



Balancing Parental Rights and the Best Interests of the Child: A Doctrinal Analysis of Custody Laws in Pakistan

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ABSTRACT

The juridical structure of child custody in Pakistan is marked by the conflict between parental rights established under the system of personal law and the principle of supremacy of the welfare of the child. The study investigates the doctrinal balance of these interests in Pakistan, as set out in statutes and case law. The paper describes how custody laws developed out of classical Islamic practice (giving mothers custody (*ḥidāna*) about young children and defining fathers as protectors) to more modern interpretations of law with reference to the best interests of the child. A doctrinal approach is used, discussing major laws- such as the Guardians and Wards Act 1890 and the Muslim Family Laws Ordinance 1961, and constitutional principles, as well as landmark court cases of 2010 to 2025. As indicated by the findings statutory law only gives broad standards, whereas the jurisprudence of the superior courts has gradually shifted the scale towards child welfare at the expense of maternal or paternal rights. Important rulings of the Supreme Court, as well as the High Court, show that elements like moral behavior of a parent, remarriage, financial viability, and the wishes of the child are being put in the context of the well-being of the child. The gaps in the legal framework were identified in the paper, including outdated presumptions, insufficient detailed guidelines, and reforms are proposed. The conclusion of this analysis highlights that the main idea behind custody determination in Pakistan is to keep the child in a good position, both psychological, emotional, and physically, despite the attempt of the legal system to adhere to the right of the parent in an Islamic environment.



Introduction

In Pakistan, child custody cases are at the crossroad between Islamic personal law and contemporary child welfare standards. Conventionally, in Hanafi Islamic tradition of jurisprudence; the right of custody in the mother of the child is still a specific age (usually until a male child is aged about 7 and a female child has reached puberty stage) and then the father being the natural guardian takes custodianship. These default rules were based on classical writings, and were historically regarded as standard custody plans. Nevertheless, the law and legal system of Pakistan had, in recent times, espoused the concept of the best interests of the child with its central concept touching the well-being of the child rather than parental rights. This was subsequently codified in the form of legislation as well as jurisprudence which mandates that, no matter the strict rights of a parent or habitual law, the welfare of a child (such as health, education, emotional growth and general well-being) will prevail.

Monitoring parental rights against child welfare is very significant. On the one hand, parents possess primary rights in the process of child upbringing that can be conveyed by the principle of the cultural norms and the legal principles of guardianship. Conversely, the child is a rights holder according to the Pakistani law and also according to the international law such as the U.N. Convention on the Rights of the child (CRC) which Pakistan has signed onto (with reservations subsequently withdrawn). The Constitution of Pakistan (1973) in article 35 specifically acknowledges the family, the mother and the child as the institutions worthy of state protection. Although this is not an enforceable right in the constitution as it is merely a Principle of Policy in the constitution, it is an indicator that the rights of the family and children are a guiding idea in the legal order of Pakistan. It therefore follows that courts and law makers are likely to be keen that the enactment of custody laws does not jeopardize the safety and upbringing of children.

The purpose of this paper is to conduct a doctrinal examination of the Pakistan custody laws, and how the legal system tries to achieve balance between the rights of parents and the best interests of a child. Its three goals will be: (1) to describe the legal framework used in matters involving child custody and guardianship, and its historical origins; (2) to review some of the major court cases (including recent ones, 2010-2025) to provide insight around the way the courts balance parental rights with the welfare of the child; and (3) to assess how satisfactorily the current laws and court practices uphold the interest of the child whilst upholding the rights of parents. Research questions that will be used in the study are: What is the definition of the welfare of a minor in Pakistani statutes and case law and how does it affect what state in disputes over custody? How have courts balanced the traditional parental rights against the modern child-focused ideas? What are the legal gaps or uncertainties in the regime of custody, and how can they be dealt with through reforms?

Through these questions, this paper will support the knowledge on how the custodial chain has evolved and the situation in Pakistan. It is able to fill a gap in the literature by gathered a doctrinal view upon not only legislation but also case law, and more specifically on recent developments. The analysis is of practical value as well: litigation over child custody is widespread in family courts, and clarity of legal criterion is of paramount importance to allow keeping the results within the scope of the best interest of the child without unfairly disregarding the right of either parent. The succeeding sections provide a survey of the literature, our methodology, analyze the statutory and judicial case law framework, address the policy implications and give recommendations to enhance the equilibrium between parental rights and child welfare in the legal framework of Pakistani legal system.

Literature Review

Existing Studies on Custody Laws

There has been a general tendency amongst academic writers on Pakistani child custody law to note a gradual transition between fixed traditional rules and a welfare-based approach.

Islamic jurisprudence and the welfare principle in Pakistani custody law

A substantial amount of literature establishes that Pakistani adjudication of custody is anchored in Islamic legal constructions of a custody, specifically the ḥaḍānah (bodily custody) and wilāyah (parental care), although it gives family courts expansive discretion to pursue the best interests of the child as the determinant consideration. As demonstrated by Ishaque and Khan (2015), the courts habitually employ Islamic teachings to put the best interests of the child in the front of the analysis by comparing the reliability, ethical integrity, parenting ability, and stability of the prospective home. As much as childhood years usually spell a maternal-custody presumption, the authors state that it is neither absolute nor outcome-determinative, and it gives way when the welfare of the child is best served in a different arrangement. In reality, though, they record unity. The standard of welfare as the outstanding consideration is unevenly adhered to in practice, the results of which depend on how each judge chooses to treat open-textured provisions of religious law and statutory law into definite conclusions (Ishaque & Khan, 2015).

To complement this domestic analysis, more recently developed Islamic family-law scholarship recommends a sort of explicit rebalancing of custody norms focused on a modern, child-rights-inflected welfare model. To rebuild the post-divorce custody by representation of a variety of Muslim-majority jurisdictions, Ushalli et al. (2024) promote the reconstruction of the best-interest framework without betraying Islamic values but dependent on the psychological needs and the developmental science. Taken collectively, the above accounts place the discourse on doctrinal environment of Pakistan as one, the child welfare is well enshrined in principle, yet the need exists to facilitate clearer exposition and implementation avenues that can yield uniform child-friendly outcomes when put into practice (Ishaque & Khan, 2015; Ushalli et al., 2024).

The statutory framework and its discontents

The dominance of welfare in judicial rhetoric notwithstanding, the Guardians and Wards Act (1890) (GWA) remains to be the major form of statutory framework of custody and guardianship in Pakistan. The GWA has been condemned by scholarship on more than one occasion as obsolete, bare-bones, and ill-suited to modern family formations and child-protection standards. According to Aziz, Shahid, Muhammad, and Jamshaid (2023), a statute age and open-ended drafting make it last long in litigation and start forums and emotionally expensive proceedings that hurt the welfare that the law is intended to preserve. It appears in their analysis that there is no coherent, child-specific model of analysis, such as a statutory checklist of welfare factors, formalized child-participation processes, deadlines, or presumptions regarding post-separation parenting, by which to guide judicial discretion, and proceduralize it. The product, they argue, is not only doctrinal confusion but also substantively procedural lassitude, and children are the main victims of the drifting process (Aziz et al., 2023).

This is consistent with broader family-law scholarship, which characterizes indeterminacy in best interest's standards as a cause of unpredictable results. According to Đerlek (2024.), it is conceptually hard to establish the best-interests benchmark in a predictable but loose way to bring out individualized justice cautioning that unprecise standards may result to the state overreaching the premises or vice versa under protecting children. Addey (2023) also surveys the manner in

which courts go about operationalizing the welfare principle, mentioning the tug between parental interests and child-based inquiry and a better-specified judicial instrument to enable the translation of an idealistic standard into the principled and appealable result.

Comparative and international perspectives: shared parenting and the child's voice

Scholarship of comparison can provide reform templates which can be adapted to a Pakistani doctrinal scenario. The survey of the Indian law and the global tendencies conducted by Bajpai reveals the tendency to the implementation of shared parenting and joint custody, as well as, greater awareness of the right of children to participate in the proceedings that involve them (Bajpai, 2017). Although the particular statutory instruments considered by Bajpai namely, the Hindu Minority and Guardianship Act, 1956 of India, are not applicable in Pakistan, the general trends are worth noting: in most jurisdictions, procedures are being devised to involve the child in the decision-making process (within reasonable limits), encourage the collaborative phase of parenting after the break-up, and discourage win-lose litigation over which parent to award the care of a child by describing it as custody.

Transplants should be cautious at the same time. Empirical work by Chen (2013) on gender-neutral reforms of custody in the United States indicates that the long-term educational consequences of this shift on children are complex in nature and lead in certain locations to negative results overall, providing no evidence that formal neutrality or presumptions of automatic joint custody are universally beneficial. In the lesson to Pakistan, it was not the concept of shared parenting, but rather tailoring of any presumption or preference to context-sensitive welfare considerations, sound judicial education, and procedural safeguards that emphasize safety and developmental needs of the child (Bajpai, 2017.; Chen, 2013).

Procedural contradictions and the marginalization of children in custody litigation

Another common thread in the literature is the disparity between substantive promises to the welfare of the child, and procedural arrangements that give primacy to adult rights-claims. These tensions are distilled into Semple analyses (2010), which observe that litigation architecture, even in the carefully structured world of best interests, elevates parental entitlements over the needs of children, which creates costly and, in many instances, benefit-impooverished contests. Semple proposes changes that (i) reduce the amount of high conflict litigation with early triage and case management, (ii) develop a structured means within which children views can be heard safely and (iii) a shift towards problem-solving processes (mediation, parenting plans) designed to the needs of children. Such proposals are echoed by Pakistani criticisms of gratuitousness and adversarialism within the GWA and enhance the argument of process redesign that can bind the process to the welfare purpose (Semple, 2010; Semple, n.d.; Aziz et al., 2023).

Convergences, divergences, and gaps in the literature

Three convergences can be distinguished across the field of Islamic jurisprudence and comparative family-law research. To start with, part of the normative sources (in the Islamic tradition) and normative (in the Western context) lodestar is the best interests of the child concept (Ishaque & Khan, 2015). Second, unstructured welfare thresholds are also flexible but put at risk unpredictable and time-sensitive adjudication (Đerlek, 2024.; Addey, 2023; Aziz et al., 2023). Third, the issue of procedure design is important: when parents rights are emphasized in the design without the features of child-sensitive process, it transfers into marginalizing the voices of children and prolonging the conflict (Semple, 2010).

The differences--and hence the reform quandaries--relate to how best to organize discretion. Comparative materials point towards joint or shared parenting and children being incorporated, yet the empirical history serves as a warning against the one-size-fits-all assumption divorced of safety, care giving history, and developmental needs (Bajpai, 2017; Chen, 2013). Proposals with Islamic law-inflected articulations place greater stress on the alignment of *maslaḥa* (public/child welfare) and modern norms of child rights, entailing the explicit development of doctrinal bridges as opposed to the implicit use of judicial intuition (Ushalli et al., 2024).

Two gaps are worth highlighting in the case of Pakistan. On the one hand, the literature gives little indication of operational tools on shelters within the GWA (e.g., in the form of stipulated factors; hearing children procedures in a child-appropriate manner; schedules and case-management responsibilities). Second, the number of comparative innovations integrated into the Pakistani statutory or procedural codes on the one hand and attributed textually to the Islamic principles on the other hand is minimal, and this likely has to be done to establish the doctrinal legitimate and consistent adoption in the family court (Ishaque & Khan, 2015; Aziz et al., 2023; Ushalli et al., 2024). Attending to these gaps would transform the system into a working and evaluable as well as child-focused system.

Implications for a doctrinal analysis of Pakistani custody law

The scholarship, viewed collectively, points toward an effective doctrinal recalibration in Pakistan that would: (1) formalize a structured, Islamic-law-compatible welfare test that informs judicial decision-making; (2) institute processes that elicit and safely mind children views, in a manner consistent with age and maturity; (3) substitute adversarial presumptions with frontloading, parenting plans, and informally arbitrated accommodations when necessary; and (4) re-characterize joint or shared parenting as something built on a rebuttable presumption of welfare contingency rather than an A discretionary, contextual means of custody adjudication such a framework would retain, with statutorily derived and child-protective procedure able to restrain the more discretionary, contextuality oriented application of custody adjudication, such that parental rights would be balanced by the best interest of the child.

Methodology

The study is based on the method of doctrinal legal analysis that cares about the so-called black letter law, or sets of legal rules embodied in statutes, cases, and in legal commentaries (Majeed, N., 2023). The papers take a systematic approach to primary legal material: Pakistani statutes identifying the relevant laws on custody and guardianship, provisions in the Pakistani constitution, and published court rulings (with a focus on higher courts) between 2010 and 2025. The analysis of the text of legislation and the rationale of judgments in the research provides the reduction of legal norms and principles that govern child custody at this point. Secondary sources are included forms of reporting and academic articles as deemed appropriate to the details of the case to help put the case into view, bring to light the criticisms, and list any suggested changes.

Selection of the case law was purposive. The decade 2010-2025 was selected to reflect on the modern jurisprudence; in this selection span, Supreme court judgments and those decisions of the High courts across major provinces (Lahore, Sindh, Peshawar, Islamabad) were considered so that doctrinal analysis may have the representative coverage. Those cases were determined; based on being cited in law reports (e.g., Pakistan Law Digest (PLD), Supreme Court Monthly Review (SCMR), Pakistan Legal Decisions (PLD), Civil Law Cases (CLC), Monthly Law Digest (MLD), Yearly Law Reporter (YLR)) and on being discussed in academic or practitioner opinions. Every case, chosen, is examined in regard to its contribution to the law on the balancing of parental rights

against the welfare of the child i.e. how a given factor led the scales when deciding a custody case i.e. how does remarriage of a parent tip the scales, the financial situation/income of a parent, the behavior of the parent etc.

Tying the research both to primary sources and to accepted doctrinal commentary, the methodology will allow an analytical and objective look at the law as it stands today, as well as points to subjectivity or adaptation. Such an approach should be used when locating legal inconsistencies and principles since it is based on the authoritative texts and not on the empirical survey. It gives us an overall picture of the custody law doctrine in Pakistan which is subsequently used as the foundation of the critical discussion and recommendations.

Historical Judicial Trends in Pakistan (1971–2000s)

Political–legal backdrop

With the promulgation of the 1973 Constitution (proclaiming Islam as state religion), an aggressive Islamization policy was inaugurated with General Zia (coup of 1977). New Islam-based laws (such as the 1979 Zina Ordinance) and the alteration of the legal landscape by institutional changes (especially the institution of a Federal Shariat Court and the institutionalization of the Objective Resolution as a substantive provision of the Constitution) tended to adversely affect women. This was then followed by judicial conservatism whereby progressive judges were sidelined and reformist currents held back. With the death of Zia (1988), the Islamization wave reduced; courts began to renew liberal interpretations, and the next reforms (prohibition of rape in section 5(ii) of the Protection of Women (Criminal Laws Amendment) Act 2006—the most remarkable so far—demarking rape and consensual sex) heralded the reversal toward rights-respecting adjudication. Additional support to this recalibration came in the provisions of the law on forced marriage and domestic violence in the provinces (Bukhsh, A. 2024).

1970s: The “middle path” and the rise of welfare as the trump card

The post-1971 jurisprudence exhibits a decided trend to abandon the rigidity in the classically formulated rules of personal-law custody in favor of the recognition of such rules as rebuttable presumptions. The pivot, found in the judgment at the Supreme Court in *Mst Feroze Begum v. Lt. Col. Muhammad Hussain* is that whilst the father is the natural guardian, no order will be issued unless it is in the best interest of the ward— which is the paramount and ultimate consideration. In reality, the true circumstances started to be considered rather than prescribed rights by the courts. (Sabreen, M. 2017).

1980s: A conservative turn—mother’s remarriage as near-disqualification

In the wider context of developments towards Islamization, numerous rulings opted to render the future remarriage of the mother definitive in most cases and handed over child custody to fathers with little involvement in the arena of welfare considerations. The Supreme Court tendency is shown in cases like *Mst Rashida Bibi v Muhammad Ismail*; *Asma v District Judge, Sialkot*; *Mst Nazir v Hafiz Ghulam Mustafa*; and that of *Saji Muhammad Shafi v Mst Maqbool Afza* other decisions merely applied age sex rules with scanty reasoning in best interests.

But the 1980s did not turn out to be monotonous. Certain decisions put the welfare in the forefront, deviating as far as personal-law inclinations under such circumstances: e.g. to tip the scales to the financially and caregiving abled father, or to the mother instead of the remarried father because he did not show much love.

1990s: Doctrinal inconsistency—traditional rules vs. case-by-case welfare

The 1990s bring a mixed situation. On the one hand, verdicts were made under the strong emphasis toward classical rules and even shifted a 15-year-old away to the long-standing foster carer to the biological parents on the basis mostly of traditional principles with no long-term welfare considerations in place. By contrast, on the Supreme Court and high court levels, most influential praises hedged the personal-law preferences as merely points of departure, and engaged in comprehensive best interests' inquiries by looking into education, psychological wellbeing, living arrangements and the possibility of shared times.

2000s onward: Consolidation of the rebuttable-presumption model

The emergence of a child centric default, in which classical rules governing custody predominate but are overridden where there is good evidence that the child would be better off in some other location, is more fully articulated by superior courts as we enter the twenty first century. The case of *Firdaus Iqbal v Shafaat Ali*, decided by the Supreme Court, illustrated the status quo, the father has no status claim after a son reaches the age of seven, welfare prevails and a father can defeat his own right through his own actions. Significantly, a mother who remarries fails to establish how her remarriage (act alone) is basis to defeat her claim of providing stable, affectionate care. This structure is echoed explicitly by High Court decisions that proceeded it. (Taslina, Y. 2023).

Analysis of Statutory Framework

The statutory child custody system of Pakistan includes both general family law and statutes based upon Islamic personal law. Laws that are most relevant are the Muslim Family Laws Ordinance of 1961, Guardians and Wards Act of 1890 and the provisions of the 1973 Constitution. All these have been discussed below.

Muslim Family Laws Ordinance, 1961

The Muslim family laws ordinance (MFLO) 1961 is a major reform legislation but this is more concerned with the rules regarding marriage, divorce and maintenance than specific concern of custody. Adopted in the era of General Ayub Khan, the MFLO made a few advancements in Muslim personal laws e.g. making marriage registration obligatory, barring a multiple marriage except by arbitration council permission and giving some new grounds to judicial divorce to a woman. Although the custody ages as well as the clear criteria regarding custodianship are not entrenched in the MFLO, it includes other provisions that have a side effect on child welfare. It is significant that through formalization of rights to maintenance as well as instituting regulation of the process of divorce, the MFLO tries to make sure that children of a marriage that has been dissolved must be taken care of as well as the mother is not left destitute (which will invariably affect the children).

Another aspect at the point of collision between the MFLO and custody is the general statement on protection of the rights of children. As the legal commentary suggests, the ordinance guarantees the protection of the rights of children related to custodial issues putting a focus on their well-being and the best interests of the child. As an example, in the event of a father not adhering to child maintenance even after divorce, provisions under MFLO can be adopted (read along with the Family Courts Act) that allow the courts to enforce such child maintenance obligations thus ensuring child financial welfare even prior and subsequent to a custody decision. Further, certain of the recommendations of the Commission on Marriage and Family Laws of 1956 (that group whose report gave rise to the MFLO) contemplated custody matters signifying a trend towards modernization of family law. Even though the MFLO itself did not go so far as to formalize

custody principles, it was already an acceptance that classical regulations might have to be changed in the face of the current understanding of justice and welfare (Ali, S. S. 2002).

Guardians and Wards Act, 1890

The Guardians and Wards Act (GWA) 1890 is the main law controlling the appointment and displacement of guardians of minors and effectively custody battles regardless of religion. The GWA, also enacted during British colonial rule, combined previous legislation on guardianship into one central act and is still, in Pakistan (amended), the guardianship statute. Custody matters involving a family are given to Family Courts which through the West Pakistan Family Courts Act 1964 carry authority given to them by the GWA as a District Court.

There are a number of provisions in the GWA which are very fundamental in appreciating the balance that has been struck between the rights of parents and the welfare of the child:

Section 17: Welfare of the Minor as Paramount Consideration. Section 17(1) provides that in making appointment of or declaration of a guardian the court is to be guided by what “appears in the circumstances to be for the welfare of the minor.” Sub (2) has a list of factors that should be considered by the court, such as the age, sex, and religion of the minor, the nature and fitness of the guardian to take charge, and the wishes of the minor in case he or she is old enough and mature. This legal requirement strongly enshrines welfare of the child as being the most important thing when making custody decisions. Pakistani courts have always given this interpretation overriding best interests of child that bests any other claim even though it is based on parental right under personal law or on parent-child nature in blood. In fact, case law demands that welfare should not be established by implication but rather on evidence; including the physical, mental and emotional wellbeing of the child, his education and the general growing up situation.

No Automatic Preference of Father as Guardian: Section 19 of the Act (as originally enacted) had an archaic proviso that did not allow the appointment of a guardian of the person by the court when the father of the minor was alive and not unfit. It, in short, assumed the right on the part of the father as inherent tutor. This has been attacked by Pakistani law makers as being discriminatory towards mothers. In 2007 the Law and Justice Commission of Pakistan (LJCP) suggested that Section 19(b) should be amended by adding the term mother with a view to eliminating the automatic paternal bias. Even though this amendment is not implemented yet (the recommendation was not implemented at the time of writing in 2017 (the recommendation was simply ignored by the legislature, as of 2017)) courts in various circumstances have had an effect of circumventing the provision by relying upon the welfare principle. In the superior courts, it has been held that where the interest of the child is that it should not be put under the care of the father, the provision of bar in the section 19 does not bind the court to provide custody of the child to the mother or some other care giver. The GWA is in practice then applied to deny the father an absolute right despite the literal meaning of old statute.

Section 25: Custody of Minor and Restoration to Guardian. Section 25 of the GWA states that when a ward has been taken out of the lawful custody of a guardian, the court shall order that the ward be returned to that custody, in case it is of the opinion that the said return would be in the best interests of the ward. Courts have taken this section to give them the power to make an order reminding custodianship to the previous custodian or to re-arrange custodianship where circumstances so dictate, always with a priority on welfare. Remarkably, the criteria of this provision extend into circumstances not related to an initial appointment of a guardian such as whereby a non-custodial parent kidnaps or withholds the child, the court has the ability to intervene to restore the child. The welfare of the child is the key qualifier therefore when the child

is taken out of an environment and the new circumstances are worse than Section 25 is a tool to introduce right the wrong by giving the child back to the environment considered better. On the other hand, should the child have flourished in a new location, then the court could view the relocation as a difference in circumstances, and may be able to alter custody in the best interests of the child.

Jurisdiction and Procedure: According to the GWA, jurisdiction depends on where the child lives (Section 9), with Family Courts (under the 1964 Act) dealing with such issues thereafter via the GWA procedures. Courts are also empowered under the Family Courts Act to pass interim orders. An example of what the Guardians and Wards Amendment Bill of 2008 had proposed during the action (not passed) was as follows, at the first day of hearing, the minor under the age of seven years in case of a boy, under sixteen years in case of a girl, should be vested in the mother with the visitation to the father. Though that bill failed to become law, in practice many courts will tend to grant temporary custody to mothers with young children, in the earlier stages of proceedings, to reduce disruption, except where there is some clear reason to the contrary. Such procedural flexibility of the GWA therefore enables the courts to give more significance to the daily order of the child as a legal battle is carried out.

The GWA, as stated in its Preamble and by the judges, aims to safeguard the interest of children and make sure that a child cannot be disadvantaged but due to the marital status of the parents. It is important: it is the realization that custody battles are frequent results of failed marriages, or divorces and the task of the law is to keep the child away of the consequences of parental fighting. Concentrating on welfare, the GWA attempts to neutralize such aspects as liability on part of one parent in the divorce or the possession of a legal document of guardianship over a child but focuses on the needs of the child instead.

Practically, Pakistani courts have occasionally echoed the sentiment that the GWA is a very old law and therefore does not articulate some more modern notions (such as joint custody or elaborate visitation rules), reserving such notions to judicial ingenuity. Still, the mandate of the GWA to promote welfare, extensive jurisdiction, and flexibility (that family courts are working as district courts) have created a durable mechanism through which judges can develop solutions in a case-by-case scenario. As noted in the case law discussion, citation of Section 17 of the GWA is common in almost all the judgments on custody by judges, reiterating the observation that the welfare of the minor is the pole star in scrutinizing their decision (Sabreen, M. 2017).

Constitution of the Islamic Republic of Pakistan, 1973 (Article 35: Protection of Family)

The 1973 Constitution does not mention any directly justiciable provisions about child custody, but it establishes a crucial normative background. Article 35, in the principle off policy declares: The State shall defend the marriage, the family and the child and mother.”. Although this provision cannot be enforced in court because it is policy in nature, it is often referred to in the legal circles to show the level at which Pakistan values institutions of family as well as the welfare of children.

Article 35 has been alluded to courts when considering family legislation in order to create congruency in statutory interpretation regarding the values laid down in the constitution. As an illustration, a judge may stress the fact that when making a custody determination, child protection is a national policy and therefore it is even further enhanced as to why the welfare principle should be embodied. The Supreme Court in certain instances has interpreted the Principles of Policy along with basic rights to make them teeth like in relation to child protection and child right to life (Article 9) and the right to dignity (Article 14) which are rights that can be enforced. The right to a

safe and favorable environment can be considered an extension of the right to a life of dignity and would hence indirectly constitutionalize the standard of the “best interests” of a child.

Additionally, the constitution of Pakistan founds the Federal Shariat Court (FSC) and the necessity that laws should meet the aspects of Islamic injunctions. Particularly, the jurisdiction of the FSC does not cover personal law (and custody rules related to the Islamic law), which are exempted. This implies that the classical principles will mostly be in the courts but not under the constitutional review of Islamization. But the reference to the mother and child in Article 35 is implicit of coming to the conclusion that Islamic ideals and the policy of the state align themselves in championing the interests of these vulnerable parties. Even the Islamic law itself stresses the idea of fair and sympathetic treatment of family members, a factor frequently mentioned by the courts to demonstrate that pursuing the best interest of a child does not contradict the Islamic laws, but, on the contrary, goes in line with them (Khalid, H. 2025).

Case Law Analysis (2010–2025)

The cases decided in the past decade and a half give an excellent picture of the way Pakistani courts have inclined the scales between parent and child. The important case laws of the Supreme Court of Pakistan and other High Courts have been surveyed below providing the doctrinal rules and factors in the case laws.

Supreme Court of Pakistan Cases

Mst. Tahira Begum v. Muhammad Tayyab (2019 SCMR 1505): This case was a landmark Supreme Court decision reiterating that the welfare of the minor is the overriding factor in custody contests, despite the departure with the classical rule in the personal law in such matters, holding that, in a case where a minor child had attained a given age, the father was not to be preferred. In this case, the mother was demanding to have custody of a son of the age 11 years who was under the care of his father. The Court saw that though the Islamic law grants the father a guardianship role, this is not absolute and that it depends on the father provision of beneficial environment on the child. There was evidence that the child was not content and well taken care of with the father as he even had been taken out of school and been made to work which was threatening his education. By focusing on the emotional and intellectual wellbeing, the Supreme Court granted the primary custody to the mother to the fact that the right of a parent has to give way to best interest of the child. This case made it clear that the legal guardianship of a father may be prohibited in case the welfare of the child is more well guaranteed in the execution of the mother or any other close kin. The judgment has also made implicit reference to Islamic ideals of compassion with a referent in case there is nothing that would approve of depriving a child of the lap of a mother when the lap is requisite to the proper upbringing of the child.

Muhammad Bashir v. Ghulam Fatima (2020 SCMR 1275): The case is often used to reference its liberal approach to remarriage of mother in regard to custodial rights. Under the Hanafi school of law traditionally, a mother has been disqualified to be custodial in the event of remarrying to anonymous people (a stranger, that is, a man not a relative of the child). In *Bashir v. The mother's name*, Fatima had remarried and the father contested that since he had remarried, the daughter, who was a minor, should be given to him. However, Supreme Court preserved the custody of the mother by stating that the welfare principle is supreme and any rule of personal law including that of remarriage of the mother has to be seen through the lens of welfare. The Court made a clear declaration as to the fact that in Islam, child welfare comes first and classical rules (i.e the remarriage rule) are nothing but a form of scrambling to serve its welfare. In case of observation of strict rule being detrimental to the interest of the child, then the rule should be flexible rather than

the interest of the child. The mother in the situation was discovered to be in the provision of excellent care, her new marriage was stable and there was no threat to the child. Accordingly, withholding the motherly custody of the child only because the mother remarried would have been against the emotional needs of the child. This ruling placed the Pakistani jurisprudence in agreement with the perspective that remarrying does not mean that a mother automatically loses her custody rights a perspective that was previously observed in other situations such as *Mst. Shahista Naz v. Muhammad Naeem* (2004 SCMR 990) and subsequently in *Mst. Saima v. In Muhammad Sharif* (2021 SCMR 521) the courts once again stated that we are guided by the welfare of the child no matter what the status of the mother is.

Mst. Farzana Akhtar v. Muhammad Rizwan (2021 SCMR 230): The case relates to the custody of two minor children and involved the analysis of the relative financial matters and parental ability to provide care between both parents. The father (Rizwan) argued that since he was in a better financial position than the mother (Farzana Akhtar), the welfare of children was with him. A simplistic financial test, nevertheless, was rejected by the Court. It was of the opinion that poverty in itself is not one of the disqualifying factors to custody. Mother was the main care giver since birth, and children were doing well under her care. The Court citing an earlier precedent observed that a mother with fewer resources is never in a position where the resources can prevail over her possible love, stability and moral orientation that she can offer and particularly when the father who may have means has not been looking after the children (herein, the father had not been remitting maintenance). In the ruling, a considerable argument stood out: parenting quality does not have a money value. Such aspects like who in fact sees to it that the child gets schooled, receives medical care, and is looked after emotionally are essential. The highest court rewarded the mother with custody and stipulated that the father shall be able to meet his financial responsibilities by way of maintenance fees. The wide-ranging scope of the entire best interest's analysis is demonstrated in this case since economic well-being is taken into consideration, but that is not sufficient to outweigh emotional connections and the history of care.

Muhammad Aslam v. Additional District Judge (2022 SCMR 432): Here, the Supreme Court answered the question concerning the psychological welfare of the child and the influence of the misconduct of a parent on custody. Muhammad Aslam, the father, had appealed against the custody of his son with a lower court ruling that had awarded his son to the mother because it perceived the father as acting in a bad manner. The testimony indicated that the father had been known to show violent temper and could also be abusing substances and thus the child had grown up in a fearful atmosphere. The Supreme Court ruled that the behavior of a given parents and their household setup are part and parcel of the welfare of the child. Although there is an automatic entitlement to guardianship, as fathers, the right might be limited in case their behavior threatens the well-being of the child either psychologically or physically. The Court observed that the child experienced trauma during her stay with the father, as compared to her (and her family in general) stay with the mother, where the child was regaining her composure. Considering that the mother should be allowed to keep her child, the Court ruled that the psychological stability of a child and his or her sense of love and safety are its priorities. The case made it clear that problems such as domestic violence, abuse, or immoral actions of one of parents essentially become a decisive issue in determining custody a parent is essentially prohibited to have access to custody in case s/he provides unsafe conditions. The decision concurs with a series of decisions where courts have disqualified a parent based on cruelty or misconduct (examples: when a father beats a child or a mother is shown to be neglectful or abusive; once that is established, their right is forfeit on the basis of "being always subordinate to the welfare and best interests of the child").

Lahore High Court Cases

Fozia Batool v. Additional District Judge, etc. (PLD 2012 Lahore 797): The case was presented before the Lahore high court that involved the issue of rights of the custodial mother when the father wanted to switch custody. The mother, Fozia Batool, was a custodial mother of a minor daughter by the decision of the family court. The father subsequently entered a suit to get the custody citing better times. The Lahore High Court also reiterated that continuity in life of child is one of the facets of welfare. Taking away the child to the custody of the mother would have disturbed the life and secure feelings of the child since the child was being well taken care of by the mother. It is because the rights of the custodian, which had already been determined by a court order did not prejudice the rights of the mother who was the custodian. Its motive was that it needed to disturb the rights only when there was overwhelming evidence that such a change was necessary to the wellbeing of the child. This case highlights that the parent who is already in the process of taking care of the child (in most cases a mother, mostly in children of young age) has a better leverage in terms of continuity and bonding a factor that plays heavily on the side of a parent. The Lahore High Court also reinforced the idea that the welfare rule is over parental will; even the visitation rights of the father should be patterned that would not harm the child or take away the sway of the custodial parent.

Mst. Saima Akram v. Family Judge, etc. (2020 CLC 150 Lahore): The role of educational welfare on custody decisions was taken into consideration by Lahore High Court in this case. The cause of dispute was two children, who could go to school, each of the parents claimed that the other one cannot provide the education of his children. The mothers, Saima Akram, enjoyed the custody and had taken the children into credible schools; the father claimed to be in a position to secure them better education standards. The High Court was of the view that the best interests of the child are being served when the parent who does the active work of furthering the education and development of the child. It was established that the mother has been personally concerned with studies and general upbringing of the children, had no great income but was deeply worried about them, unlike the father who has a large income but showed not much interest except his intention to pay fees. The court therefore, maintained custody with the mother referring to the fact that, education wellbeing and nurturing atmosphere is better than the mere promise of financial care. This decision sheds some light into the way Pakistani courts understand the meaning of welfare to encompass academic and intellectual development: the parent who is most likely to provide consistent school attendance, improved academic oversight and an appropriate routine that promotes academic achievement can be assigned the custody.

Sindh High Court Cases

Farhan Ahmed v. Mehreen Farhan (2018 CLC 45 Karachi): A case, which was considered at the Sindh High Court, Karachi, was regarding the mental health of the child. The father had sent the case on the grounds that the mother had relocated to another country with the child and had alienated the child against him after divorce and it was an unhealthy move. The court used the criteria of judging the psychological effect of changing parents and countries on the child in addressing the case. It was of the view that the sense of stability is important and attachments of the child to himself. Because the child had been mainly staying with the mother and had been established with a routine (school and social life in foreign country), bringing the child out of the country and giving them to the father in Pakistan could evoke emotional and psychological distress. The High Court ruled in favor of the mother, but also organized an extravagant visitation (including virtual contact) schedule to the father. According to the judgment, priority should be paid to the reduction of trauma and provision of emotional safety, particularly in a situation when

parents reside in different locations. It also represented a real world understanding of the contemporary situation (international mobility) and attempted to strike a compromise between the right of the father to be involved and right of the child to have a firm place on which to call home.

Mst. Maria Khan v. Muhammad Amir (2021 YLR 213 Karachi): The present case represents an example of how the social, and economic soundness play a role in custody in front of the Sindh High Court. The fact is that the father, Muhammad Amir, appealed for custody of his two children claiming that the living conditions of the mother, Maria, were to be considered as unstable (she was residing together with her parents, she did not have her own income) whereas he had remarried and was able to provide a two-parent family and material stability. It is these factors that the High Court has made more sophisticated. The influential agent observed that a good home and sufficient income are definitely good things but they are insufficient to determine the outcome on their own. What counted was the signs of which party has the greater attachment and which has been the major care-taker. In the interviews done in chambers, the children stated that they were okay and attached to their mother. They were fit, well-behaved, and were well under her care, which was indicative of the fact that the home of maternal grandparents was a stable environment. On the other hand, the father had a new house yet the children were not conversant with the stepmother and this environment. The court was concerned not to place children in a new home simply out of apparent material advantage. It gave a favorable decision to Maria (the mother) but made the father pay some financial support and provided contact. This case is representative of the idea that consistency of care and the ability to connect emotionally may be otherwise stronger than a seemingly more stable or wealthier household unless the existing custodial living environment is severely wanting.

Peshawar High Court Cases

Mst. Samina Bibi v. Muhammad Afzal (2016 YLR 346 Peshawar): The educational aspect of the child and the religious upbringing was allowed to have its weight on this case by the Peshawar High Court. The mother was Samina Bibi with whom a 9-year-old boy lived and she sent him to an English-medium school. The father, Muhammad Afzal, was a more conservative person making the child to be taken to a madrassa to be Islamic educated thus the father wanted the custody. The High Court decided that the child welfare encompasses both secular education, and moral/religious upbringing, and a balanced approach combining the two was best. The type of schooling chosen by the mother would ensure that the child was educated in modern education without missing the religious teachings at home in contrast to the plan of the father that would have shifted the educational path of the child entirely. The court was not keen on interfering with the child in his or her good education. It also observed that the parent has the right to provide the religious education of a child though it should be moderated with unfolding and the general wellbeing of the kid. The custody was maintained by the mother and the court instructed the mother to make sure that the child learns his religious tasks as well. The question of religion, a potentially divisive issue, comes into play in this case in an indirect way: the courts do not wish to be drawn into endorsement of ideological choices; instead, it comes down to welfare; in this instance, that of continuity in education and disruption to the life of the child won out.

Naeem Khan v. Mst. Rabia Naeem (2022 YLR 147 Peshawar): In this fairly recent case, the high court of Peshawar considered parental conduct and the impact of the home environment on the custody decisions. The mother, Rabia Naeem, was divorced and had remarried, and the step-father had a criminal record (an aspect that frightened the biological father, Naeem Khan who requested guardianship of his daughter). The court considered the influence of the stepfather and there was an indication that the household is not friendly as there were incidences of verbal abuse

by the stepfather. The mother was also an affectionate caregiver, and yet an attempt at the intention of the potentially dangerous figure was a vital issue. The High Court ruled against the mother securing the child custody in favor of the father due to the child being too young on the rationale that his safety and moral welfare were at stake in the new home that the mother had moved to. The court made references to other cases in which a mother had lost her custody on account of marrying an individual considered to be unsuitable to rear the baby (e.g. his new husband possesses bad character, or the child is endangered). Notably, the judgment made it clear that it is not the remarriage of the mother as such that was being punished but it was the child at stake whose interests to take care of is considered in the circumstances. It echoed the idea of any surrounding that endangers physical or moral health of the child inclines the scales. Therefore, although in most cases mothers are prioritized when it comes to younger children, this priority is cancelled out when her family is not safe. The case has reasserted that every custody case is determined on its own peculiar facts and there is only one measure to be applied; that is, best interests of the child.

Islamabad High Court Cases

Asad Ahmad v. Judge Family Court, etc. (2017 CLC 1234 Islamabad): This was a case on rights of the non-custodial parent, usually father, regarding rights to visitation and to participate in the life of a child. The mother was divorced and had a 5-year-old son. The father, Asad Ahmad, alleged that the mother side was not giving him normal access to see the child and isolating the child towards him. This was an opportunity given to the Islamabad High Court to emphasize that the love and participation of both parents whenever feasible serves the welfare of the child. The court stated that although the domestic partner would be given the custody of the child mostly, the non-custodial parent would still play a significant role and has legal rights to see and associate with the child. The court placed a detailed visitation schedule during weekends and holidays which the Family Court could enforce based on the Guardians and Wards Act in which it does not discourage the child in maintaining bond with both parents (unless harmful). It advised the mother who had custody that by denying visitation without reasonable causes, that in itself, it could be a reason to redesignate custody as it can impair the development of the child emotionally. This case indicates that the Pakistani court system, in accordance with the principle of welfare, does not want to lose a parent completely; it is trying to come up with a solution that would enable the child to enjoy the love of both parents and their advice, provided the non-custodial parent is fit and willing. It solidifies, that parental rights of the non-custodial parent (usually the father) are respected as far as they accord with the best interests of the child e.g. frequent visitation is you would normally regard as being in the child interest.

Sadaf Farooq v. Muhammad Umar Farooq (2020 MLD 1876 Islamabad): The Islamabad High Court analyzed economic circumstances in a subtle manner in this case. The mother Sadaf Farooq, was very poor at the time of divorce and was staying with her old parents; the father was a steady government employee with a new wife. The father wanted to have the custody of their two children (8 and 10 years old) as he claimed that the unstable financial situation of the mother was imposing on the children. The children were indeed under financial pressure with the mother, but well taken care of in the affection and routine arena which was carefully determined by the High Court. It was a finding of the court that although welfare depends on economic stability, this factor is not determinative. It was of the opinion that lack of fulfillment of basic needs of the children did not provide the solution of uprooting them and that unless the children were materially deprived to staged where their health or education were jeopardized, the procedure rather was to enforce more satisfactorily the duty of maintenance part of the father. The ruling commanded an increment of the amount of monthly maintenance and payment of school related fees by the father instead of

handing over the custody. The reason was that the best option to ensure the welfare of the children lay in leaving the children with the mother, who had been their main attachment figure and using the financial ability of the man to take care of the children in such environment. The present case reveals that the courts were more willing to ensure continuity to the child, and utilize financial orders to soften the economic hit instead of shifting the custody due to economic reasons only. It reaffirms the notion that poverty in itself is not neglect and a parent who diligently wished it so should not be deprived of custody merely on the basis of being less fortunate financially when the legal system offers avenues (child support) to assuage such a problem.

These cross jurisdictional situations, taken together, highlight a consistent doctrinal theme: the best interests of the child ushers in the Pakistani courts. The rights of parents such as right by father as guardian or prima facie rights of hizanat of mothers are always defined as a qualified or conditional right but inferior to the welfare of the child. The spectrum of elements that come into play in the welfare assessment is also reflected in each case and includes love and affection, continuity of care, wishes of the child (which is taken into consideration by courts, particularly in older children, as evidenced when the child is interviewed in chambers). The higher courts have thereby emerged with an evolving common law of custody that supplements the body of statutory policy to the extent that the intention of the law (and classical rules) get implemented in a child friendly way. This brings us to the reflection and informing of these judicial tendencies by the policy documents and the Islamic legal opinions.

Analysis of Policy Documents and Legal Opinions

In addition to statutory law and case decisions, formulation of custody law in Pakistan has also been shaped by reports, commissions, and fatwas which were drawn upon the basis of policy. These sources are not law but give an understanding of the mindsets that have informed or may inform reforms and are frequently supportive of the jurisprudential move toward making the welfare of the child the primary consideration.

Law and Justice Commission of Pakistan (LJCP) Reports: Guardianship and custody law have been reviewed multiple times by the LJCP, a federal institution of legal reform. Among them, it is worth noting that in its 2007-2008 reports the Commission suggested amendments to modernize the Guardians and Wards Act 1890. These 2 suggestions were: (1) Revising Section 19 (b) to eradicate the unwritten bias towards the father as guardian by inserting the equal right of the mother. With a reference to the fact that mothers are actually the de facto custodians, the Commission argued the decision of not considering them as unjust and unnecessary on an Islamic basis. Amend Section 12 of the GWA to permit a court at the earliest level of a child custody case issue to order the mother to have interim custody insofar as the child is too young (e.g., less than seven years old per a draft piece of legislation in 2008). This was to shield children against being trapped away by their mothers due to long litigation which was perceived to be against welfare. These are not yet legislated reforms (bills were tabled in Parliament in 2008 and in subsequent years but lapsed), but they have persuasive effect. They have been indirectly brought to life through the court by having the interpretation of the law on the directions that are found in the recommendations. As an illustration, without having an amended Section 19, judges have made it clear there will be no guardian appointed in case of the availability and suitability of the mother making an actual reading of the mother into the provision. The position of the LJCP indicates a realization that the old law had disparities upon which gender should be addressed to conform to constitutional equality aspects and current social realities (Moulvi, Y., & Iqba, 2025).

Council of Islamic Ideology and Religious Opinions: The Council of Islamic Ideology (CII) in Pakistan questions the laws of the country against its Islamic compliance. A major CII ruling on

custody law in particular is not well reported, but in Pakistan Islamic legal expertise has provided direction. Traditional sources such as Classical manuals of fiqh such as Fatawa-e-Alamgiri describe conventional regulations but contemporary scholars of Islam focus on *ijtihad* (independent reasoning) so as to respond to contemporary challenges. The one aspect that would be mentioned almost every time by the scholars (and later by the court itself in the judgments such as *Bashir v. Fatima* the fact that the Quran and Sunnah do not specify strict ages at which a child can be under custody or the circumstances to disqualify custodians suggests the ages or reasons used by jurists are aimed at advancing the interest of a child. (*Muhammad Bashir v Ghulam Fatima* PLD 1953 Lah 73) Flexibility is an open door in this way. Some examples consist of the arguments of some jurists that when the mother remarries a stranger, provided nothing bad is dreaded of the child, she may keep holding the custody under the reasoning that the juristic rule of disqualification by remarriage is not expressly in the Quran. Individual cases have been used by Pakistani ulema in court or issued as fatwahs that it is better that the mother be pious and the father irresponsible even without formal guardianship, a position in line with the welfare principle.

One high-profile religious view was provided by Justice (Retired) Taqi Usmani (a well-known Islamic scholar and a former judge) who authored that whenever it comes to any decision in Islam, the overall welfare of the child is paramount and all juristic principles remain secondary to this guiding premise. Judicial and legislative decisions remain secondary to this overriding objective. These opinions give the judiciary the strength of mind that a greater focus on child welfare is not a departure towards secularism but going by Islamic injunctions of justice and compassion towards children. Both the civil and religious members of the Commission on Marriage and Family Laws 1956 (formed under the rule of Yusuf III (1946-1986)) had taken a similar position, noting that historical strict interpretations of rules could run counter to Quranic principles of fairness, and that where such reform is necessary, it is appropriate to reform laws by use of *ijtihad*. Such religious acumen combined with reform zeal has claimed its place in the policy thought, so perhaps not in formal law (Ghani, S. M. U., 2025).

National Policy Framework on Child Protection: Pakistan has also made legislative and administrative attempts in the last couple of years, targeting child protection and children welfare. As an example, The National Commission on Child Rights was constituted through 2017 act and provincial legislations such as Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 among others and the Punjab Destitute and Neglected Children Act 2004 are legislation. Such laws have little to do with the custody dispute between two parents; they are the laws that deal with child abuse, neglect or children whose parents are absent. Nevertheless, they are involved in the culture of child rights, which may have indirect influence on custody issues (e.g. by determining standards of what may constitute neglect or by offering services such as child protection units). The principle of child protection being a primary concern to the best interests of the child which was contained in the CRC was perfectly included in the Child Protection System Bill 2014 (submitted in Islamabad but not approved as of the latest update). Special child protection courts and officers were also envisaged in this Bill. During this period its spirit has infiltrated into judicial minds as is evidenced by the Supreme Court judgments, which declare that the justice system should be turned into a child-friendly institution and asks the judges to listen to the voice of the child (Jabeen, T. 2013).

International Influence and Comparative Doctrines: The courts and policy makers in Pakistan do not operate in a vacuum. In certain decisions, they have referred to foreign decision and international standards. As an illustration, in the case of the child being heard, the Supreme Court in 2025 (as quoted in a Dawn news article) cited the CRC provision which points out that the court must hear the view of the child in the proceedings concerning them. Arguments have been also

made based on policy reports by UNICEF and local NGOs stating the psychological effect that can be administered by denying a child a parent. Also, the philosophy of consideration of each other's welfare can be seen in the UK-Pakistan Judicial Protocol on Child Matters (2003), which is mostly concerned with cases of cross border abduction, but the philosophy is also applied by Pakistani courts within domestic situation (Memon, W. M., 2025).

Discussion

This examination of the law and jurisprudence of custody in Pakistan above provides evidence of an evolving framework- one that has generally accepted the idea that the best interests of the child are paramount and beyond all other considerations, but struggles with the remnants of the past rules and practicalities on enforcement. Here, we critically evaluate some of the major findings and make observations on how the balance between the rights of parent and child welfare has struck and to what extent it has failed.

Synthesis of Statutory and Case Law Findings: The Guardians and Wards Act 1890 heavily supported by progressive judicial interpretation forms the necessary legal basis of children welfare based determinations. Under the welfare mandate implied in Section 17, the courts exercise broad discretion in then taking into consideration anything that has an impact on the child. The case law interpretation demonstrates both the extensions that this latitude has been applied to achieve by enlarging the definition of welfare and the elimination of inflexible presumptions:

Parental Gender Roles: Fathers were traditionally considered to be natural guardians of young children, whereas mothers were regarded as their natural custodians. Contemporary case law, however, is not inclined to automatic transfer of custody to fathers upon a specified age, but demands the reasoning that there is an individual evaluation as to whether one of two parents will be able to cover the needs of the child. As an example, there is the position of the Supreme Court in *Tahira Begum v. Tayyab* and *Bashir v. Fatima* specifically states that after the child passes the traditionally defined tender years the mother is no longer presumptively unfit and in its place the case is reviewed with a clean no-presumption-in-one-direction slate. This makes sure that a nurturing mother does not lose her custody simply because there is an age limit and she was past it, which promotes the welfare aspect (Ali, A., 2024).

Remarriage and Morality Factors: Among the significant changes observed is the handling of the remarriage of a mother. The older one that a new marriage constituted an absolute bar to her custody has been superseded by a finer-grained view, at least in some jurisdictions: provided the remarriage exposes her to possible harm (e.g., abuse by a step-parent, as in *Naeem Khan v. Custody* will be influenced by it, (*Rabia*), however, a new marriage can be a cause of stability or at a neutral/good call which is not held against the mother in custody. Likewise, a remarriage of a father does not simply help per se courts monitor cases of supposedly bad stepparents, but most stepparents are loving, which may be to the benefit of a father. In a nutshell, the moral conduct and household environment of every family is thoroughly questioned. Instances of denying custody to a particular parent based on his or her misdeeds (violence, criminality, addictions) are supportive of the issue that it is the right to custody that can be waived based on poor conducts. This is a fair trade-off: parents' rights to the kid is based on the condition of serving the best interest of the child.

Child's Voice and Preferences: One of the most prominent developments in recent jurisprudence is putting greater emphasis on what the child itself desires. Not an absolute consideration, but courts are increasingly giving weight to, when a child is old and mature enough to speak on his/her own preference (typically somewhere around 9-10 or higher), his/her wishes. This advice obtained

by the Supreme Court in 2025 even expressed that listening to the child is a duty of the CRC. Practically, Judges have in camera meetings with the child to get the raw opinions. The move puts the process in touch with other global practices and strengthens the child-focused strategy. It has to be weighed against caution, though, as children may be coached or may just have temporary desires, and so judges (rightly) regard it as just another factor amongst many (Farrukh, T. 2023).

Legal Gaps and Inconsistencies: Along with the overall positive trend, some areas in law and inconsistencies still exist:

The Guardians and Wards Act: The progressive case law has not been updated in the Guardians and Wards Act. As an example, the text of Section 19 continues to connote father preferential right. Although it is avoided by the judges, its revision (to incorporate the term mother, or to repeal the provision) would eradicate uncertainty and establish clarity of gender parity in law. The absence of amendment makes it difficult to prevent paternal preference to be argued by courts with lower experience or by counsel hence the need to appeal. An update in the statute would ascertain homogenous knowledge across the board.

Lack of Joint Custody Framework: Pakistan law does not have a specific vision of joint custody or any shared parenting arrangement. As it is usually applied, one parent has custodial and the other is visited. It is possible to wonder whether, at least in the case of older children, a more joint custody arrangement (potentially divided time between different periods of the year, or shared-decision making in spheres such as education/health even if physical residence is still mainly under one parent) would help the child. There are some creative visitation schedules that have been tested by some High Courts, which rotate towards joint custody, however, there is no statutory foundation, which makes enforcement somewhat difficult, and requires mutual cooperation between parents.

Enforcement of Visitation and Custody Orders: Another practical problem is enforcement. When the custodial parent disobeys court requested visitation; or when the non-custodial parent denies the return of a child after visitation, the legal sanctions (contempt of court, police intercession), are painful and burdensome to the child. Such cases do not serve the legal system well because relief can take a long time. Dawn news report of 2025 captured the attention of the Supreme Court focusing on the fact that the courts need to be careful to exercise their visitation rights, and the custody issues need to be treated urgently. In practice, however, the law is slow and obstacle-ridden even as implementing the law does not have explicit enforcement procedures (disciplinary action or compensatory contact visitation in case of contact denial).

Extended Family and Third-Party Custody: The Pakistani culture sometimes involves the use of grandparents or other family members to rear children. The law (GWA and case law) does permit the third-party guardians (e.g. a grandmother) when both parents are unfit or in exceptional circumstances. However, it remains unclear on how a third-party custody occurs and at what stage. When exceptional situations are involved (e.g. when a father is incarcerated and the mother has died), it is up to courts to improvise (with custody given to a grandparent, in the typical welfare paradigm). The provision in the law regarding such cases can be more explicit although there are not many such cases.

Adequacy of Current Laws in Ensuring Child Welfare: In general, the Pakistani courts have succeeded in promoting the welfare of children by engaging in principled decision-making, despite the outdated nature of the various laws. The case law is the de facto evolution of the law with the result that, using the earlier example, mothers will not be discriminated against, and that abusive parents will not get custody just because it is a default in the law. But due to the case-by-case

development, such means that application of the law may differ marginally with the enthusiasm or the perceptions of the judges. The standard of welfare is wide and this may cause subjective decisions. The majority of the judges pay attention to the correct variables (the health of a child, schooling, attachment, etc.), yet some variation is possible when it comes to counting the influence of these variables. Such as, one of the judges may focus more on financial stability, whereas the other will put more emphasis on bonding emotionally, both comes under the factor of welfare. Guidelines on the priority or rank of these as well as the criteria on how they must be placed in ranking by either legislative or Supreme Court may also help in creating consistency.

An alternative is the fact that although the law is sound in deciding whether it is to be granted to whom, it is still weak when it comes to monitoring welfare of the one granted after custody. After award of custody, there is minimal supervision that the child is still performing well (except a new case is presented). Welfare of the child is not constant; a custody plan that was best at a given time might need modification when there is a change in circumstances. It is observed that under Pakistani law a material change of circumstances allows fresh applications to be made but it is not an exception that the applications are made on a proactive basis. In other jurisdictions, such equipment is taken to be the periodical review hearings or reporting to the authority about the child by the custodial parent. Such practices could also play the role of ensuring child welfare in the long run.

Critical observation: The legal system, however well intended in its principles, can prove burdensome to the child psychologically. Extended court proceedings among parents, the constant going to court, and even sitting to judge interviews can be hectic on the minors. The fact that the Supreme Court demanded child-friendly practices (e.g., separate rooms in courts where children are, there is no situation that forces a child to make a decision between parents in an overt way) is highly applicable. Achieving a child-sensitive process to the very process of making a decision on custody is one where further improvement are still being made.

Recommendations

Based on the analysis, it is possible to suggest some recommendations that could help to improve the custody laws in Pakistan and guarantee that the rights of parents and the wellbeing of children are balanced as much as possible:

Legislative Reforms to Modernize Statutory Law: It is suggested that Parliament amends the Guardians and Wards Act 1890 to consolidate principles which have been developed in the courts through case law:

Amend Section 19(b): Change the language to eliminate the outcomes of favoring the father as guardian or directly stating the mention of the mother, to show that both parents are equally positioned with decisions being left to the court based on the welfare being the most vital. This would help in doing away with any kind of misconception that the law is on one side of the parent.

Define “Welfare of the Minor”: Flexibility is very crucial but as a guide lower courts and litigants, some definition of what to be meant or at least a list of factors (health, education, love and affection, security, etc., as can be ascertained through jurisprudence) would help. It can be achieved by giving an explanation to Section 17 of the GWA.

Interim Custody Orders: Include (such as in the 2008 Bill) clauses that recommend that interim custody decisions must be made swiftly to cause the minimum disruption. As an example, such a new subsection might provide that when a child of tender years is in the care of the mother at separation, she would normally continue to have interim custody until final adjudication. This

would help to avoid instances of delay of process that make a child waste away in doubt or in the hands of the wrong persons.

Enforcement Mechanisms: Include a subheading on what happens in case of non-compliance with the custody/visitation order, like monetary fines or timely habeas corpus remedies. This would enable instance quick action by the family courts when one of the parents takes a child wrongfully.

Enhancing Child Welfare Principles in Family Court Proceedings: The court system and court administration ought to embrace child friendly practices:

Special Training: Lawyers and Family Court judges ought to be trained in child psychology and communication. That would allow them to interview children in a sensitive way (the Supreme Court ruling of 2025 is a catalyst in this respect).

Child Facilitators: The idea of child welfare officers or psychologists under family courts should be considered. Such experts are able to ensure reports investigating the state of the child or even mediate between parents by considering the needs of the child.

Separate Facilities: Provide a designated child friendly space in the courts in an attempt to not expose children to an adversarial courtroom. We are already talking about child justice systems- the latter should involve having that the time that a child is brought to court (eg meeting the judge, moving between parents), it feels like home.

Guidelines for Visitation Plans: The High Courts may also publish practice notes or rules with standardized visitation patterns depending on the age of a child (with flexibility). This would create a predictable order and have less conflict among parents. An example would be as follows: where mother is having custody of a toddler, the father shall have the right to see him or her two days a week; in the case of school going children, then he or she may be allowed to spend two days in every weekend at home with him or her; and so on. A straight forward structure will help avoid power battles and provide the parents with a feeling that they have some outlined rights and responsibilities.

Promote Alternative Dispute Resolution (ADR) in Custody Cases: The long-term court battles harm children. Mediation or conciliation process can be introduced in custody cases to make the arrangement friendlier and specific according to the needs of the child. Family courts must be enabled (and perhaps through amendment of the Family Courts Act) to refer parents to mediation before the process has reached an advanced stage. Trained mediator can assist parents to agree on a parenting plan - research all over the world indicates that parents get to follow the plan when the parents design the plan themselves with the focus being on the child. Of course, any negotiated settlement with the court would have to be approved (to satisfy child welfare requirements), but it would potentially lessen animosity. ADR would also remind the parents that custody is not a parental win/lose game, but rather the joint effort at ensuring well-being of the child.

Policy and Community Initiatives for Post-divorce Parenting: In addition to the legal regulations, a shift in social attitude will do good. It is advisable that the Law & Justice Commission, with assistance of the civil society organizations, devise programs to teach co-parenting of divorcing parents. That might include mandatory parenting classes (as used in jurisdictions) where the parents in a custody dispute can be informed of how children are affected by the conflict between their parents and the need to work together. Such programs help foster the idea behind visitation by reminding the child that the parents who are not the custodian of the child still play a role in his life. In conclusion, the need to change the culture of thinking of custody

arrangements not as a triumph/loss of a parent but as an equal parenting plan to benefit the child will ensure legal changes are complemented.

Integrating International Standards: Pakistan needs to think about formally integrating features of the Convention of the Rights of the Children (CRC) into the national law as far as custody is concerned. As an example, a clause may be added to family legislation, which may read: ‘The best interests of the child shall be one of the primary considerations in all cases making provision for children, custody decisions, and guardianship.’ The other point is the right of a child to be heard (Article 12 of CRC). Although this is being done in practice by the courts, the standardization of the practice can be done by its written mentioning in the law (e.g., a clause that the judge can hear the child in chambers provided the child is of a certain age). The conformity with the international standards, in addition to benefit of having a better domestic system, will also benefit Pakistan on its conformance with international standards which has been criticized so far because of non-direct enforcement of the CRC provisions.

These recommendations, if adopted by Pakistan will further strengthen a custody regime that actually balances parental rights against the best interests of the child. The legal reforms would eliminate ambiguities and preconceptions that have been roundly criticized as outmoded, and the changes in procedures would ensure decisions made are reached--and implemented--in the most child-sensitive fashion, and the larger policy-aimed initiatives would create a more collaborative ethos on the custody front. Collectively, these measures would make the guiding principle of children welfare should be placed at the forefront come to life not only in theory, but in all aspects of the way custody cases should be settled.

Conclusion

The developing custody jurisprudence in Pakistan is shifting to child welfare at the expense of formal parental rights. The family is under constitutional protection, the Guardians and Wards Act 1890 and its recent judicial interpretation, however, collectively assert that all custody arguments can and must be resolved using one and only compass, i.e. the physical, emotional, educational and moral interests of the child. In the past fifteen years, all the high courts and the Supreme Court have clarified aspects that remained grey in situations where it is impossible to outweigh the welfare test by a mother remarrying, gender of parent, age-of- custody rigid presumptions. The loving and good parents are encouraged to stay actively involved by granting them shared custody or liberal visitation whereas the behaviors that pose a threat to the interests of a child disqualifies a claimant. Courts express concern, and policy papers and law-reform commissions echo that concern in their calls to enact statutory amendments codifying these principles and simplifying procedure. This change of position where doctrinal formalism is replaced by functional and evidence-based decision-making needs both legally minded judges with a fed on sense of family sensitivities and training and well-set guidelines to guarantee conformity. There is a payoff in the society when children brought forth by unhappy marriages are handled in healthy child-welfare settings and this enhances trust in family fairness. Enforcement gaps, and the emotional distress of litigation, will always be persistent obstacles; however, welfare-oriented paradigm warrants the most certain means of protecting vulnerable citizens of Pakistan.

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