

The Right of Custody of Children in a Dispute between Parents

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ABSTRACT:

The recent trend in our society is seeing an exemplar change in matrimonial relationships, with an increasing number of separation cases, particularly since the last two decades, while more and more middle and lower-middle class couples have been approaching family courts for divorce, resulting in the rise of bitter child custody battles. The innocent child/ children are often being used as a tool to seek vengeance by vindictive litigants who feel no hesitation in inflicting relentless emotional and psychological violence on the child. Among many implications that a divorce has on the individual, family and society at large, the children of divorced couples are the ones who bear the brunt of the entire process. It is a common practice among couples to use kids as pawns in this game of emotional chess and it amounts to absolutely irresponsible parenting to scar children emotionally post separation. In due course the parents move on with their lives and onto other partners but the children carry the trauma of being manipulated and ragged apart emotionally, throughout their lives.

The voluminous loads of family cases, the separating parents go to the extent of contesting their cases till its final intercession before the court of last option just to let each other down instead of resorting to affect be consistent with for the better and favorable upbringing of their children.

Keywords: Guardian & Ward, Custody of minors, Litigation, Spouses, Divorce, Custodian

INTRODUCTION:

Litigation in Pakistan, especially under the **Guardians and Wards Act 1890**, is a terrifying. Fighting child custody litigation is a burdensome, slow and nerve wracking procedure that on average takes 5-7 years. Most of the procedures and precedents adopted by guardian Courts have favored the custodial parent and have been manipulated and used by parties to only seek revenge by making it extremely difficult for the non-custodial parent to meet his or her own children.

It has been witnessed that guardian Courts are very inflexible when it comes to the visitation rights of a non-custodial parent. In most cases, the interim visitation schedule granted to a non-custodial parent is only allowed once a month in the form of a two hour long meeting with the child and that too within Court premises. Over many decades, such visitation orders have been considered as precedents by default across all guardian Courts in Pakistan.

The most common kind of child abuse is parental child abuse which often occur when the parents separate or initiate divorce proceedings. A parent may, remove or retain the child from the other parent's custody, looking for to gain an advantage in the expected or pending child custody proceedings, or because that parent fears losing the child in the lengthy, pending child custody proceedings. A parent may refuse to return a child at the end of an access visit or may even flee with

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

WELFARE OF MINOR:

In a recent reported judgment, **2018 MLD 1592**, the honourable Lahore High Court has held the following:

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

In another reported judgment, **PLJ 2021 Islamabad High Court 110**, the honourable High Court has held the following:

A father is considered natural guardian of a minor, since even after separation with mother, and even when mother has been granted custody of a minor child, father is obligated to provide financial assistance to minors--A mother has no right to remove a minor to a place which is inaccessible to father of minor--It is not for welfare of minor son to appoint guardian of his person in presence of his natural guardian who is not unfit for his guardianship

CONCLUSION:

The noteworthy characteristic of the issues related to child custody is that in spite of the widespread customs, norms and personal laws; any of the non-custodial parents longing for of his child custody and failing in reaching a private settlement has to reach the court of law and seek recourse to the Guardian and Wards Act of 1890. The Act is a century-old, failing to cater to the needs and challenges of the present-day situation. The lacunas in the law on custody in Pakistan have created a complex situation for the child.. The cases under the Guardian and Wards Act may take three to five years on average. During this parent, the parent-child bond keeps on depleting due to the pressure of the custodial parent. Also, the irregularities and unreasonable restrictions in the visitation of noncustodial parents bring frustration and result in losing one of the parents.

“A divorce or separation occurs between spouses and not between parents” and that a minor has not contributed to it and hence must not be penalized. The course/syllabus/teaching material must cover concepts like quasi parental jurisdiction, loco parentis, denial of appropriate contact with minor children and its implication, expeditious disposal of applications pertaining to visitation rights, and measures that are required to be taken up by the guardian/family Courts at the interim stage of litigation to avoid development of the signs of parental estrangement pattern and separation in minors. It must also be ensured that the learned family/guardian judges adhere to the provision of plausible justification and reasoning while chalking-out an interim visitation schedule and passing an order under the provisions of **Section 12** of the **Guardian and Wards Act 1890**, except in accordance with the law propounded by the superior judiciary in the form of reported case-law on the subject.

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