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A Human-Centered Legal Perspective of Child Custody Under Pakistan Guardianship & Wards Act Law

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Abstract

The paper is about social-legal issue and is connected to the Guardian and Wards act 1890 as Child custody disputes represent one of the most emotionally sensitive areas of family law. Like commercial or constitutional casesandcustody decisions directly shape a child's emotional security, psychological development, and future identity. Courts are often faced with a difficult question: Should custody be granted primarily on the basis of biological parenthood, or should long-term emotional and environmental stability take precedence? In modern legal systems, the principle of the "best interests of the child" is widely accepted. However, courts interpret this principle differently. While biological ties traditionally carry legal weight, many cases involve step-parents, grandparents, foster parents, or guardians who have provided long-term care and stability. This paper seeks to humanize custody law by examining how judicial decisions affect real children, families, and caregivers. As legal framework under the Guardianship and Wards Act 1890provide some rules about the custodybut because of the lack of detailed rules and guidelines in the statutes, the litigants have to resort to case law to make the possible way-out regarding the custody of children. The paper analyses the relevant provisions of the Guardian and Wards Act along with the case law to point out legal gaps and practices.

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1: Provision of National Law Child Custody in Pakistan:

'The guardianship/child custody laws in Pakistan are defined as in the Guardians and Wards Act 1890, the law is from the British colonial period which is still part of legal system with the proposed amendments. According to the Act, the Guardian and WardsDepartment is established in each province of Pakistan. The mandate of the department is to handle the matter related to custody of minors and guardians. Minor custody refers to the parents' right for the better future of the child. These decisions concern the welfare and responsibility of the child. The main responsibility of a parent is to take all proper legal decisions, which include the child's basic needs of health, education, religious upbringing and welfare. The background of the burning issue is after the separation of the parents in kind of dissolution of marriage, which makes both parents know about child custody laws in Pakistan. Each parent seeks a legal provision to gain custody of their child even though being a single parent is tough.

1.1: Legal Validation of Guardians and Wards Act, 1890

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Sec.17 and 25 Interpretation of Sec.17 and 25 of Guardians and Wards Act, 1890 “Hizanat and Wilayat” Custody of Minors by their biological parents which rights are usually termed as “Hizanat” and “Willayat” is used for custody of minors by biological father. As word “Hizanat” in its literal sense means “upbringing”. Therefore, it covers the concept of “Wallayat” too. It is most important to point out that legal terminology the word “Hizanat” or “Willayat” cannot be limited to the extent of mother or father of minors because the duty of upbringing can be performed by any person who has the legal right to do so such as maternal or paternal aunts or grandmother. For this reason, most of the textbooks, particularlythose written in Arabic, title the relevant chapter with the word “Al Hizanat”.

2. Power of Court to Make Order as to Guardianship under Section 7

Power of Court to make order as to guardianship” under Section 7, it is defined by the Guardians and Wards Act, 1890 (Act VIII of 1890).Section 7 is fundamental because it gives the court authority to make an order concerning guardianship where the statutory requirements are satisfied[4].

In custody litigation, Section 7 should not be read in isolation. It operates together with Section 17, which supplies the central welfare standard.The judicial approach is therefore not simply:“Who is the biological parent?”Instead, the court must consider whether the proposed arrangement serves the minors’ welfare.A recent Sindh High Court judgment expressly emphasized that Section 7 requires the court to consider the circumstances of the case and that the words concerning the welfare of the minor impose a duty on the court to approach custody matters with care.

Pakistani courts have recognized that the views of older and sufficiently mature children may be significant. For example, the Lahore High Court has emphasized the relevance of the wishes of minors who are sufficiently mature to make an informed preference, while also recognizing that the child's wishes are not necessarily the sole determinant.

3. Visitation Rights of Parents under Pakistani Child Custody Law

Visitation rights constitute an important component of child custody law in Pakistan because the determination of physical custody does not necessarily terminate the legal and emotional relationship between the child and the non-custodial parent. In a custody dispute, the court may place the child in the physical custody of one parent while preserving the right of the other parent to meet, communicate with, and spend appropriate time with the child. The statutory recognition of visitation rights reflects an important shift from viewing custody proceedings merely as a contest between competing parental claims toward an approach that considers the continuing emotional and developmental needs of the child. Under the Family Courts Act, 1964, the Schedule expressly includes “custody of children, and the visitation rights of parents to meet them” within the jurisdiction of the Family Courts. This demonstrates

[4]*Guardians and Wards Act, 1890, 17 (Pakistan);* **Gul Sadem Khan v. Mst. Halima and others**, PLD 2025 SC 47 (SC).

that visitation is not merely an informal privilege but a recognized subject of family-law adjudication.

The legal importance of visitation rights must be understood in conjunction with the welfare principle contained in the Guardians and Wards Act, 1890. Although the Act does not contain a separate, detailed statutory code prescribing a uniform visitation schedule for every custody dispute, the courts possess authority to regulate arrangements concerning the child in accordance with the welfare of the minor. Sections 17 and 25 of the Guardians and Wards Act are particularly significant because they require the court to approach custody questions from the perspective of the child's welfare and best interests. Consequently, a visitation arrangement should not be designed merely to satisfy the wishes of the parents. It should be structured according to what is appropriate for the child's age, emotional needs, education, health, safety, existing relationship with each parent, and overall development[5]. The Supreme Court has expressly described welfare as the overarching consideration in cases involving both custody and visitation rights.

The recognition of visitation rights is particularly important where one parent has obtained physical custody but the other parent remains biologically and legally connected to the child. Physical custody and the parental relationship are therefore conceptually different. A parent may not be granted day-to-day physical custody, yet that parent may continue to have a meaningful role in the child's life. Maintaining an appropriate relationship with the non-custodial parent can provide the child with emotional support, a sense of family identity, continuity of relationships, and access to both sides of the family. For this reason, a custody order should not ordinarily be understood as meaning that one parent "wins" and the other parent is completely excluded. Instead, the law can accommodate a custody arrangement in which one parent provides the child's primary residence and daily care while the other maintains regular and meaningful contact, subject always to the welfare of the child.

The Supreme Court of Pakistan has provided an important illustration of this approach in Mst. Madiha Younus v. Imran Ahmed, 2018 SCMR 1991. In that case, the Supreme Court formulated a detailed arrangement dealing with custody, visitation, and maintenance. Although custody remained with the mother, the Court provided for regular periods during which the children could stay with their father, including alternate weekends, portions of summer and winter vacations, and arrangements for Eid and other occasions. The Court also imposed responsibilities relating to the children's expenses and emphasized that both parents should refrain from conduct that could prejudice the children's minds against the other parent. This case is particularly significant because it demonstrates that visitation can be structured in a comprehensive manner rather than being reduced to occasional meetings of limited duration.

The principle underlying such arrangements is that children generally benefit from maintaining healthy relationships with both parents, provided that continued contact does not expose them to harm or undermine their welfare. The non-custodial parent's relationship with

[5]**Gul Sadem Khan v. Mst. Halima and others, PLD 2025 SC 47 (SC); 2024 SCP 395.**

the child can be important for emotional development and family continuity. At the same time, visitation is not an unconditional right that must be exercised without regard to circumstances. Where there is evidence that contact may adversely affect the child, the court may regulate the manner, duration, location, or supervision of visitation. Thus, the legal position can be described as a child-centered right of parental access, rather than an absolute parental entitlement. The Supreme Court has emphasized that any visitation schedule must be consistent with the welfare and best interests of the minor.

This principle is also reflected in decisions of the High Courts. In a Sindh High Court case concerning custody of a minor, the biological father was granted regular visitation while physical custody remained elsewhere. The court prescribed a specific schedule under which the father could spend time with the child at the court premises[6]. The decision demonstrates that the biological relationship of a parent remains relevant even when physical custody is not awarded to that parent. At the same time, the court structured the contact in a manner it considered compatible with the child's welfare. Such decisions illustrate the distinction between biological connection, physicalcustody, guardianship and visitation. These concepts overlap, but they are not legally identical.

Visitation rights become particularly important in cases involving parental separation or divorce because children may otherwise become caught between conflicting parental interests. A prolonged absence of one parent can potentially produce emotional difficulties and may weaken the child's relationship with that parent. Pakistani courts have therefore recognized the importance of maintaining meaningful parental contact. In Shahida Adnan v. Additional District Judge, the Lahore High Court considered a mother's objection to a visitation schedule for the father. The court observed that the father could not simply be treated as an outsider or enemy to the child and that denying a father access could result in emotional deprivation[7]. The court nevertheless reiterated that the paramount consideration in custody matters remains the welfare of the minor. This illustrates the necessary balance between preserving parental relationships and protecting the child from circumstances that may be harmful.

However, visitation rights should not be interpreted as giving parents an unrestricted entitlement to remove the child from the custodial environment whenever they wish. The court may impose conditions where necessary. For example, visitation may take place at a specified location, on specified days, for a particular number of hours, or under supervision. Such restrictions may become appropriate where there are allegations concerning parental conflict, neglect, inappropriate conduct, instability, or other circumstances affecting the child's welfare. A recent Sindh High Court order demonstrates that courts may temporarily restrict extended visitation and require supervised meetings where concerns have been raised about circumstances potentially harmful to the minor. This shows that the scope of visitation is ultimately dependent upon the facts of each case.

[6]https://paklawportal.com/case/84487413cf6d",https://paklawportal.com/case/84487413cf6d?

[7]**Mst. Shahida Adnan v. Additional District Judge and others,Writ Petition No. 3312 of 2020 Lahore High Court (Rawalpindi Bench)Before: Jawad Hassan, J.Decided: 1 June 2021Reported as: 2021 YLR 1915**

The issue becomes particularly significant when viewed through the concept of child stability. A child may have a strong biological relationship with a parent but may also have developed a stable daily life with the custodial parent. Excessive or poorly regulated visitation could disrupt schooling, sleeping arrangements, routines, social relationships, or emotional security. Conversely, completely preventing contact with a non-custodial parent may also negatively affect the child's emotional development and sense of family identity. The court therefore faces the difficult task of establishing an appropriate equilibrium between continuity of care and preservation of parental relationships. The correct question is not simply whether a parent has a right to see the child, but whether the proposed form and frequency of contact are compatible with the child's overall welfare.

The child's age and maturity are also relevant when determining an appropriate visitation arrangement. Section 17 of the Guardians and Wards Act requires the court to consider the welfare of the minor and permits consideration of the preference of a minor who is sufficiently mature to form an intelligent preference. This principle has particular relevance to visitation because the child's wishes may help the court determine whether a proposed schedule is comfortable, beneficial, or potentially distressing. The Supreme Court has recognized that children's views can be relevant to custody proceedings and that the best interests of the child, rather than the interests of the parents, must remain central to the decision-making process. Therefore, as children become older and more mature, their views concerning the nature and frequency of contact may deserve greater consideration, while still requiring judicial assessment rather than automatic acceptance.

Another important aspect of visitation is the prevention of parental alienation and manipulation. Custody disputes can sometimes create an environment in which one parent attempts to influence the child's perception of the other parent. Such conduct can damage the child's emotional wellbeing and make the child feel compelled to choose between parents. The Supreme Court's decision in *Madiha Younus* is significant in this respect because its comprehensive custody arrangement specifically required both parents to avoid conduct that could prejudice the children's minds against the other parent. This approach recognizes that parents have responsibilities toward the child even after their marital relationship has ended and that neither parent should use custody or visitation as a mechanism for continuing marital conflict.

Visitation also has an important relationship with the concept of biological ties. Biological parenthood is a significant consideration under Pakistani family law, but it should not automatically determine the extent of visitation without regard to the child's circumstances. The Supreme Court has repeatedly stated that natural guardianship or biological relationship does not operate independently of the welfare principle. In a 2024 decision, the Supreme Court reiterated that the welfare and betterment of the minor are the prime considerations and that the relevant statutory factors are not exhaustive or conclusive. Accordingly, biological ties may justify maintaining an appropriate relationship between the parent and child, but the nature of that relationship must be regulated according to the child's best interests.

The concept of visitation therefore provides an important middle ground between two competing approaches to custody. The first approach emphasizes parental rights and biological relationships, while the second emphasizes the child's stability and welfare. A well-designed visitation order can potentially accommodate both. The child can remain in a stable primary residence while continuing to maintain a meaningful relationship with the non-custodial parent. In this sense, visitation can serve as a legal mechanism for reconciling biological continuity with environmental stability.

Nevertheless, the Pakistani legal framework has certain limitations. The Family Courts Act recognizes visitation rights, but it does not prescribe a single standardized schedule applicable to all families. This is understandable because children and family circumstances differ considerably. However, the absence of detailed statutory criteria may result in significant judicial discretion and differences between individual cases. One court may consider alternate-weekend contact appropriate, while another may consider shorter supervised meetings necessary. The lack of uniform standards can create uncertainty for parents and children and may sometimes prolong litigation.

Another challenge concerns the enforcement of visitation orders. A court may establish a detailed schedule, but disputes can arise when one parent fails to comply with the order or deliberately obstructs the child's contact with the other parent. Conversely, a non-custodial parent may misuse visitation or fail to return the child at the agreed time. These situations can expose the child to further conflict. Consequently, an effective visitation system requires not only a judicial order but also practical mechanisms for enforcement, monitoring, modification and protection of the child.

The need for flexibility is particularly important because the welfare of a child is not static. Circumstances may change as the child grows older, changes schools, develops new emotional needs, or experiences changes in the living arrangements of either parent. A visitation schedule that is appropriate for a young child may not be suitable for an adolescent. Similarly, a parent's relocation, remarriage, employment circumstances, or other significant change may require the court to reconsider an existing arrangement. Pakistani judicial decisions recognize that custody arrangements are not necessarily permanent and may be reconsidered when circumstances change.

From a human-centered perspective, visitation should therefore be understood not merely as a parent's right to access a child, but as a mechanism designed to protect the child's right to maintain healthy family relationships where such relationships are beneficial. The distinction is important because it places the child, rather than the competing adults, at the center of the legal analysis. The court should ask whether the proposed contact contributes to the child's emotional security, development and sense of belonging, while also ensuring that the child is protected from parental conflict, manipulation, instability or harm.

Ultimately, Pakistani law supports the proposition that custody and visitation should not be treated as mutually exclusive concepts**.** One parent may have physical custody while the other retains meaningful visitation rights. The Family Courts Act expressly recognizes visitation

within the family-law jurisdiction, while the Guardians and Wards Act provides the broader welfare framework within which custody-related decisions are made. Pakistani judicial precedent further demonstrates that courts can formulate detailed visitation arrangements and modify them where circumstances require.

For the present research, visitation rights provide strong support for a child-centered model of custody law**.** It is demonstrated that the law does not necessarily require a choice between biological ties and child stability. Instead, an appropriately structured ,arrangement can preserve the child's relationship with both parents while ensuring that the child's primary living environment remains safe, stable and conducive to development. Therefore, the most appropriate legal approach is not to treat biological parenthood as an automatic entitlement to unrestricted access, nor to treat physical custody as a justification for excluding the other parent. Rather, visitation should be determined according to the best interests, welfare, emotional needs, age, maturity, safety and stability of the child**.**

3. Distinction between Natural and Court-Appointed Guardian

3.1 Concept of Guardianship and Custody

Guardianship and custody are closely connected but legally distinct concepts under Pakistani family law. Guardianship primarily concerns the legal authority and responsibility exercised on behalf of a minor, whereas custody concerns the actual care, upbringing and physical control of the child. The distinction becomes particularly important in disputes between parents and other relatives because a person may possess a legal status as a natural guardian without necessarily being entitled to the physical custody of the minor.

The principal statutory framework is provided by the Guardians and Wards Act, 1890. Section 7 empowers the Court to make an order appointing a person as guardian or declaring a person to be a guardian where the statutory requirements are fulfilled. Section 17 further requires the Court to be guided by what appears, in the circumstances of the case, to be for the welfare of the minor. Section 25 deals specifically with the custody of a ward and permits the Court to order the return of a ward to the custody of a guardian where such return would be in the welfare of the ward[8].

The distinction therefore cannot be reduced to the question of who is the biological parent. Pakistani courts have repeatedly emphasized that the welfare and betterment of the minor is the paramount consideration in custody proceedings. In **Gul Sadem Khan v Mst Halima**, the Supreme Court reaffirmed that even though a Muslim father is recognized as a natural guardian, his claim to custody is not absolute and remains subject to the welfare of the minor[9].

[8]Guardians and Wards Act 1890, ss 7, 17 and 25 (Pakistan). The Act provides the statutory framework for appointment/declaration of guardians and custody of wards.

[9]*Gul Sadem Khan v Mst Halima and others* **PLD 2025 SC 47 (**Supreme Court of Pakistan), Civil Petition No 421-P of 2022, decided 22 November 2024. The Supreme Court stated that the welfare and betterment of the

3.2 Natural Guardian

A natural guardian is a person whose guardianship arises by operation of law rather than through a particular order of appointment by a court. Under the principles of Muslim personal law applicable in Pakistan, the father is generally recognized as the natural guardian of his minor children. This legal status, however, should be distinguished from the mother's or another person's entitlement to physical custody or *hizanat*.

Natural guardianship primarily concerns legal responsibility and authority, whereas *hizanat* relates more directly to the care and physical upbringing of the child. Consequently, the existence of a natural guardian does not automatically determine the question of physical custody.

The Supreme Court's decision in Gul Sadem Khan v Mst Halima provides a particularly important clarification of this distinction. The Court observed that although the father is a natural guardian, the Court must still be satisfied that appointing him as guardian and delivering custody to him would serve the welfare of the minor[10]. Thus, natural guardianship creates an important legal relationship, but it does not create an unconditional entitlement to physical custody.

This distinction is particularly significant in cases where the mother has been providing continuous care, education, emotional support and a stable living environment. A court may recognize the father's status as natural guardian while nevertheless deciding that the child should remain physically with the mother because that arrangement better serves the child's welfare.

3.3 CourtAppointed or CourtDeclared Guardian

A court-appointed or court-declared guardian derives their legal authority from a judicial order under the Guardians and Wards Act, 1890. Section 7 is the principal statutory provision governing this process. The Court may appoint a person as guardian or declare a person to be a guardian when the requirements of the Act are satisfied.

The appointment is not made merely because the proposed guardian is a relative or because that person has a biological connection with the minor. Under section 17, the Court must be guided by the welfare of the minor and consider relevant circumstances, including the minor's age, sex and religion, the character and capacity of the proposed guardian, the proposed guardian's relationship with the minor, and other relevant circumstances. Where the minor is

minor is the prime and paramount consideration and that the father's status as natural guardian does not make custody automatic

[10]*Gul Sadem Khan v Mst Halima and others* **PLD 2025 SC 47**. The Court expressly held that although the father is a natural guardian, the Court must be satisfied that appointment of the father and delivery of custody to him is consistent with the welfare of the minor.

sufficiently mature to form an intelligent preference, the Court may also consider the child's preference[11].

The statutory framework therefore gives the Court a protective and supervisory role. The Court is required to examine whether the proposed guardianship arrangement actually serves the interests of the minor rather than merely determining which adult has the stronger claim.

3.4 Difference between Natural and CourtAppointed Guardians

The principal distinction between the two forms of guardianship lies in the source of the guardian's authority.A natural guardian derives authority from the applicable personal law and legal rules governing the family relationship. A court-appointed or court-declared guardian, on the other hand, obtains authority through a judicial determination under the Guardians and Wards Act, 1890.

The two categories may also differ in relation to the Court's intervention. Where a person already has the status of natural guardian, the Court may still have to determine whether exercising or recognizing that guardianship in a particular custody arrangement is consistent with the welfare of the minor. In contrast, where the Court is asked to appoint or declare another person as guardian, the statutory requirements of sections 7 and 17 become directly relevant.

The distinction may be summarized as follows:

Natural Guardian	**Court-Appointed/Declared Guardian**
Status generally arises by operation of law/personal law	Status arises through judicial appointment or declaration
Does not necessarily require a prior guardianship order	Requires judicial proceedings and an order
Biological or legal relationship may be important	Court examines suitability and welfare
Natural guardianship does not automatically establish physical custody	Court determines guardianship/custody according to statutory requirements
Subject to the welfare of the minor in custody matters	Welfare of the minor is central to appointment/declaration

3.5 Biological Parenthood Does Not Automatically Determine Custody

The distinction between natural guardianship and custody is particularly important in disputes involving biological parents. Biological parenthood is an important factor in family law, but

[11]Guardians and Wards Act 1890, s 17(1)–(3). Section 17 requires consideration of welfare and identifies factors including age, sex, religion, character and capacity of the proposed guardian, nearness of kin and the child's sufficiently mature preference

Pakistani courts have consistently treated the welfare of the minor as the controlling consideration in custody disputes.In Gul Sadem Khan v/sMst Halima, the father sought custody of his two minor sons. The Supreme Court declined to interfere with the decision refusing him custody. The Court noted, among other circumstances, that the father was settled abroad and had pursued the proceedings through a special attorney rather than personally participating in the proceedings. The Court also found no evidence that the mother was failing to care for or educate the minors. The petition was therefore dismissed[12].

The importance of this decision for the present research is that it demonstrates the practical operation of the welfare principle. The father's biological relationship and natural guardianship were not treated as sufficient, by themselves, to establish an entitlement to physical custody. The Court examined the actual circumstances of the children and the quality of care being provided to them.

3.6 Appointment of Relatives as Guardians

Where the circumstances of a case make it necessary to appoint or declare a guardian other than a natural parent, the Court may consider relatives or other suitable persons, subject to the requirements of the Guardians and Wards Act.

Section 17 specifically directs the Court to consider the "nearness of kin" of the proposed guardian as one of the relevant factors[13]. This means that a close family relationship may be legally relevant because it may contribute to continuity of care, emotional attachment and familiarity with the child's social and cultural environment.

Grandparents, maternal or paternal relatives, and other close family members may therefore become relevant in guardianship proceedings where the circumstances of the parents or the welfare needs of the child make such an arrangement appropriate. However, kinship should not be treated as an automatic entitlement. The Court must still determine whether the proposed guardian is suitable and whether the arrangement serves the welfare of the minor.

This approach is consistent with the child-centred nature of guardianship jurisdiction. A close relative may have an advantage because of an existing emotional relationship with the child, but the ultimate question remains whether the proposed arrangement is beneficial to the minor.

3.7 Incompetent Parents and the Welfare Principle of Child

A parent's biological relationship with a child does not protect that parent from judicial scrutiny where there are circumstances indicating that custody may be harmful to the child.

[12]G *ul Sadem Khan v Mst Halima and others* **PLD 2025 SC 47**. The Supreme Court declined the father's claim for custody after considering the circumstances of the father and the care and education being provided by the mother.

[13]Guardians and Wards Act 1890, s 17(2).

The Court may consider the parent's character, conduct, capacity, living circumstances and ability to provide appropriate care.

In Gul Sadem Khan, the Supreme Court explained that the welfare assessment may involve considerations relating to a parent's ability to care for the child. The judgment refers to circumstances such as habitual involvement in crime, drug or alcohol addiction, maltreatment of children, inability to provide proper upbringing, and deliberate failure to fulfil parental responsibilities as circumstances that may affect entitlement to custody[14].These factors should not, however, be treated as a closed statutory list. The Supreme Court emphasized that the circumstances affecting custody must be assessed according to the facts of each case and the overriding consideration of the welfare of the minor[15].Thus, the law does not require a court to disregard biological parenthood. Rather, it requires the court to place biological parenthood within the broader welfare assessment.

3.8 Grandparents and Other Caregivers

The issue becomes more complex where a child has been raised for a substantial period by a grandparent or another relative. In such circumstances, the Court may need to balance the biological relationship of a parent against the child's existing emotional attachments and stability.

Section 17 is particularly relevant because it requires consideration of the existing or previous relationship between the proposed guardian and the minor[16]. Therefore, a caregiver's established relationship with the child can form part of the welfare assessment.

This is significant from a social-legal perspective. A child may have developed a stable home, educational environment, emotional attachment and daily routine with a grandparent or another caregiver. Removing the child from that environment merely because another person has a stronger biological claim may not necessarily advance the child's welfare.

Accordingly, Pakistani custody law allows the Court to examine the practical reality of the child's life rather than relying exclusively upon formal legal relationships.

3.9 The Child's Wishes and Maturity

The Guardians and Wards Act also recognizes the relevance of the child's own views. Section 17(3) provides that where a minor is old enough to form an intelligent preference, the Court

[14]*Gul Sadem Khan v Mst Halima and others* **PLD 2025 SC 47**. The Supreme Court discussed circumstances that may affect a parent's suitability for custody, including maltreatment, addiction, criminal conduct, inability to provide appropriate upbringing and failure to fulfil parental responsibilities

[15]*Ibid.* The Court indicated that the factors affecting custody are not exhaustive or conclusive and that each case must be determined according to its own circumstances with the welfare of the minor as the paramount consideration

[16]Guardians and Wards Act 1890, s 17(2), concerning the existing or previous relationship between the proposed guardian and the minor.

may consider that preference[17].The provision does not mean that the child has an absolute right to select the guardian or custodial parent. Rather, the child's preference is one factor within the broader welfare inquiry[18].

This approach is particularly important in cases involving older children or adolescents. Their views may provide the Court with information about their emotional attachments, educational circumstances, living preferences and relationship with each parent or caregiver. Nevertheless, the Court must assess whether the preference is genuinely informed and consistent with the child's welfare.

3.10 The State and the Court as Protective Authority

In guardianship proceedings, the Court performs a protective function on behalf of the minor. It does not simply resolve a dispute between competing adults. Its responsibility is to determine an arrangement that protects the child's welfare and development.The judicial role may therefore be described as a form of protective or parental jurisdiction. The Court examines the circumstances of the child, evaluates the suitability of the proposed guardian or custodian, and may impose appropriate conditions concerning custody and contact.

This protective role is particularly important because a minor is generally unable to protect his or her own legal interests independently. Consequently, the Court must ensure that the litigation does not become merely a contest between adults over parental rights.

The Supreme Court has repeatedly emphasized that the welfare of the minor is the paramount consideration. In Gul Sadem Khan, the Court expressly stated that the welfare and betterment of the minor are the prime and paramount considerations in deciding custody[19].

3.11 Natural Guardianship, Custody and Welfare

The relationship between natural guardianship and custody can therefore be understood through three separate concepts.Natural guardianship establishes an important legal relationship between the parent and child. Physical custody concerns who actually cares for and lives with the child. Welfare provides the judicial standard through which competing claims are evaluated.

These concepts may point in the same direction, but they do not necessarily produce the same result. A father may be the natural guardian while the mother has physical custody. Similarly,

[17]Guardians and Wards Act 1890, s 17(3).
Guardians and Wards Act, 1890 (Act VIII of 1890), Pakistan,particularly 7, 17, 24 and 25. Pakistan Code, Ministry of Law and Justice. The official text confirms that §24 places responsibility on a guardian of the person for custody, support, health and education, while §25 deals with the return of a ward to the custody of a guardian where this is consistent with the ward's welfare.

[19]*Gul Sadem Khan v Mst Halima and others* **PLD 2025 SC 47.**

a relative may provide day-to-day care without becoming the natural guardian. In exceptional circumstances, the Court may also appoint or declare another suitable person as guardian.

The decisive consideration in contested custody proceedings remains the welfare of the minor. This means that the Court is not required simply to determine which adult has the stronger formal legal claim. Instead, it must determine which arrangement will best protect the child's physical, emotional, educational and developmental interests.

2.12 Relevance to the Present Research

The distinction between natural and court-appointed guardians is directly relevant to the central argument of this research concerning biological parenthood and child stability.

A purely biological approach would place primary emphasis upon the child's relationship with the natural parent. A purely environmental approach, on the other hand, might focus exclusively upon the caregiver who has provided long-term stability. Pakistani law provides a more flexible framework. Through sections 7 and 17 of the Guardians and Wards Act, 1890, the Court can consider both the legal relationship and the actual circumstances of the child.

The welfare principle therefore operates as a mechanism for balancing biological ties against continuity of care. Biological parenthood remains legally significant, but it does not operate as an absolute entitlement to physical custody. Likewise, long-term caregiving and emotional stability are important considerations but do not automatically extinguish the legal relationship between a child and a biological parent.

The appropriate legal approach is consequently a child-centred model in which natural guardianship, biological relationship, existing caregiving arrangements, emotional attachments, educational needs, parental capacity and the child's own mature preference are assessed together.

In this sense, the Court acts not merely as an adjudicator between competing parental claims but as a protector of the minor's welfare. The ultimate objective of guardianship jurisdiction should therefore be to secure an arrangement in which the child can develop in a safe, stable and supportive environment while maintaining appropriate family relationships wherever such relationships are consistent with the child's best interests.

Summary

The paper examines child custody under Pakistani law from a human-centered and child-focused perspective**,** particularly the tension between biological parenthood and the stability and welfare of the child. It analyzes the Guardians and Wards Act, 1890, especially Sections 7, 17 and 25, and explains that biological parenthood or natural guardianship does not automatically create an absolute right to physical custody. Rather, the welfare and best interests of the minor remain the paramount consideration. The paper distinguishes between guardianship, physical custody, and visitation, demonstrating that

a parent may remain the natural guardian while another person, such as the mother, grandparent, or other caregiver, may provide the child's day-to-day care. The discussion of cases such as *Gul Sadem Khan v. Mst. Halima* and *Mst. Madiha Younus v. Imran Ahmed* illustrates that Pakistani courts have considerable discretion to assess the child's circumstances, maturity, emotional attachments, education, safety, parental capacity, and continuity of care rather than relying exclusively on biological ties.

The paper further argues that visitation rights provide an important mechanism for balancing biological relationships with child stability. A non-custodial parent can maintain a meaningful relationship with the child without necessarily disrupting the child's primary living environment. However, the absence of detailed statutory guidelines concerning visitation, enforcement, supervision, modification, and the assessment of child stability creates uncertainty and allows considerable variation in judicial practice. From a human-centered perspective, custody should therefore not be understood as a contest in which one parent "wins" and the other "loses." The central question should be which arrangement best protects the child's physical, emotional, psychological, educational, and developmental welfare. The paper ultimately supports a balanced, child-centered model in which biological relationships remain legally important but are weighed alongside continuity of care, emotional attachment, parental capacity, the child's mature wishes, safety, and the stability of the child's existing environment.

Recommendations

1. The Guardians and Wards Act, 1890 should be strengthened by expressly defining or explaining the best interests or welfare of the child. Although Section 17 already places welfare at the centre of the judicial inquiry, the legislation does not provide sufficiently detailed guidance concerning what factors should constitute welfare.
2. The legislation and judicial guidelines should expressly distinguish between biological relationship, natural guardianship and physical custody**.** A biological parent should not lose legal significance merely because another person has cared for the child for a long period. At the same time, biological parenthood should not operate as an automatic entitlement to remove a child from an established and beneficial environment.
3. Give greater legal recognition to continuity of care where a child has lived for a substantial period with a parent, grandparent or other caregiver, the court should specifically consider the consequences of removing the child from that environment.Section 17(3) already permits consideration of the wishes of a sufficiently mature child. However, courts should develop clearer practices for hearing children in a safe, confidential and age-appropriate manner.

4. Develop detailed statutory or judicial guidelines for visitation. The present framework recognizes visitation but does not establish sufficiently detailed and consistent standards for determining its form and frequency.The guidelines should remain flexible rather than rigid**,** because a visitation arrangement suitable for a five-year-old child may be inappropriate for a fifteen-year-old adolescent.

5. Establish supervised visitation mechanisms. Where there are credible concerns about the child's safety and wellbeing of the children, courts should have access to properly organized supervised visitation facilities.Supervision should, however, be used as a protective measure rather than as a punishment against a parent.

References

1. Abbas, J., Aqeel, M., Ling, J., Ziapour, A., Raza, M. A., &Rehna, T. (2023). Exploring the relationship between intimate partner abuses, resilience,psychological, and physical health problems in Pakistani married couples: A perspective from the collectivistic culture. Sexual and Relationship Therapy, 38(3), 431-460. https://www.tandfonline.com/doi/abs/10.1080/14681994.2020.1851673
2. Bibi, A., Hayat, R., Hayat, N., Zulfiqar, S., Shafique, N., & Khalid, M. A. (2021). Impact of parenting styles on psychological flexibility among adolescents of Pakistan: A cross-sectional study. Child and Adolescent Social Work Journal, 1-10. https://link.springer.com/article/10.1007/s10560-021-00754-z
3. Egger, M., Higgins, J. P., & Smith, G. D. (Eds.). (2022). Systematic reviews in health research: Meta-analysis in context. John Wiley & Sons. Gan, J., Xie, L., Peng, G., Xie, J., Chen, Y., & Yu, Q. (2021). Systematic review on modification methods of dietary fiber. Food Hydrocolloids, 119, 106872. https://doi.org/10.1016/j.foodhyd.2021.10687210.1136/qshc.2004.012781
4. Hiver, P., Al-Hoorie, A. H., Vitta, J. P., & Wu, J. (2021). Engagement in language learning: A systematic review of 20 years of research methods and definitions. Language Teaching Research, 13621688211001289. https://doi.org/10.1177/13621688211001289
5. Husain, M. I., Umer, M., Chaudhry, I. B., Husain, M. O., Rahman, R., Shakoor, S., & Husain, N. (2021). Relationship between childhood trauma, personality, social support and depression in women attending general medical clinics in a low and middle-income country. Journal of Affective Disorders, 292, 526-533. https://www.sciencedirect.com/science/article/pii/S0165032721005954
6. Imran, N., Bodla, Z. H., Asif, A., &Shoukat, R. (2021). Pakistan's First Child & Adolescent Psychiatry Inpatient Unit: Characteristics of admitted patients and response to treatment over a 7-year period. Pakistan Journal of Medical Sciences, 37(2), 305-311. http://editor.openaccessbook.com/id/eprint/555/
7. Begum, S., Afzal, M. (1988). PLD Karachi 252
8. Tahira, Z., & Iqbal, A. (2019). YLR 785 Lahore