

**IN THE HIGH COURT OF SINDH AT LARKANA**

Constitution Petition No.464 of 2025  
(*'Sanam Bibi vs. Sardar Ali Shah'*)

**14.05.2026**

*For hearing of main case.*

Mr. Ahmad Wadho, Advocate, along with Petitioner, Mst. Sanam Bibi.  
Mr. Nisar Ahmad Lolai Advocate, along with Respondent, Mr. Sardar Ali Shah.  
Mr. Mohsin Ali Pathan, Assistant Advocate General, Sindh.

**JUDGMENT**

**MUHAMMAD HASAN AKBER, J.:** The Petitioner [**mother**] has initiated this petition against the Judgment dated 03.11.2025 passed in Family Appeal No.17 of 2025 by the learned Additional District Judge-III Shikarpur, which upheld the Judgment and decree dated 12.08.2025 passed in Guardian and Wards Application No.20 of 2024 '*Sardar Ali Khan v. Mst. Sanam Bibi*' by the learned Family Judge-I Garhi Yasin [**impugned Judgments**].

2. Tersely, both parties were married around 12 years ago, and out of the wedlock, the couple was blessed with five children: (1) **Bibi Mariam** aged about 11.5 years (2) **Amir Ali Shah** aged about 10 years (3) **Bibi Khadijah**, aged about 9 years (4) **Bibi Fizza** aged about 6 years and (5) **Karam Abbas** aged about four years [henceforth collectively referred to as "**the Children**"]. Due to differences between the husband and wife, the minors Bibi Mariam, Amir Ali Shah and Khadijah are residing with the Father, whereas two minors, Bibi Fizza and Karam Ali Shah @ Asghar Ali Shah, are residing with the mother.

3. The arguments from the petitioner's side are that an earlier Guardianship Application No.5/2024 was filed by the father, which was decided vide Judgement dated 09.09.2024, whereby custody of the minors was handed over to the mother, which Judgment was not challenged and has attained finality. Within a few days, Father

applied for guardianship and permanent custody of the two minors living with the mother, Faiza Bibi and Azhar Ali Shah @ Karam Ali Shah, under sections 7, 12 and 25 of the Guardian and Wards Act 1890, which was allowed by the learned Guardian Court and the same was concurrently upheld by the learned appellate Court.

4. Both learned advocates, along with their respective clients present in Court, were heard, and the record was also perused with their assistance. The two basic arguments raised by the Respondent/ father are, firstly, the poverty of the mother in maintaining the two children; and secondly, that the children in the custody of the mother are not getting education at all, but the other three children who are in the custody of the father are getting education in Indus Public School, Dakhan. Custody to stepmother from real mother, and the welfare of the children are other main issues to be considered.

5. While deciding this petition, 'jurisdiction *in loco parentis*' was exercised, and 'child-centric approach' was followed, taking guidance from the principles enunciated in the landmark Judgments by the Honourable Supreme Court of Pakistan in the cases of '*Arif Fareed v. Bibi Sara and others*' and '*Dr. Muhammad Asif Vs. Dr. Sana Sattar and others.*' Also kept in consideration were Articles 35, 25A, 11(3), 37(e) and 25 of the Constitution of the Islamic Republic of Pakistan 1973 and 'The United Nation's Convention on the Rights of the Child 1989' [CRC]. At the same time, the duties of parents introduced in the 'Principles of European Law Regarding Parental Responsibilities' by the Commission on European Family Law (CEFL), introduced by the European Union, were also considered. Lastly, the guidelines provided in '*Mst. Madiha Younus v. Imran Ahmed*' (2018 SCMR 1991) and '*Muhammad Riaz and others v. Mst. Surriya Jabeen and others*' (1985 SCMR 2066) were also adopted.

6. While the mother has not remarried, the father has contracted second marriage. Per the petitioner, she has consciously taken such a decision and has sacrificed her life for the welfare and well-being of the minors so that she could properly look after the minors and devote her full time and attention towards the children. The father is a schoolteacher and is also financially sound, whereas the mother's financial issues are challenging. He is living with his second wife. The three children of the petitioner/ mother are already being brought up by his second wife/ stepmother, whereas allowing the application would mean that two more children will have to be brought up by his second wife/ stepmother. In addition to the above, the Respondent's second wife will also have to raise her own children and manage her family affairs as well. So practically speaking, while the father being a schoolteacher will be busy teaching other children the whole day, his second wife/stepmother would be looking after five children from the first marriage of the Respondent and, her own children, and will also have to look after her day-to-day chores and affairs of the entire family, while the real mother, who has not entered into second marriage, will be without custody of any child, only because she is poor and less educated than the father. Perusal of the further reflects that both the

learner quotes below did not consider at all, the aspect of the stepmother taking care of the children, nor attended to the principles settled on the issue of poverty and literacy of a parent, nor considered the effect of three children already being under the custody of the stepmother. Findings of both the courts below, without consideration of the above-discussed material aspects, are unsustainable.

7. Hence, on the arguments that the mother's poverty and illiteracy be considered *per se* to deprive her of her children, I am therefore not convinced by the Respondent's line of argument, since abundant case law is available in our own jurisdiction on the subject of the removal of custody of a minor from that of a real mother to the care of a stepmother, which has escaped the attention of both the learned Courts below. The Respondent's claim to this effect is also untenable on the strength of the following study. The Honourable Supreme Court of Pakistan has already held in '**Mst. Feroze Begum v. Lt.-Col. Muhammad Hussain**' (1978 SCMR 299) that poverty could not be a valid ground to disentitle a real parent to the custody of the minor. Moreover, in '**Muhammad Nazir V. Additional District Judge, Mianwali and another**' (2009 CLC 1010), it was held that:

“It is axiomatic that it is always the father who has an obligation under law to provide maintenance to his minor children. That being so, the argument that the respondent mother had weak financial position as compared to the petitioner father, is misconceived. The petitioner father has admittedly contracted a second marriage and there would be no gainsaying the fact that he will have to remain out of his house for considerable time in connection with his daily pursuits. The minor cannot be left to the surveillance of stepmother. A stepmother can never be a substitute for the real mother. Real mother has inherent right to keep her minor children close to her bosom. The minor boy had been with the petitioner father and was naturally prone to toe his line as a tutelage in his hand. In these circumstances, intelligent preference of the minor while considering comparative rights of the real mother vis-a-vis the father who had already contracted a second marriage, could be legitimately pushed to oblivion and this is what the learned two Courts below had done.”

8. In '**Masroor Hussain V. Additional District Judge, Islamabad and 2 others**' (2011 CLC 851 ), it was held that a stepmother by no stretch of imagination can be considered to be a sympathiser of a stepchild, and a minor cannot be left at the mercy of a woman who is otherwise a stranger to the minor, while the father remains away in connection with his job. In '**Muhammad Jameel V. Azmat Naveed**' (2010 MLD 1388), it was held that when "*the petitioner has contracted second marriage, and it will not be in the welfare of the minors that their custody be taken from the real mother and handed over to the stepmother.*" For a detailed study on the subject on the same aspect, the following long list of cases can also be studied viz, '**Humayun Gohar Khan V. Guardian Judge, Okara and 2 others**' (2010 MLD 1313), '**Muhammad Zulqarnain Satti V. Mst. Ismat Farooq**' (2010 CLC 1281), '**Tahira Batool V. Additional District Judge, Mianwali and another**' (2008 CLC 1595), '**Matloob Ahmad V. Additional**

*District Judge, Sheikhpura and 2 others*' (2007 CLC 1578), '*Javed Irfan V. Additional District Judge*' (2007 MLD 1089), '*Salma V. Additional District and Sessions Judge, Faisalabad and 2 others*' (2006 YLR 316), '*Zahid Hussain V. Tahira Perveen and 2 others*' (2006 CLC 1766), '*SHER MUHAMMAD v. Mst. Nasreen Akhtar and others*' (2000 YLR 2848), '*Zahoor Ahmed V. Mst. Rukhsana Kausar and 4 others*' (1999 MLD 1580), '*Shaukat Pervez Butt v. Mst. Nargis Sultana and another*' (P L D 1988 Lahore 290).

9. Lastly, in '*Bang v. Mirza Muhammad and 2 others*' (2003 YLR 1337), it was declared that a mother is the best guardian for her minor children unless it is proved that she has married a man who is not closely related to the minor, or she lives a life of open immorality, or her occupation be such as to make it difficult for her to look after the child properly. For the determination of the question of custody of a minor, the paramount consideration is the welfare of the minor, as held in '*Safdar Hussain and others v. Mst. Parveen Umar and others*' (PLD 2004 SC 357).

10. Once the above two issues have been duly attended to, the most disappointing and unfortunate aspect which transpired while hearing this petition was that neither the three children in the custody of the father, nor the two children in the custody of the mother, were being allowed to meet each other. While on one hand, those in the father's custody were not being provided an atmosphere and opportunity to meet their spouses and mother, and likewise, those two children in the mother's custody were also not being provided any atmosphere or opportunity to meet their spouses and their father. Such a situation has occurred, apparently, due to the total severity of relations between father and mother, and due to which, all five children were being deprived of their precious and priceless opportunities of meeting their own spouses and parents, at their sensitive and formative ages. Extensive Research and Studies conducted around the world<sup>1</sup> on the adverse impact of inter-parental conflicts on their children conclude that if parental conflicts are not resolved privately and within a shorter period, the children suffer psychological distress with increased risk of developing fear, anxiety, sadness, depression, insecurity, instability, emotional dysregulation, mood swings and impulsivity. This ultimately hampers the overall psychological adaptation and brain development of the child. Studies further confirm that a parental conflict, culminating in divorce, has a direct adverse impact on their child's mental health in multiple ways.

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1. Mediation Role of Parenting Behavior: By Dr. Stephanie Hess; Impact of Parental Conflict on Children's Mental Health: Rocky Maharjan; Parental Conflict: Outcomes and Interventions for Children and Families, by Reynolds, Jenny, and others; In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce. Johnston, Janet, et al.; 7 Rules to Protect Your Children from Marital Conflict, by Athena Staik; Institute for Family Studies.

11. When such a dispute enters the litigation phase, the miseries of the child are added, and the trauma leaves permanent scars on the psychological health and personality of the child. In such a toxic and confrontational atmosphere, the child needs to be provided with a secure and protected environment, from direct exposure to such hostilities between the parents. Although Section 12 of the Guardian and Ward Act 1890, to some extent, caters to this situation and empowers the Court to pass any appropriate orders for production, protection and interim measures for the person and property of a minor. Such powers, however, are without any regulated guidelines, leaving the entire exercise at the discretion, understanding and capacity of each individual Court, often resulting in added difficulties for the litigant parents and the child. Piecemeal and incomplete orders/ interim arrangements, without a holistic view, and in the absence of a simultaneous, synchronous and overall scheme for all possible relevant issues concerning the child, not only adds to the financial burdens, logistical issues, multiplicity of litigation and consumption of precious time of the Courts and the parents, but it also fuels adversity, hatred and uncertainty amongst the litigant parents. All this ultimately affects the child, in physical and psychological terms.

12. In the present case also, the children and the parents are repeatedly going through the rigours and expenses of family litigation in Courts, and that too, without any positive conclusion of their complex and multi-dimensional problems to date. On the contrary, the miseries of the children have been added, instead of being resolved, and the distance and vacuum between the parents has also increased manifold, to the extent that now threats of criminal cases are being exchanged between the parents, as agitated by one of the parties. All this ultimately adds fuel and takes these children further away from any sensible and quickly needed solution to their real issues and miseries. If such distancing between spouses is allowed to prevail, in a few years, the hate-poison may consume the children, and is likely to increase the distance between real spouses and their non-custodial parents in future.

13. I have repeatedly emphasised in my earlier decisions on the need to adopt a simple and quick solution to cope with the above alarming situation in Courts in child custody and maintenance matters (under section 12 G&W Act and under section 17-A Family Courts Act), through introduction of formalised and regulated guidelines and rules under both the laws, applicable to every family maintenance and child custody case, across the Board without distinction, while the exercise of discretion can be narrowed to the extent of certain variables only, depending upon various limited factors including age, gender, mental maturity, health and opinion of the minor. Even the meeting schedules and venues etc. could be moulded accordingly for infants/ toddlers/ adolescents/ other age categories of children. In my earlier orders, also, different variable meeting schedules and formulas have been introduced and happily implemented by the parents themselves, wherein meeting formulas were varied depending upon the cooperation between the parents, the gender and age of the child and the personal opinion of the child etc.

14. For instance, in every Family case at the first hearing, a Mandatory Preliminary Hearing can be fixed by the Courts, to tentatively decide ALL the issues concerning the child(ren) of the subject family, to hear about the status of the child(ren), their monthly maintenance, interim custody, health, education, property, interim meeting arrangements with non-custodial parent, frequency of meetings, timings, venue, logistical issues regarding pick and drop of the child, expense of each meetings, meetings on other important occasions, religious and cultural festivities, birthdays and school vacations etc., with directions to the parents to cooperate on all other issues concerning the child etc. The order should consider the gender, age and mental maturity of the child and should include the voice and opinion of the minor. Seeking periodic reports to monitor the education and health of the child should also be part of this exercise. Such an exercise at a preliminary stage as a matter of rule, will give a sense of certainty among litigating parents and the child; will save precious time of the Courts and that of the parties; will discourage multiplicity of litigation and Court burden; will reduce litigation expenses; protect rights of the child and the parents; reduce adversity among litigating parents; and may also induce harmony within the family. As for the child, this entire exercise will help create a more conducive atmosphere for during the interim period; and will certainly improve peace of mind, boost confidence, mental health and certainty in the child's life; and will ensure continued facilitation for the interim period. The above suggestions are strongly recommended for consideration by all concerned, for improvement in the Guardian and Wards Act, the Family Courts Act and the Rules thereunder, for the sake of child rights and for the ultimate benefit of thousands of children in our country. The exercise and procedure under section 12 of G&W Act and section 17-A of the Family Courts Act and rules are, therefore, required to be modified and aligned in consonance with the Constitution of Pakistan, the CRC., the guidelines enunciated by the Justice Aminuddin Khan in the case of Justice Aminuddin Khan in the case of '*Arif Fareed v. Bibi Sara and others*' (2023 SCMR 413), and by Justice Mansoor Ali Shah of the Honourable Supreme Court in the case of '*Dr. Muhammad Asif Vs. Dr. Sana Sattar and others*' (in CRP No.458/2024 in CPLA No.2514/2024), the UN's CRC, and the recommendations contained in this Judgment.

15. Finally, after discussing the above-discussed circumstances and welfare of all five children/ spouses, and acting in a highly prudent and sensible manner, both parties present in Court agree to the following formula with respect to all issues concerning all five children:

- i. **Custody:** The permanent custody of the three children already with the father, shall continue to remain with the father. Likewise, the custody of the two children, already with the mother, shall continue to remain with the mother.
- ii. **Regular Meetings:** all five children shall meet both their parents on 2nd and 4th Saturday of every month, from 10 am to 12 pm.
- iii. **Each Child's Birthday:** meeting of each child on his/her Birthday, with the non-custodial parent, from 12 pm to 1 pm.
- iv. **Father's Birthday:** all five children shall meet the father from 12 pm to 1 pm.
- v. **Mother's Birthday:** all five children shall meet the mother from 12 pm to 1 pm.

- vi. **Venue:** All above Meetings [para (ii) to (v)] shall be conducted within the premises and under the monitoring and supervision of the concerned Family Court.
- vii. **Cost:** For each of the above meetings HELD in Court, the father shall deposit a total Transportation Cost of Rs.500/- in the Court, payable to the mother.
- viii. **Summer vacations:** On every 2<sup>nd</sup> and 4<sup>th</sup> Friday of every month during summer vacations, father will pick up the two children (in mother's custody) at 10 am, and the Mother will pick the three children (in father's custody), under the supervision of the learned Family Court, and all children shall return on the next day at 11 am, in Court. Father to pay Rs.1000/- Transportation cost in Court, for mother.
- ix. **Winter vacations:** On 1st Friday during winter vacations, the same above formula shall be observed.
- x. **Eid-ul-Fitr Prayers:** All male children to attend Eid prayers with Father and will rejoin the mother at 11 am.
- xi. **Eid-ul-Azha Prayers:** All male children are to attend Eid prayers and participate in sacrifice, if any, with the father, and will rejoin the mother at 12 noon.
- xii. **Eid-ul-Fitr meeting:** all five children shall meet their non-custodial parent on the first working day after Eid, from 10 am till 12 pm in Court.
- xiii. **Eid-ul-Azha meeting:** all five children shall meet their non-custodial parent on the first working day after Eid, from 10 am till 12 pm in Court.
- xiv. **Friday Prayers:** All male children may attend weekly Friday prayers with the father for an hour and will rejoin the mother after prayers.
- xv. **Transportation:** For all meetings at clauses (x) to (xiv), Pick and drop will be arranged by the father.
- xvi. **Alterations:** The above days, timings, venue or occasions etc. can be altered or improved, with the express mutual consent of both the parents and the children.
- xvii. **Education: (a)** Father has undertaken in this Court to arrange for the admission in Indus Public School, Dakhan (or if not possible, in any other proper school) and to pay all other educational expenses/ admission fee/ uniforms/ transportation/ pocket money/ extra tuition, etc. for the two children who are in mother's custody, so that all five children could study together and the education of the two children could also improve. The mother has undertaken in Court, not to hamper such schooling arrangements.  
**(b)** Both parents may attend important school meetings, other school functions, or any other activity of the children, as required, only to improve the confidence, better personality and education of the Children.
- xviii. **Gifts:** All Gifts from the father and the mother to their respective non-custodial children shall be delivered personally, through the Guardian Court.
- xix. **Mutual Cooperation: (a)** Considering the children's ages, both parents are required to act sensibly, being conscious of their serious responsibility towards the children, and they shall not do any act which may prejudice the minds of the children towards the other parent [2018 SCMR 1991].  
**(b)** Hence, in the best interests of all five Children, both parents shall fully cooperate with each other on all matters and documentation(s), etc., as, when and wherever required by the Children's school, or NADRA, or Union Council, or Immigration, concerned Doctor, or any other Department/ Authority/ forum etc. In this regard, the learned Guardian Court may pass appropriate Orders for its implementation to compel the non-cooperating parent.
- xx. **Monthly maintenance:** the father shall continue to deposit the monthly maintenance of the two children with the Family Court with 10% annual increment starting from 01.06.2026.
- xxi. **Reconciliation:** During their meetings, the learned Guardian Judge, from time to time, shall also initiate positive reconciliation efforts to reduce the relationship gap, presently created between the respective parents and their non-custodial children.
- xxii. **Implementation:** For the implementation of this Order, as well as for all matters and guidance concerning the rights and welfare of the Children, the parties shall approach the concerned learned Guardian Court.

- xxiii. **Action:** The learned Guardian Judge may take action against any of the non-cooperating parties found involved in deliberate avoidance of any term of this Order.
- xxiv. **Court:** the term 'Court' wherever used in this Order, shall mean the concerned learned Family Judge-I, Shikarpur at present, and for the future, shall also include the Family Court having jurisdiction under the Guardian and Wards Act, the Family Courts Act 1964 and the Rules thereunder.

16. The above arrangement between the parties is therefore made the Order of the Court, and the learned Family/ Executing Court shall follow the same formula, as noted above.

17. Before parting with this Order, I commend the quality of legal assistance, social service and their efforts in resolving this complex case concerning five children, as rendered by Mr. Ahmad Wadho, Advocate for the Petitioner, Mr. Nisar Ahmad Lolai, Advocate for the Respondent No.1 and Mr. Mohsin Pathan, learned Assistant Advocate General. I also appreciate the cooperation, prudence, wisdom and forbearance exercised by both the parents i.e. Mr. Sardar Ali Shah/ father and Mst. Sanam Bibi/ mother, for considering and resolving these issues in the best interests of all their Children.

The petition, therefore, stands disposed of in the above terms.

**JUDGE**