

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
MIRPURKHAS

C.P. No.S-274 of 2025

Petitioner: Mst. Shakeela Anjum, through Mr. Muhammad Ayoub Magsi, along with the minor.

Respondent: Raja Rashid Asghar, through Mr. Dilawar Hussain Panhwar Advocate.

Mr. Muhammad Shareef Solangi, Assistant A.G Sindh.

Date of Hearing: 16.03.2026 and 19.03.2026
Date of Decision: 19.03.2026.

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Judgment dated 21.10.2025 passed by the learned 2nd Additional District Judge Sanghar in Guardianship Appeal No.03/2025 (**impugned Judgment**) has been as sealed by the petitioner (**mother**) arising out of the Order dated 5.5.2025 (**impugned Order**) passed by the learned Family and Guardian Judge Sanghar in Guardianship application No. 33/2024.

2. The instant petition was heard and decided on priority, in light of the guidelines of the Supreme Court in **Arif Fareed**¹, that writ jurisdiction may not be exercised routinely, since the legislature, with the intent to curtail family litigation and for expeditious disposal of family disputes, has consciously withheld a second appeal under the Family Courts Act, 1964 (**Act 1964**).

3. The Petitioner and Respondent No.1 (**father**) were married on 11.11.2009 under the Sunni Muslim law and the couple was blessed with a son master 'Noor-e-Haq' presently aged around 14 years [**child/ minor**].

1. 'Arif Fareed v. Bibi Sara and others' 2023 SCMR 413

Social complexities amplified between the parties complicated the fragile matrimony, resulting in the dissolution of the marriage through a mutual agreement and a divorce deed between the parties dated 05.01.2021. In 2024, the father initiated a Guardianship Application under section 25 of the Guardian and Wards Act 1890 (**Act**). Issues were framed and evidence recorded, after which the learned Guardian Court allowed the application, which was concurrently upheld by the learned Appellate Court and is assailed in this petition. Admittedly, the minor has been living with his mother since birth, even after the divorce between the parents. The two core reasons on which such a decision was concluded were (a) the second marriage of the mother, and (b) the educational performance of the minor.

4. Heard learned counsel for both the parents and the minor, learned AAG, and meticulously perused the record with their able assistance.

5. During the course of the hearing, the father pleaded that the minor did not have an appropriate opportunity to meet his father. This aspect touches the core issue of the future welfare, mental health and rights of the child. While guaranteeing rights of a child, the Constitutional scheme in the Constitution of the Islamic Republic of Pakistan 1973 [**Constitution**] impose certain duties upon the State i.e. to protect the marriage, the family, the mother and the child [**Article 35**]; to provide free and compulsory education to children between five to sixteen years [**Article 25A**]; to protect children from engagement in hazardous employments [**Article 11(3)**]; or in vocations unsuited to their age or sex [**Article 37(e)**]. Even while dealing with the issue of Equality of citizens, the Constitution permits the State to make exceptions through special provisions for women and children. [**Article 25**].

6. The Honourable Supreme Court of Pakistan has emphasised for harmonisation and transformation of the Act 1890 and other child-related laws with the United Nation's Convention on the Rights of the Child 1989 [**CRC**] in **Dr. Muhammad Asif's case**², which demands a fundamental shift in philosophical approach from the "welfare of the child" to "rights of the child" while dealing with child laws. The Judgment demands the need for a child-centred justice system; the child's participation during court proceedings, where the child's voice is heard, along with

2. 'Dr. Muhammad Asif Vs. Dr. Sana Sattar and others' in CRP No.458/2024 in CPLA No.2514/2024

ADR and Child Justice in child-related matters; and the judicial obligation to construct and interpret child-related laws, from the dedicated lens of the CRC.

7. Recognising the sensitivity and importance of the issue, the European Union has also implemented *Principles of Parental Responsibilities*³ which impose around 39 duties upon the parents to safeguard *inter alia*, for care, protection, education, maintenance, residence, property and legal representation of the child. As regards the adverse impact of inter-parental conflicts on their children, research and **Studies**⁴ around the world suggest 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. When such a dispute enters the litigation phase, 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. Section 12 of the G&W Act, 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.

3. "Principles of European Law Regarding Parental Responsibilities" by the Commission on European Family Law (CEFL).

4. 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.

8. A possible solution to the above could be through introduction of formalised and regulated guidelines and rules, applicable to every family and custody case across the board without distinction, while the exercise of discretion can be narrowed to the extent of certain variables only, depending upon the age, gender, mental maturity, health and opinion of the minor, and even the meeting schedules and venues etc. could be moulded accordingly for toddlers and other categories of children. For instance, in every family/ custody case at the initial stage, a mandatory preliminary hearing can be fixed by the Courts, to tentatively decide ALL issues concerning the child, including the interim custody, education, health and property of the minor, interim meeting arrangements with non-custodial parent, monthly maintenance, 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 the Act and rules are, therefore, required to be improved and aligned in consonance with the Constitution of Pakistan, the guidelines enunciated in *Dr. Muhammad Asif's case*² *supra*, the UN's CRC, and the recommendations in the preceding paragraphs.

9. In the present case, not only the father and mother of the child but their learned advocates also expressed genuine interest in playing their respective roles to conduct the above exercise for the best interests of the child, and for which, they also willingly cooperated with the Court's efforts. In this regard, minuscule details of the child were also discussed, which included his physical, mental and spiritual upbringing, his education, physical and mental health, his financials and his right to meet both parents, grandparents, relatives, cousins, friends etc. During personal interaction with the minor in court, the child appears to be bright, intelligent and active, having respect and care for both his parents and also understands the gravity of the situation arising out of the order by the guardian court. He clearly expressed his willingness to live with his mother, where he has already cultivated strong relations with his friends, relatives, cousins and schoolmates. He, at the same time, also loves and duly respects his father. The responsibilities of both parents also came under discussion, and it transpired during the hearing that the second marriage of the mother has also concluded, and the parents of the mother have also arranged a separate permanent residence for her and the minor where they are presently living. The arrangements approved by the Honourable Supreme Court of Pakistan in *Madiha Younus case*⁵ and *Muhammad Riaz case*⁶ were also considered for guidance.

10. Finally, acting in a highly prudent and sensible manner and after fully considering all the above aspects in the best interests of the Child, the Father, the Mother and also the child, entirely cooperated with the Court's efforts, through the good offices of their respective advocates, and came up with the following formula:

A. That by consent, the instant petition be partly allowed, and the impugned Judgment and Order be modified in the terms recorded in the following paragraphs 10-B to 10-C.

B. That the mother shall hold the **permanent physical care and custody** of the Child, with freedom to travel with him. In case of mother's remarriage, the father would be entitled to review this decision before the concerned family Court, the same may be reassessed at that time, depending upon the welfare, rights and opinion of the minor.

5. 'Mst. Madiha Younus v. Imran Ahmed' (2018 SCMR 1991)

6. 'Muhammad Riaz and others v. Mst. Surriya Jabeen and others' (1985 SCMR 2066)

- C. That other terms between the parties shall, by consent, be conducted in the following manner:
- i. **Regular Meetings:** From 7 pm every Saturday evening, the minor will stay with the father (in view of this age of 14 years) and will return to the mother on the next afternoon at 2 pm.
 - ii. **Venue:** All Regular Meetings will be conducted at father's residence.
 - iii. **Costs:** For each of the above meetings, the father shall pay Rs.5,00/- to the mother, in addition to any gifts he may give to the child.
 - iv. **Child's Birthday:** from 4 pm to 7 pm at father's place.
 - v. **Father's Birthday:** from 4 pm to 7 pm at father's place.
 - vi. **Friday Prayers:** The child shall attend weekly Friday prayers with the father for an hour and will rejoin the mother after prayers.
 - vii. **Eid-ul-Fitr:** The child will attend Eid prayers with the father and will rejoin the mother at 11 am.
 - viii. **Eid-ul-Azha:** The child will attend Eid prayers and participate in sacrifice, if any, with the father, and will rejoin the mother at 12 noon.
 - ix. **Summer vacations:** The child will stay with the father in the second week and 3rd week of both months during summer vacations, OR as may be further agreed between the child and the father.
 - x. **Winter vacations:** In the 1st week of winter vacations, the child will stay with the father for three days during winter vacations, OR as may be further agreed between the child and the father.
 - xi. **Exceptions:** Notwithstanding the above schedule, the meeting arrangements shall be implemented strictly considering the health and education of the child, and in case of any difficulty, subject to the ruling by the learned Guardian Court.
 - xii. **Alterations:** The above days, timings, venue or occasions etc. can be altered only with the express mutual consent of the child and both parents.
 - xiii. **Maintenance:** Starting from 1st April 2026, on or before the 1st day of each month, the father shall continue to deposit future monthly maintenance of the minor with the Family Court @ Rs.5000/- with 10% annual increment. The extra educational or health expenses of the child may be individually decided by the Guardian Court.
 - xiv. **Education:** (a) Mother may be at liberty to look after the health and education of the minor, in the school(s) of her choice and other day-to-day needs of the child. (b) However, considering the present grades of the child, the father shall have the right to make efforts to participate and improve the minor's education, without disturbing his existing school arrangement or residence by the mother. (c) In this regard, periodic reports regarding the educational status/ results of the child be submitted every three months by the school principal of the child before the Guardian Court, which shall be monitored by the learned Court. (d) Both parents may attend important school meetings, other school functions, or any other activity of the child, as required, only to improve the confidence, better personality and education of the Child. (e) The father may approach the Guardian Court after a year, for further improvement in the marks/ grades of the child.
 - xv. **Mutual Cooperation:** considering the child's age, both the 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 mind of the child towards the other parent [2018 SCMR 1991]. Hence, in the best interests of the Child, both parents shall fully cooperate with each other on all matters and documentation(s), etc., as, when and wherever required by the Child's school or NADRA or Union Council or Immigration or any forum/ department/ authority.

- xvi. **Implementation:** For the implementation of this Order, as well as for all matters and guidance concerning the rights and welfare of the Child, the parties shall approach the Guardian Court.
- xvii. **Court:** wherever used in this paragraph, shall mean the concerned learned Guardian Judge, Sanghar at present, and for the future, shall also include the Family Court having jurisdiction under the Guardian & Wards Act, the Family Courts Act 1964 and the Rules thereunder.

11. Order accordingly. In view of the above, this petition is therefore partly allowed; and both the impugned Judgment and Order stand modified with the conditions, as recorded in the preceding paragraph 10 *ibid*. The office is directed to send copies of this Order to the learned Guardian Court for compliance.

12. Before parting with this Order, I feel obliged to appreciate the grace, prudence and cooperation extended by Mr. Raja Rashid Asghar (child's father) and Mst. Shakeel Anjum (mother), while considering the best interests of their Child. I also appreciate the quality of legal assistance and the positive social service rendered by Mr. Dilawar Hussain Panhwar, learned counsel for the Respondent and Mr. Muhammad Ayoub Magsi, learned Advocate for Petitioner.

Announced in the presence of the Parties on this 19th day of March 2026.

JUDGE