JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.2010 OF 2025

FARRAH MEHMOOD & 2 OTHERS

VS

ADNAN AMIN & 2 OTHERS

Petitioners by : **Ms. Kaneez Fatima Advocate.**

Respondents by : **Mr. Naseem Ahmad Shah, Advocate for the Respondent No.1.**

Date of hearing : **14.07.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the Petitioners have assailed the Order dated 15.05.2024 [**"Impugned Order-I"**] passed by the learned Family Court/Guardian Judge, East, Islamabad [**"Trial Court"**] whereby the application filed by the Petitioners for modification of visitation schedule, has been dismissed. The Petitioners also assailed the Order dated 30.11.2024 [**"Impugned Order-II"**] passed by the learned Additional District & Sessions Judge-1, East, Islamabad [**"Appellate Court"**] whereby the appeal filed by the Petitioners under Section 14 of the Family Courts Act, 1964 read with Rule 22 of the West Pakistan Family Courts Rules, 1965 against the Impugned Order-I passed by the learned Trial Court, has also been dismissed.

2. The brief facts of the case as per the memo of the petition are that the Petitioner No. 1 and Respondent No. 1 got married on 06.09.2006**.** However, due to irreconcilable differences, the Petitioner No. 1 filed a Suit for Dissolution of Marriage, which was decreed by the Family Court, Islamabad in March 2016. Thereafter, the Respondent No. 1 filed a Suit for Custody and Guardianship of

Petitioners No. 2 & 3 (hereinafter referred to as the "**Minors"**) before the learned Trial Court, Islamabad in 2017. The learned Trial Court vide Order dated 30.06.2017 prepared a visitation schedule, whereby the Respondent No. 1 was granted night stay with the Minors at his house. The Petitioner No. 1 assailed the said Order before the learned District Court, Islamabad which was dismissed vide Order dated 31.10.2017, thereby upholding the decision of night stay every week with Respondent No.1. The Petitioner No. 1 further approached the Islamabad High Court, Islamabad and challenged the Orders of the learned fora below, which is still pending adjudication. It is pertinent to mention herein that in compliance with the Orders of the learned fora below, the Minors started visiting the Respondent No. 1 twice a month and stayed at night as per the visitation schedule chalked out by the learned Family Court.

3. During the Summer Vacation in 2019, a tragic incident occurred at the house of Respondent No. 1 (father of minors) involving the Petitioner No. 3 (minor girl) where the paternal uncle of Petitioner No. 3 sexually harassed her. This prompted the intervention of the Executing Court Judge, who, after consulting with the children, decided to halt the night stay arrangement at the house of Respondent No. 1 (Adnan Hameed) vide Order dated 02.10.2020. According to the Order, the minors were to visit their father from 10:00 AM to 4:00 PM, without overnight stays. Petitioners filed an application for modification of visitation schedule of the Petitioners No.2 & 3 with their father i.e. Respondent No.1 contending therein that earlier an application filed by the Respondent No.1 for custody of Petitioners No.2 & 3 was dismissed by the learned Trial Court vide Order dated 30.06.2017 and fixed the visitation schedule as under:-

- Fortnightly visitation per month
  2nd and 4th weekend (Saturday 06:00pm to Sunday 04:00pm)
- Summer Vacations (yearly)
  First two weeks
- Winter Vacations (yearly)
  1st half of vacations
- Eid-ul-Fitr & Eid-ul-Azha
  2nd Day of Eid (from 10:00am to 05:00pm)
- Birthday of minors, Father's Day
  From 04:30pm to 07:30pm

4. It was contended that Petitioner No.1 had arranged the visitation in accordance with the schedule, in compliance with the aforementioned Order. However, during the last meeting between Petitioners No.2 & 3 and Respondent No.1, Petitioner No.3 [Sarah Adnan] was reluctant to visit her father, which caused distress to her, as she was experiencing discomfort and anxiety symptoms that had been progressively increasing since June 2019. This situation compelled Petitioner No.1 to consult a psychiatrist for Petitioner No.3. After three consecutive visits to Dr. Ambreen Ahmed, a renowned psychiatrist in the country, certain facts pertaining to the paternal uncle of Petitioner No.3 were disclosed, which were shocking for the Petitioner No. 1. The psychiatrist also provided her professional opinion and recommendations in light of the situation. In such circumstances, Petitioner No.1 felt aggrieved and uncomfortable in sending the minors to Respondent No.1 for overnight stay, particularly in view of the psychiatrist's report and the prevailing condition of both Minors, who had shown absolute reluctance to visit their father. Consequently, she filed an application for modification of the visitation schedule. The said application was contested by Respondent No.1 through a written reply, wherein he raised certain preliminary objections, categorically denied the allegations levelled by Petitioner No.1, and prayed for its dismissal. The learned Trial Court, after hearing arguments from both sides, dismissed the Petitioners' application vide Impugned Order-I . Feeling aggrieved by the said Order, the Petitioners preferred an appeal before the learned Appellate court, which also met the same fate vide Impugned Order-II . Hence, the Petitioners have approached this Court by filing the instant Writ Petition.

5. The learned counsel for the Petitioner contends that the learned Trial Court as well as the learned Appellate Court failed to appreciate the material facts and medical evidence on record, particularly the psychiatrist's report, which clearly reflected the mental health concerns and emotional discomfort experienced by the minor Petitioner No.3 due to the existing visitation arrangements; that both the learned Courts below erred in law by dismissing the application for modification without giving due weight to the reluctance and emotional state of the minors, who are the most affected parties in custody and visitation matters, thus failing to uphold the welfare of the Minors, which is the paramount consideration in such proceedings; that the learned Courts below did not consider

the professional opinion and findings of a qualified and reputed psychiatrist, Dr. Ambreen Ahmed, which disclosed disturbing facts and recommended revisiting the visitation schedule to safeguard the minors' well-being; that the learned Courts below adopted a mechanical approach in dismissing the Petitioners' application and appeal, without appreciating that the circumstances had materially changed since the issuance of the original visitation Order dated 30.06.2017, thereby justifying the request for modification; that the consistent and absolute reluctance of both minors to meet their father, especially for overnight stays, demonstrated a significant psychological impact that warranted serious judicial consideration and an adaptive visitation arrangement rather than rigid adherence to a schedule issued years earlier; and that dismissal Orders are not sustainable in the eyes of law as they amount to denial of the Petitioners' right to be heard and violate the principle of natural justice, in particular the right to a fair hearing in matters affecting the mental and emotional well-being of minor children. In the last, the learned counsel for the Petitioners prayed that instant Writ Petition may kindly be accepted and both the Impugned Orders may kindly be set aside.

6. On the other hand, the learned counsel for Respondent No.1 vehemently opposed the arguments of the learned counsel for the Petitioners and contends that the application filed by the Petitioners is not maintainable in law, as there has been no substantial change in circumstances warranting modification of the visitation schedule already settled by the competent Court vide Order dated 30.06.2017; that the Petitioner No.1 is willfully attempting to alienate the Minors from their father (Respondent No.1) and is creating undue psychological barriers in the mind of the children to frustrate his visitation rights, which is contrary to the settled principle that a child’s welfare includes regular interaction with both parents; that the visitation schedule was set after full adjudication and consideration by the competent Court, and the same was in force without objection for a substantial period; that the psychiatrist’s report, relied upon by the Petitioners, is unilateral, based solely on information provided by Petitioner No.1, and lacks any independent or Court-supervised evaluation of the children; that the Respondent No. 1 was neither consulted nor given an opportunity to participate in the said psychiatric evaluation, which renders the findings one-sided and questionable; that the alleged reluctance of the Minors to meet Respondent No.1 has been deliberately cultivated by Petitioner No.1 through manipulation and

repeated negative portrayal of the Respondent No.1, amounting to parental alienation; that this is a common tactic in custodial disputes and cannot be taken at face value without a neutral assessment; that the Respondent No.1 has always complied with the Court Orders and has made sincere efforts to maintain a healthy and nurturing relationship with his children; that the visitation schedule as framed ensures that the children maintain emotional ties with both parents, which is essential for their balanced development; that the application filed by the Petitioners was rightly dismissed by the learned Trial Court, and the learned Appellate Court rightly upheld that decision, as the Petitioners failed to establish any cogent legal or factual grounds to justify interference with the settled visitation regime, therefore, it is requested that the instant Petition may kindly be dismissed.

7. I have heard the learned counsel for the parties and perused the record with their able assistance.

8. Perusal of the record reveals that visitation schedule was prepared by the learned Trial Court vide Order dated 30.06.2017, wherein the Respondent No. 1 was granted night stays with the Minors at his house. Petitioner No. 1 had assailed the aforementioned Order before the learned District Court, Islamabad, which was dismissed vide Order dated 31.10.2017, thereby affirming the direction for overnight visitation with Respondent No. 1 on a weekly basis. Petitioner No. 1, thereafter, invoked the Constitutional jurisdiction of the Islamabad High Court by challenging the Orders passed by the subordinate fora, where the matter is presently sub-judice. It is pertinent to note that, in compliance with the directions issued by the learned Courts below, the Minors commenced visitation with Respondent No. 1 twice a month, including overnight stays, in accordance with the visitation schedule. However, during summer vacations in 2019, the Petitioner No. 3 was allegedly sexually harassed by her paternal uncle at the house of Respondent No. 1, which made the Minors reluctant to stay overnight at the house of their father/Respondent No. 1. The Petitioners, due to change in circumstances, had moved an application seeking modification of the visitation schedule chalked out earlier by the learned Trial Court. The said application was dismissed vide Impugned Order-I by the learned Trial Court. The

Petitioners assailed the Impugned Order-1 before the learned Appellate Court, however, the appeal was dismissed vide Impugned Order-II.

A. To thoroughly examine the merits and legal complexities of the present case, it is essential to articulate the moot questions that have emerged for determination by this Court Whether any subsequent change in circumstances could allow modification, alteration and/or revocation of an earlier visitation schedule chalked out by the Guardian Court?

B. Whether the voice of the children holds substance in matters pertaining to custody?

C. Whether there are any pertinent factors/aspects that need to be considered by the Courts whilst preparing the visitation schedule?

D. Whether mediation should be the first recourse for reaching an amicable solution within a reasonable timeframe?

9. There remains no dispute as to the settled principle that the welfare of the minor is of the paramount consideration before any Court seized of a custody matter. The rights of the parents are necessarily subordinate to the welfare of the child, and there is an obligation on the Courts to ascertain and determine a course of action that best serves the well-being of the minors. Any decision qua custody, rendered without proper evaluation of the minors' welfare, and without considering all relevant factors and circumstances, lacks legal sustainability and cannot be regarded as a proper exercise of judicial discretion. Therefore, the welfare and best interests of the minors form the foundational basis upon which determinations related to custody and visitation must rest. In this regard, it is imperative to refer to the established legal principles in such matters. The august Supreme Court of Pakistan in the case titled *Raja Muhammad Owais Versus Mst. Nazia Jabeen and others* **(2022 SCMR 2123)** has observed the following:-

> *"**Time and again, this Court has held that the paramount consideration where custody is concerned is the welfare of the minor, that is to consider what is in the best interest of the child**. The court's jurisdiction in custody cases is in the form of parental jurisdiction which means that the court must consider all factors from the parents' ability to provide for the child including physical and emotional needs, medical care but also relevant is the parents' ability to provide a safe and secure home where the quality of the relationship between the child and each parent is comforting for the*

> *child. Hence, there is no mathematical formula to calculate the welfare of the minor, as the factors range from financial and economic considerations to the household environment, the care, comfort and attention that a child gets.* ***Accordingly, the concept of welfare of the child is an all encompassing concept which will cover not only the manner in which the child has to be cared for but will also include the physical, mental and emotional well being of the child.*** *" (Emphasis added)*

Similar view has been expressed by the apex Court in the latest judgment titled as *Shaista Habib v. Muhammad Arif Habib and others* **(PLD 2024 SC 629)** wherein the august Supreme Court has ruled as under:-

> *"The overarching principle in cases involving the question of custody and visitation rights of the parents is, therefore, determination of the welfare of the child, i.e. to ascertain a course that would serve the best interest of the child."*

10. Reliance is further placed on the latest judgment cited as *Irfan Arshad Versus Mst. Zainab Noor and 2 others* **(2025 MLD 401)**, wherein the Lahore High Court has observed the following regarding the welfare of the minors:-

> *"Before adverting to the merits of the case, the Court is of the considered view that the* ***utmost priority of the Court in determining the custody of a minor is to see his/her welfare and well-being****. This is the reason, law provides a parental jurisdiction to the Guardian Judge in such cases. The objective of the law is not just handing over the custody of the minor, but to examine all the aspects which are ancillary to it. The power and duty of the Court while considering the question of custody of a minor is to thoroughly and comprehensively take into consideration the minor's welfare.* ***The word "welfare" in such cases is to be taken in its widest sense, which includes not only the monetary expenses of the minor but also his mental and physical health, educational needs, psychological well-being, religious and moral values. The Courts are duty bound to consider such cases in the best interest and healthy up-bringing of the minor which sometimes may yield the rights of the parents.*** *" (Emphasis added)*

11. Although the Guardian Court is deemed as the final arbiter for determining matters relating to custody of minors, this authority is subject to exception where the Court has rendered its decision in an arbitrary, capricious, or fanciful manner, particularly in situations where the foundational consideration of the minor's welfare has neither been adequately evaluated nor determined with reference to

the relevant and prevailing circumstances. In instances where the welfare and best interest of the minor has been disregarded or subordinated to extraneous considerations, such a decision cannot sustain in the eyes of law. It is well-established that in adjudicating custody disputes, the Court is not required to adhere rigidly to procedural formalities or technical rules if such adherence is likely to impede or frustrate the primary objective of ascertaining the welfare of the child. The determinative criterion in all such matters is the best interest of the minor, which stands as the overarching and settled principle. Therefore, the Guardian Courts must adopt a course that best serves the welfare of the child, as such welfare is to be treated as the paramount consideration in all custody-related adjudication.

A. Whether any subsequent change in circumstances could allow modification, alteration and/or revocation of an earlier visitation schedule chalked out by the Guardian Court?

12. The Guardian Courts have been empowered not only to modify, set-aside or alter an earlier Order, but also to pass appropriate Orders at any subsequent stage to safeguard the interest and welfare of the minors. Thus, an Order rendered prior in time qua visitation of minors would not operate as a bar of jurisdiction on the Guardian Courts for all future time to come. Reliance in this regard is placed on *Shabana Kausar Versus District Judge and others* **(2020 CLC 2099)**, wherein it was held that:-

> *"At this juncture, it is relevant to observe that order relating to custody of child is by its very nature not final but is interlocutory in nature and subject to modification at any future time upon proof of change of circumstances requiring change of custody but such change in custody must be proved to be in the paramount interest of the child."*

Furthermore, in the case of *Ayesha Tahir Shafiq Versus Saad Anamullah Khan and 2 others* **(PLD 2001 Karachi 371)**, the Court observed the following:-

> *"It may be mentioned here to this regard that an order passed by the Guardian Court in respect of the custody of the minor (consent order or otherwise) may be an order in the best interest and welfare of the minor at that point of time but due to certain future eventuality and subsequent developments the same may not serve as such. It is for this reason that the Guardian Court has been empowered to modify, set aside or alter an earlier order and pass an appropriate*

> *order at any subsequent stage to safeguard the interest and welfare of the minor and that the order passed earlier in that context will not operate as a bar of jurisdiction for the Guardian Court for all future time to come."*

Similar view has been taken by the apex Courts in *Amna Nawaz Versus District Judge and others* **(2021 Y L R 2030)** and *Dewan Abdullah Ahmed Farooqui Versus Court of Family Judge South, Saddar Karachi and another* **(2022 Y L R 2095)**.

13. In view of the foregoing legal position and jurisprudence settled by superior Courts, it is evident that in matters pertaining to the custody of minors, the welfare and best interest of the child is the overriding and paramount consideration. An Order previously passed by the Guardian Court with respect to custody is not of a conclusive or permanent nature, rather it is interlocutory and inherently susceptible to modification upon proof of a material change in circumstances. The passage of time, coupled with the evolving physical, emotional, and psychological needs of a child, may warrant a re-evaluation of an earlier custody arrangement. Therefore, the filing of a subsequent application is not barred where new grounds or developments have arisen, although the prior Order must still be accorded its due legal weight during such reconsideration.

14. It is well-recognized that no fixed age can be determined for assessing when a minor is capable of expressing a meaningful preference in custody matters. However, the maturing capacity of the child and his or her ability to comprehend the circumstances are relevant factors that must be evaluated by the Courts. In the instant case, the emergence of new allegation qua sexual harassment, which directly concerns the wellbeing of the Minors, coupled with the fact that the children have since grown significantly older, necessitates judicial scrutiny. Th Guardian Court is duty-bound to examine new developments and changed circumstances by affording the Minors a fair opportunity of hearing, thereby ensuring that any future custody determination conforms to the constitutional (as guaranteed under Articles 9, 14, 25, and 34 of the Constitution) and statutory mandate of safeguarding the best interests of the Minors. Hence, in light of the above findings, the Guardian Courts have been empowered to modify, set-aside or alter an earlier Order, at any subsequent stage, to safeguard the interest and welfare of the minors.

B. <u>Whether the voice of the children holds substance in matters pertaining to custody?</u>

15. Whilst observing custody disputes, it has been oft-noted that the child is frequently casted as a lone figure standing at the border of two sovereign territories; each claimed by a parent, each demanding allegiance. One parent stands to the East, the other to the West. Albeit the child shares their identity, love, and history, yet the child is made to choose between parents as though love could be partitioned. The children are often saddled with the burden to carry the emotional baggage alone, which the Courts can never fully understand or carry. In such moments, the courtrooms should not become a site of border, rather the child's preference must be heard above all arguments, and their best interest must not be governed by parental control and desires, but discerned with compassion, empathy and dignity.

16. The august Supreme Court of Pakistan, in a recent judgment cited as *<u>Dr. Muhammad Asif Versus Dr. Sana Sattar and others</u>* **(2025 SCP 192)**, has stated that the voice of the child must be heard and respected in every custody and guardianship matter. Relevant portion is reproduced hereunder:

> *"We underline that a child must be heard so that her best interests can be properly understood and protected. The participation of a child in legal proceedings is not a formality; it is fundamental to a justice system that respects the dignity and agency of the child. Listening to the voice of a child gives them a sense of worth, inclusion, and trust in the judicial process. As clarified in the UN General Comment No. 12, the views of the child must be seriously considered, not merely acknowledged. Listening to a child does not mean obeying them, but rather understanding their perspective deeply enough to act in their best interests."*

17. Therefore, there is no cavil to the proposition that in every matter concerning custody and guardianship, the voices of the children must not be treated as a mere whisper, but rather as a vital guiding source in the judicial proceedings with a view to determining their welfare, prosperity and safety. The child is not a passive subject to be moved like property, but a sentient being with fears and aspirations that deserve to be heard with sincerity and weighed with reverence. To silence that voice is to darken the very soul of the dispute, for in the quiet truth of a child's heart often lies the clearest path to their well-being.

18. Moreover, Article 3 of United Nations Convention on the Rights of the Child, 1989 (UNCRC) establishes that the best interest of the child shall be a primary consideration in all actions concerning them. This is not merely a rhetorical or aspirational directive, but rather a binding legal standard that necessitates a holistic and child-centric evaluation encompassing the child's emotional, psychological, developmental, and relational needs, as well as considerations pertaining to their safety, security, and long-term welfare. Furthermore, Article 12 of UNCRC confers upon every child, capable of forming their own views, the right to freely express those views in all matters affecting them, with such views to be accorded due weightage in accordance with the child's age and degree of maturity. In the Judgment cited *supra*, the august Supreme Court observed the following:-

> *"Article 3 requires that the best interests of the child be a primary consideration in all actions concerning them. This is not a vague or aspirational goal; it is a structured legal standard demanding a comprehensive, child-centered assessment that incorporates the child's emotional, psychological, developmental, and relational needs, alongside considerations of safety and long-term well-being. Complementing this, Article 12 mandates that every child capable of forming their own views has the right to express those views freely in all matters affecting them, and that those views must be given due weight in accordance with their age and maturity. This shift from "welfare" to "best interests" and from silence to participation marks a fundamental transformation in the philosophy of child justice, it reframes the child not as a passive recipient of adult decisions, but as an active rights-holder whose voice must be heard and respected."*

19. Reliance is further placed upon on the case titled *Raja Muhammad Owais Versus Mst. Nazia Jabeen and others* **(2022 SCMR 2123)**, wherein the apex Court has observed the following:-

> *"The United Nations Convention on the Rights of the Child, 1989 (UNCRC) is an international treaty which sets out the rights of children, be it economic, social, health or family. The UNCRC was ratified by Pakistan in 1990 with reservations that it will adopt the Convention, subject to the requirements of the Islamic Law. However, in 1997, the ratification became absolute as the reservation was withdrawn.* ***The UNCRC recognizes that the child should grow up in an environment of love, happiness and understanding.*** *Article 3 provides that in all actions concerning*

> *children whether by courts of law or public, or private welfare institution amongst others, the best interest of the child shall be a primary consideration. Article 7 provides that every child has right to be cared for by their parents and Article 9 requires that in the event of separation between the parents, the child should be in contact with both parents unless either one can cause any harm. Article 12 provides that a child capable of forming his or her own view should be able to express it and it should be given due weightage.* ***This Article suggests that children's preferences can be a guiding factor in custody cases, hence, encouraging their participation and opinion in custody matters. This is essential because custody is about the care and comfort of the child and the right of the child to a family. Custody matters are always sensitive and require a great deal of care as the court has to weigh in all factors in order to determine where the welfare of the minor lies.****"*
> *(Emphasis added)*

20. In the light of the above rationale whilst keeping in view the Constitutional mandate as well as the obligations under international child rights framework, this Court undertook a child-sensitive and participatory approach while interacting with the Minors in the present proceedings. Recognizing the need to minimize the intimidating atmosphere of courtroom formality, both children were invited into the chamber to facilitate an environment conducive to honest and uninhibited expression of speech. The elder minor, a 16-year-old girl, had initially chosen to narrate her account before the Court from the rostrum. She appeared composed and articulate, confidently recounting the circumstances that had influenced her views regarding her living arrangements at her father's house. The younger minor, a 14-year-old boy, expressed his desire to speak in private, which was duly respected by the Court. Inside chambers, both minors independently verbalized their clear reluctance to reside with their father. They exhibited emotional maturity and clarity of thought, and both communicated their preferences and grievances with conviction and coherence. Due consideration was accorded to their views in accordance with their age and maturity, as required by Article 12 of the Convention on the Rights of the Child. The Court ensured that their psychological and emotional well-being remained central to the process. Only after engaging meaningfully with the Minors and each parent separately in order to determine the best interest of the Minors, this Court has reached the conclusion to give weightage to the preference of the Minors, who genuinely seemed stressed by the whole fiasco. The father has also acknowledged the possibility of an incident having

occurred in the year 2019, and has undertaken to engage in communication with his brother in relation thereto.

21. The modifications introduced by the learned Appellate Court, whilst dismissing the application of the Petitioners, though intended to strike a balance, fail to adequately safeguard the psychological well-being and emotional security of the Minors, particularly the 16-year-old girl who has explicitly expressed her discomfort and apprehension regarding the presence of her paternal uncle, the alleged harasser at the residence of the Respondent No. 1. While the directive to provide a separate room with specific furniture and limited access may offer a semblance of physical distance, it overlooks the critical reality that proximity to an individual associated with past trauma continues to pose a serious risk to the Minor's mental health. A protective barrier in the form of a separate room cannot neutralize the constant fear, stress, and emotional turmoil experienced by the child in such an environment.

22. Children cannot be expected to thrive, or even function normally, under the psychological shadow of a known threat. The proposal that the father should knock before entering the daughter’s room or meet her in common areas may reflect procedural caution, but it does not cure the deeper harm caused by continued exposure to a triggering environment. The welfare of the Minor, being the paramount consideration in all custody matters, demands a more robust, trauma-informed approach. Allowing visitation in a setting where the alleged perpetrator remains within reach, even if not in direct contact, perpetuates a cycle of constant fear and anxiety that is antithetical to the principle of the child’s best interest.

C. Whether there are any pertinent factors/aspects that need to be considered by the courts whilst preparing or modifying the visitation schedule?

23. The determination of custody of minors is governed by the overarching principle of welfare, which mandates that the primary consideration for the grant or refusal of custody must be what serves the best interests of the child; this is just as much applicable whilst preparing visitation schedule. This assessment is not based on a rigid or mechanical formula, as the factors qua the welfare of a minor are multifaceted and may include, inter alia, financial and economic stability, the quality of the household environment, and the degree of care, comfort, and

attention afforded to the child. In instances where circumstances have evolved, the Court is duty-bound to undertake a fresh evaluation of the living arrangements and domestic environment in order to determine whether the same continue to align with the welfare of the minor. It is imperative to emphasize that the guiding consideration is the welfare of the child and not the convenience or entitlement of the parent. Following aspects/factors need to be considered by the Courts whilst preparing or modifying the visitation schedule:

I. Welfare and Best Interests of the Minor:

Welfare and best interest of the minor is the overarching and foundational principle in all custody and visitation matters. Welfare includes emotional, mental, psychological, educational, and physical well-being, not merely material comfort. In this regard, reliance is placed upon *Shaista Habib Versus Muhammad Arif Habib and others* **(PLD 2024 Supreme Court 629)**, wherein the august Supreme Court of Pakistan has held that:-

> *"**The decision regarding custody of a child is governed on the fundamental principle, the paramount and overarching consideration is the welfare of the child i.e. to ascertain the course which is in the latter's best interest.** The crucial criterion is, therefore, the best interest and welfare of a child while determining the question of custody. The rights or aspirations of the parents or some other person are subservient to this principle and each case of custody must be decided on the basis of ascertaining a course which is in the 'best interest of the child'."*

II. Intelligent Preference and Age of the Minor:

Article 12 provides that a child capable of forming his or her own view should be able to express it and it should be given due weightage. This Article suggests that children's preferences can be a guiding factor in custody and visitation matters, hence, encouraging their participation and opinion in custody matters. The Courts need to consider the preference of a minor if he or she is capable of forming an intelligent opinion. Courts must give due weight to the minor's views depending on their age and maturity.

III. Psychological Assessment:

A professional evaluation (ideally by a child psychologist or counselor) should be conducted where possible to assess the child's psychological needs,

mental health, trauma, or risk of emotional harm. This is especially critical in cases involving allegations of abuse, neglect, or fear of a particular guardian or environment. In the case of *Shaista Habib (supra)*, the august Supreme Court has held that:-

> *"The environment of a court dealing with the rights of the children must also cater to their emotional and psychological needs.* ***The courts must also be adequately equipped and enabled to professionally assess and determine the welfare of a child in each case. The courts must have access to professional consultation and advice of qualified experts such as psychologists.*** *The parents and the courts must also have access to child welfare and social assistance services to protect and fulfill the rights of each child."*

Courts must avoid abrupt transitions or forced contact that may cause psychological regression or harm.

IV. Parenting Capacity and Emotional Security:

The Court must assess each parent's emotional capacity, sensitivity, stability, and ability to provide a safe and nurturing environment. Quality of relationship between the child and each parent is relevant. The relevant factors such as the parenting capacity, relationship of the child with each parent, the mental health of both the parents as well as the minor, the latter's emotional and mental needs and such other relevant factors in the context of determining the welfare of the child are to be taken into consideration to assess the best interest of the child. Courts must avoid any arrangement that may cause the child to live in fear, stress, or mental anguish, including the fear of staying in a household where a predator resides, even if indirectly.

V. Living Conditions and Safety:

The domestic environment must be conducive to the child's development and protection. Court orders must ensure that the minor has access to a safe, secure, and private space, and is protected from contact with abusers or people that may cause harm within the home. Therefore, the entire living arrangement and environment has to be reassessed in the context of the welfare of the child with utmost care. Visitation schedules must also account for the educational, medical, emotional, and social development of the child.

VI. Past Conduct of Parents:

Courts consider factors such as consistent visitation by a parent, regular payment of maintenance, genuine efforts to sustain a relationship with the child, and any prior history of neglect or absence. A parent's passive or inconsistent involvement may lead to modification or eventual curtailment of visitation rights.

VII. Change in Circumstances:

The Court can re-examine and modify earlier visitation orders based on future eventualities, subsequent developments related to child's age and character, changed preferences, allegations of abuse, trauma, or domestic hostility, deterioration in living standards or psychological harm, etc. Any change that follows an earlier visitation schedule can be modified in the light of new circumstances.

VIII. Professional Expertise and Child-Sensitive Processes:

The lack of professional expertise or child-sensitive Court processes may undermine the fairness and sustainability of decisions. Therefore, the Courts are encouraged to take assistance from psychologists, social workers, or child welfare officers. In the case of *Malik Mahmood Ahmad Khan Versus Malik Moazam Mahmood and others* **(PLD 2025 Supreme Court 247)**, the august Supreme Court of Pakistan observed the following:-

> *"Child justice encompasses both children in conflict with the law, who require rehabilitative interventions rather than punitive measures, and children in contact with the law, who must be safeguarded and supported throughout judicial processes. This approach demands sensitivity to their circumstances, ensuring access to education, shielding them from exploitation, and fostering an environment conducive to their growth and reintegration into society."*

i. The august Supreme Court of Pakistan further stated that to fulfil the mandate of child justice, the UNCRC outlines certain guiding principles affecting children, which inter alia, include:-*Ensuring that the best interests of the child is given primary consideration;*

ii. *Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination*;

iii. *Advancing the right of the child to express his or her views freely and to be heard;*

iv. *Protecting every child from abuse, exploitation and violence*;

v. *Treating every child with dignity and compassion*;

vi. *Respecting legal guarantees and safeguards in all processes*;

vii. *Preventing conflict with the law as a crucial element of any juvenile justice policy*;

viii. *Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time.*

Therefore, whilst preparing or modifying a visitation schedule, the Courts must not treat the matter as a routine civil proceeding. In a judgement cited *supra* as (2025 SCP 192), the apex Court of Pakistan stated that:-

> *"It must be underscored that courts are bound to approach all matters involving children through the lens of a dedicated child-centered and child justice framework, a judicial philosophy grounded in both legal and moral obligations to safeguard, nurture, and empower children within the justice system. It encompasses not only children in conflict with the law, who require rehabilitative and restorative processes rather than punitive sanctions, but also children in contact with the law, including those involved in custody and guardianship disputes and other civil proceedings who must be treated with dignity, heard, protected, and empowered throughout judicial proceedings."*

D. Whether mediation should be the first recourse for reaching an amicable solution within a reasonable timeframe?

24. Pertinently, this Court made efforts to resolve the issue between the parties through mode of mediation vide Order dated 01.07.2025, however, the Petitioners failed to appear before the Court on the date fixed. The august Supreme Court of Pakistan in the judgement cited *supra* (2025 SCP 192) observed that mediation is a viable and better option to avail in custody matters in order to reach an amicable solution. The relevant portion is reproduced hereunder:-

> *"12. In matters involving children, such as custody, guardianship, and family disputes, the courts must recognize that a strictly adversarial approach often exacerbates conflict, delays resolution, and undermines the child's sense of stability and security.* ***In contrast, Alternative Dispute Resolution ("ADR"), particularly mediation, offers a more collaborative, efficient, and child-sensitive mechanism for resolving such dispute****. While the CRC does not explicitly reference the term ADR, its spirit and structure clearly support its use. Article 3 of the CRC demands that the best interests of the child be a primary consideration in all actions concerning children, while Article 12*

guarantees the child's right to express views freely and to have those views given due weight. In General Comment No. 12 (2009), the UN Committee on the CRC explicitly encourages States to develop mechanisms that ensure meaningful child participation in family law proceedings, including through non-judicial and informal processes such as mediation.[22] ***Such processes must be voluntary, child-friendly, and facilitated by professionals trained to respect the evolving capacities of the child and prioritize their best interests. Properly designed ADR mechanisms reduce the psychological burden on children, promote parental cooperation, and lead to faster, more sustainable outcomes that support the child's long-term welfare****. Accordingly,* ***Family Courts and Guardianship Tribunals must prioritize mediation as a first recourse, particularly where parties demonstrate a willingness to engage in good faith****.* ***Adjudication should be pursued only when mediation fails or is deemed unsuitable due to concerns of safety, coercion, or imbalance of power****. This approach not only aligns with Pakistan's international obligations under the CRC but also reinforces the constitutional commitment to protect the dignity, welfare, and future of every child." (Emphasis added)*

25. Furthermore, in CPLA No. 3519 of 2021 titled "Muhammad Naseer Butt Versus Additional District Judge, Lahore, etc.", the august Supreme Court of Pakistan encouraged mediation in family disputes by observing the following:-

"6. The benefits of mediation are manifold. It reduces the costs associated with protracted legal battles, alleviates the burden on courts, and ensures quicker resolution of disputes. ***The confidential nature of mediation protects the privacy of the parties, and its informal setting encourages honest communication and problem-solving.*** *Moreover, the* ***flexibility of the process allows parties to explore creative, interest-based solutions that a court of law may not be empowered to grant****. These benefits were remarkably evident in the present case.* ***What years of litigation could not resolve, mediation achieved within weeks.*** *This reinforces the principle that the earlier a dispute is channeled through mediation, the greater the potential for cost and time savings, reduced emotional strain, and restored relationships.*

9. The case at hand underscores the efficacy and benefits of mediation, ***particularly in familial contexts where adversarial litigation often exacerbates emotional distress, imposes significant financial burdens, and strains familial ties****. Had mediation been pursued earlier, the extended litigation and accompanying costs, both monetary and emotional, could have been substantially mitigated or altogether avoided in the present case." (Emphasis added)*

26. In the present case, the minor girl has explicitly expressed her unwillingness to reside at the father's residence due to allegations of sexual harassment by the

paternal uncle. In such circumstances, the adoption of a mediation process, facilitated by trained professionals, could provide a more sensitive, trauma-informed, and child-centered pathway toward resolving the custody and visitation dispute. Given the deeply personal and distressing nature of the allegation, especially when the matter has been on-going since 2017 till date, mediation would allow the parties to communicate openly in a confidential, non-confrontational setting, and potentially arrive at a mutually agreeable visitation arrangement that ensures the safety, dignity, and psychological well-being of the Minors while preserving the father's right of access in a manner that does not retraumatize the child.

27. However, it is pertinent to mention herein that even where the father is the non-custodial parent, he retains the status of natural and legal guardian under Islamic personal law and continues to possess the inherent right to maintain contact and develop an emotional bond with the minors. The Courts, in exercising parental jurisdiction under Sections 12 and 25 of the Guardians and Wards Act, 1890, are obligated to ensure that the visitation rights of the non-custodial father are structured in a manner that upholds the welfare and best interests of the child. Jurisprudence has consistently held that limited, Court-supervised interactions within the premises of the Guardian Court are not conducive to meaningful parental bonding and may, in fact, risk the development of estrangement between the child and the non-custodial parent.

28. Accordingly, Courts must adopt a liberal and facilitative approach in chalking out visitation schedules, granting sufficient time and, where appropriate, overnight stay with the non-custodial father, so as to enable the minors to receive the love, guidance, and care that is indispensable to their balanced emotional, psychological, and social development. Thus, depriving the minor of the company and affection of the father in such circumstances is not only inequitable but may also result in long-term psychological detriment to the child. Therefore, while the overarching principle remains the welfare of the minor, the Courts must ensure that visitation schedules are framed in a manner that preserves the child's right to maintain a meaningful relationship with both parents, unless exceptional circumstances necessitate otherwise. Reliance in this regard is placed on *Fayyaz-ul-Hassan Anwar Versus Mst. Shehla Khalid and another* **(2025 CLC 960),** *Shahid*

Wazeer Versus Additional District Judge, Muzaffargarh **(2023 CLC 2110),** *Mst. Ayesha Shahid Versus Additional District Judge* **(2018 MLD 1592)**, *Mst. Maryam Masood Versus Mughisuddin Mirza and 2 others* **(2009 CLC 1443)**, *Abdul Khaliq and others Versus Ms. Mah Noor and others* **(PLD 2018 Balochistan 44)**.

29. In view of the foregoing discussion and in light of the authoritative pronouncements of the superior Courts of Pakistan, this Court is of the considered opinion that, given the prevailing circumstances, there is no legal impediment in setting aside the direction pertaining to the Minors' overnight stay with their father. The Minors, while appearing composed and articulate, expressed visible emotional distress and candidly conveyed their reservations and lack of confidence in the judicial process, particularly noting that their preferences had previously been disregarded. In these circumstances, the direction for overnight custody at the father's residence, including *inter alia* Eid holidays, birthdays and Summer/Winter vacations, is hereby **set aside**. However, this shall not be construed as a blanket prohibition against overnight stays with the father. The parties are at liberty to mutually determine and agree upon a visitation schedule, including overnight stays, in accordance with the preferences and comfort of the Minors, and to submit the same before the learned Guardian Court for its approval. Both parents are advised to foster an environment that enables the Minors to exercise autonomy in deciding whether they wish to stay overnight with the non-custodial parent, free from coercion or pressure, and to respect the evolving capacities and emotional readiness of the children in this regard.

30. Nevertheless, the father's right to maintain contact and interaction with his children remains intact and shall not be curtailed. He is permitted to meet the Minors during the daytime, as both the Minors and the father have conveyed no objection to daytime meetings. As the Guardian Court is the appropriate and final forum vested with jurisdiction to determine matters of custody and visitation under the law, the matter is accordingly remanded to the Trial Court to devise a revised and suitable visitation schedule, ensuring that the welfare and best interests of the Minors remain paramount. Recourse should be made to mediation as well in order to reach an amicable solution. Furthermore, the modifications introduced by the learned Appellate Court are hereby **set aside**. It is also clarified that the judgment of the august Supreme Court cited as *Mst. Madiha Younas vs. Imran Ahmed* (**2018**

SCMR 1991), whereby visitation schedule had been finalized, cannot be used in all cases as paragraph 3 of the said judgment clearly spells out that the said schedule is based upon reconciliation *inter se* the parties with consent and on the basis of compromise. It can be used as a source of guidance, however, is not applicable on each and every case, therefore, the Guardian Courts must consider the prevailing circumstances whilst chalking out a visitation schedule, keeping in view the factors/aspects mentioned hereinabove.

31. The instant Writ Petition is **disposed of** in the terms mentioned in the preceding paragraphs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of July 2025.

JUDGE

//Mehboob//