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BENCH TO THE BRINK: JUDICIAL MISCONDUCT & THE LEGAL VOID OF SECTION 12 OF GUARDIAN & WARDS ACT 1925, PAKISTAN FAMILY COURTS

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ABSTRACT

This article critically examines the structural and procedural deficiencies embedded in Pakistan's family court system, with a particular focus on the colonial-era Guardian and Wards Act, 1890. Central to this analysis is Section 12 of the Act, which allows for interim custody orders without granting a statutory right of appeal—an omission that creates a legal vacuum in urgent child welfare cases. This absence of appellate scrutiny enables rampant judicial discretion and fosters an environment conducive to favoritism and procedural abuse. Drawing from a real-life case (the "Montgomery Case"), the article exposes how corrupted evidence, judicial bias, and administrative misconduct can converge to produce outcomes that violate due process and undermine the welfare of children. Existing oversight mechanisms, such as the High Court's Member Inspection Team, are shown to be largely ineffective, issuing mere explanatory notices without undertaking meaningful disciplinary action.

This article further explores how Section 12 is in direct violation of Articles 10-A and 25 of Pakistan's Constitution—guaranteeing the right to a fair trial and equality before the law. Comparisons are made with legal systems in India, the United Kingdom, and the United States, where interim custody orders are subject to appeal or expedited review, demonstrating Pakistan's legal obsolescence. The article proposes legislative reform through a newly drafted Section 12-A, establishing a statutory right of appeal for interim custody decisions, and recommends the creation of an independent judicial appointment commission, enhanced training in child psychology, and a strengthened judicial oversight board. These reforms aim to harmonize Pakistan's domestic laws with international human rights standards while restoring public trust in the judiciary.

The findings build upon previous scholarly work exposing systemic flaws in Pakistan's judicial and institutional architecture, including analyses of recruitment corruption (Siddiqui, 2019), misuse of public authority (Siddiqui, 2022), and procedural rigidity (Siddiqui, 2018; 2023), thereby contributing to the growing body of policy-oriented legal critique in South Asia.

Keywords: Judicial misconduct, interim custody, family courts, Guardian and Wards Act, judicial discretion, constitutional rights, Section 12, Pakistan judiciary, child welfare, legal reform.

INTRODUCTION

In a constitutional democracy, the highest and best of the open fields of the fundamental rights is the arm of the Government by which justice is administered. It is not merely a translator of the law, but a significant barrier against the abuse of executive and legislative authority. An independent, open, and efficient judiciary is also crucial for public confidence in the rule of law and state institutions. But in Pakistan, and particularly in the case of family laws, the judiciary is not nearly fulfilling these expectations (Cheema, et al., 2020).

Family courts, intended to deal with sensitive issues pertaining to child custody, guardianship and matrimonial disputes in Pakistan, are becoming increasingly discredited. While the state has taken a few good measures, like appointing women judges to hear cases concerning women and children, and making attempts at improving the legal system, but these measures seem to perfunctory. In numerous cases, such appointments have been combined without appropriate investment in judicial education, infrastructure or ethical responsibility. The courts charged with protecting the most

vulnerable children have turned into their very own breeding ground for legal chaos and psychological peril (Sabreen, 2023).

Among the immediate issues is the long-standing use of the Guardian and Wards Act of 1890 — a colonial-era law that hasn't been significantly modified in over a century. Although its structure once satisfied the standards of a very different world, today it is woefully outdated and ill-equipped to accommodate the competing interests in today's variation of guardian and custodial controversies. The Act, more importantly, has no provision for appeal when it rests in a court's discretion to make an interim custody order. This silence in the law has potentially dangerous consequences it allows judicial discretion to go unchecked, litigant abuse when they know the child has a "voice" in court and the child susceptible to instability, pressure, threats or worse (Grassroots Research Journal, 2023).

The absence of structured oversight and mechanisms of enforceable accountability for judges, particularly ones in family courts, is a breeding ground for bias, favoritism, and even misconduct to leap apace unchecked. In that world, any kind of procedural oddball is just part of the furniture, and defendants have no good options. Such harm can be done when hasty or ill-informed decisions are made, especially when children's emotional and developmental needs and their future depend upon the decision (Grassroots Research Journal, 2023).

This article aims to reveal and analyze these institutional shortcomings. Based on a recent case and the wider constitutional, legal, and ethical ramifications of the section of S. 12 of the Guardian and Wards Act, this is in order to underscore the pressing need for legislative reform. The paper also recommends specific legal and accountability changes to ensure Pakistan's family courts function more transparently, humanely, and in accordance with both the Constitution and the best interests of the child.

JUDICIAL SELECTION AND STRUCTURAL BIAS

The method of the appointment of judges in Pakistan particularly on the subordinate Judiciary suffers from opacity, arbitrariness and unmerited evaluation. Pressure groups rather than established standards legal competence, professional ethics or evidential judicial behavior determine who gets appointed to the bench and why 'political' patronage, 'bureaucratic' clout or clerical nepotism. Sycophants, those with ties to power, the support of certain sections of the bar or bureaucracy always have an edge over those with probity in public life. The consequence is that the judiciary is sometimes manned by those who may not possess the independence of thought, jurisprudential exactitude, and moral authority to effectively discharge the responsibilities cast upon them by the constitution. This undermines not only the institutional prestige of courts but also chips away at the credibility of justice delivery in the eyes of the public (Pakistan Judiciary Academy, 2021).

At the level of family courts, it is particularly troubling that the structural bias is at issue in cases that are so sensitive, including dissolution of marriage, child custody, and guardianship. Due to the emotional and gender-based implications of these disputes, the government implemented policies to increase the number of female judges in family courts. The motive behind this campaign was noble to inject compassion, consideration and enlightened perspective to the personal challenges and realities that women and children face. In reality, however, these appointments have not always resulted in the scrutiny of qualifications and judicial preparation that they should. In some cases, unqualified women were nominated to the judiciary, not based on administrative competence, but by quotas or political motivations (PLJ Law Site, 2023).

The result is a worrisome rift between policy aims and conditions on the ground. Undertrained family court judges will struggle to hear such cases involving the challenging business of family dynamics and legal contestations. Rash decisions can be made without thorough examination or reasonable basis on which to make them, and as a consequence, miscarriages of justice are more likely to happen - especially when such decisions are made concerning the lives or emotional well-being of children. To the contrary, the misuse of affirmative action in judicial selection will tend to perpetuate ineffective institutions and create cynicism about the reforms that were supposed to increase fairness and understanding (Punjab Laws, 2024).

Ultimately, when judges are installed for political expediency or social optics at the expense of competence and accountability, the justice system is compromised. The absence of an objective, merit-based recruitment process with standardized rigorous training and continuous assessment results in even well-intentioned reforms backfiring. If Pakistan wants to restore its credibility as an impartial judiciary and family courts within it, they need to acknowledge

the challenges to judicial independence well-entrenched structural biases that have devastated public trust in rule of law (Lahore High Court, 2021).

CASE STUDY: GUARDIANSHIP PETITION UNDER SECTION 25 OF THE GUARDIAN AND WARDS ACT

The deficiencies and procedural lacunae that exist within Pakistan's family courts can best be demonstrated by looking at a guardianship matter instituted under section 25 of the Guardians and Wards Act 1890 in a family court in Islamabad. Although unique in form, this case is representative of a larger trend of judicial incompetence, ethical failing, and procedural skewing which has become habitual in guardianship actions such as this.

In the circumstances of that case, a Petitioner- the minor sought permanent custody of the said minor in the Court. But the respondent—the purportedly psychologically fit parent—came forward with a pile of documentary evidence that undermined the allegations in the petition. This was coupled with unassailable evidence of the Petitioner producing bogus school fees receipts and furnishing documents as if the child was an inmate of a particular private institution. An investigation by the current school administration found child was enrolled at another place. This conclusion was supported with photographic evidence of the school uniform and with verification from school personnel (Sabreen, 2023).

Although the contradictions were apparent and the petitioner's observed behavior gave hint of possible criminal activity, the judge refused to take appropriate action. The court, instead of inquiring the forged documents or rejecting the petition, passed a unauthorized high maintenance order in favor of the respondent which brings in the issue of the partiality of the judicial system and the use of financial order as a political extortion. Perhaps even more concerning is the judge's decision to move the case to another court without giving any written reasoning or issuing a written order. This type of extra-curricular activity led to most believable (though un-provable) assumptions about hidden influences, preferential treatment or negotiates.

The matter got worse when they presiding judge refused to review the respondent's income papers even though those papers spoke to the legitimacy and ability for the maintenance to be paid. Williams "When this Court has failed to address material evidence presented to it, the very resolution of this action has lagged, causing substantial mental and emotional anguish by the minor child and the parent who responded in this case." This kind of judicial neglect, in matters like these that so effect a child's emotional health and welfare, is near negligent (Judicial Commission of Pakistan, 2024).

In search of justice and accountability, the respondent took the matter to Member Inspection Team (MIT) the internal body of the High Court that oversees the conduct of members of the subordinate judiciary. The MIT's response, though, was patently underwhelming. Rather than conduct a full investigation or suggest disciplinary actions, the MIT was required to only request "comments" from the lower court. This empty procedurals is indicative of the transactional character of judicial oversight in Pakistan. It underscores how the court's system, even when judicial misconduct is brought through normal channels, is set up such that true accountability seems mostly out of reach (Brunel Law Review, 2023).

This case is yet another example of how unbridled judicial discretion, lack of attention to the evidence, and institutional hesitation to confront misconduct perpetuate an organic injustice in the family courts. It violates not only the rights of children it tramps on the trust of parties in the justice system. Perhaps most significant, it underscores the dire necessity for procedural reform, ethical oversight, and statutory redress particularly when it's clear that guardianship determinations fly in the face of established law as well as common-sense justice (Zahida v. Javaid, 2019).

LEGAL BLACK HOLE: NO APPEAL AGAINST INTERIM CUSTODY ORDERS (SECTION 12)

The most shocking gaps: A key loophole Reviews in which the provisions of Pakistanis family law jurisprudence has fallen is section 12 of the Guardian and Wards Act of 1890, which allows courts to issue interim custody orders while custody disputes are still pending. Although the provision is designed as a measure of protection for the child during pending litigation, its maxims bear a fatal legislative defect: it is devoid of a statutory appellate or judicial review process in relation to these provisional orders. This lack of a statute has a broad impact on both the parties and the minor children (Pakistan Law Digest, 2022).

Interim custody orders in practice through a practical lens, interim custody orders are usually made ex parte (that is, the other party is not aware that the order is being made), or on the basis of limited preliminary information. Or disinclined to act as biased or incomplete presentations, or absence of sufficient documents, can all persuade the judges very early on in the proceedings to enter such orders. Once ordered, these temporary measures – despite being legally temporary – frequently will decide the entire course of the custody fight, serving in practice as a final decree. The child is usually estranged to a new world – a new home, school, or a different town – and experiences emotional, psychological and academic turmoil. Those kinds of transitions can be traumatic for a child, especially if the custodial arrangement is an unstable or abusive one (Pakistan Law Digest, 2022).

Where the problem really comes, is when the party which the gifted property has been given against decides to contest the decision – usually the non-resident parent. As per the present law there is no appellant against an intern custody order under section 12. The 21 only provision for appeal lies under Section 14 which would be available only after the final order under Section 25 is passed. This period of delay can last for months or even years, and the child is held in an unsafe or inappropriate situation with no possibility that it may be reviewed or appealed were the wrong decision originally made. The absence of early appellate control makes the party harmlessly regardless of the merit of the party's claims or the purchasing need (Imran Ali v. Iffat Siddiqui, 2008).

Certain litigants seek to circumvent this procedural void by relying the Article 199 of the Constitution of Pakistan and filing writ petitions in the High Courts under Article 199(1)(c) to question interim custody orders. 79 80 Although Art. 199 does provide a constitutional remedy to challenge an unlawful or arbitrary act of the state, it cannot be claimed as of right. High Courts are not bound to admit these petitions, and if they do, there is no guarantee of relief, relief being uneven and often postponed because of – really – procedural backlogs. Even more importantly, writ jurisdiction is no substitute for an organized system of appeals vested in statutory law. It does not have the predictability, the procedural clarity and the time in a sensitive family situation where there is a child at risk (Imran Ali v. Iffat Siddiqui, 2008).

This statutory catch in Section 12 raises a very real constitutional concern. And it offends the spirit of Article 10-A protecting the right to a fair trial and due process. A penchant for leaving unresolved important issues — here, how best to promote the welfare of a child placed in the temporary custody of one parent while litigation continues — deprives the litigants of the procedural safeguards that are fundamental to the quest for fairness. it also violates the principle of access to justice as it serves to limiting rectification for victims of judicial errors or prejudices on a provisional basis. In family law, where decisions reverberate throughout children's emotional and developmental health for years and even decades, such a failure of procedure isn't merely a squirmy detail; it's a gross injustice. In summary, that there is no provision of appeal against interim custody orders under Section 12 has created a "legal black hole" — a zone in which judicial discretion prevails without oversight, and in which the interest of the parents and the children are sacrificed to procedural paralysis. In the absence of legislative change to address this vacuum, family courts will remain constitutionally deficient, legally retrograde, and psychologically harmful (UK-Pakistan Judicial Protocol on Children Matters, 2023).

CONSTITUTIONAL IMPLICATIONS OF SECTION 12 OF THE GUARDIAN AND WARDS ACT

The Constitution of Pakistan provides a clear set of fundamental rights which are the cornerstone of democratic government and protection of the civil liberties. Prominent among these is the right to a fair trial guaranteed by Article 10-A, which is one of the cornerstones of due process of law. It requires that everyone must have a fair, impartial and public hearing within a reasonable time by an independent and impartial tribunal. But in the backdrop of family courts and guardianship proceedings the safeguards envisaged in Article 10-A are frequently violated or neutralized, more so with respect to the legislative vacuum in the Section 12 of the Guardian and Wards Act, 1890 (UK-Pakistan Judicial Protocol on Children Matters, 2023).

Orders of interim custody under Section 12 often determine the controversy altogether. And despite being technically "temporary" orders, these orders are usually the ones that the final decision is molded around, not only because they set a precedent for where the child will live, but also because they direct the child's psychological and emotional orientation. A child who has spent months, or years, in the home of one parent because of an interim order simply will not be moved later — even if overwhelming evidence emerges that that arrangement was a mistake. In such a situation, the lack of any avenue of appeal from these vital interim determinations would make a fair trial nothing more than a mirage. The litigant who becomes the victim of an improper or partial ICSO is without legal remedy in a timely manner,

and is doomed to suffer a protracted course of litigation without the hope of any just result (Child custody laws in Pakistan, 2024).

This legislative vacuum also violates Article 25 of the Constitution of the Islamic Republic of Iran, whereby all citizens are equal in the eyes of the law and shall receive equal protection. The situation on the ground is that the litigants in family law courts face discrimination (discrimination not in the conventional sense) wherein their exercise of right to seek and obtain a review becomes a matter of the discretion of the judiciary based on considerations of influence, status, and connections in the legal elite. People who are affluent and have influential connections can file constitutional writs under Article 199 of the constitution but others, especially women, the downtrodden, or parents who are economically handicapped, cannot effectively participate in the appellate process for the enforcement of constitutional rights. This discrepancy does more than discredit the rule of law; it exacerbates systemic inequities in Pakistan's justice system (Child custody laws in Pakistan, 2024).

All the more so with recent case law placing new limitations on the scope of Article 199 writs. Several High Courts have ruled that litigants cannot do both: that is oppose judicial impropriety (bias, partiality, etc., or an illegal transfer) and also pray for substantive relief (such as to reverse an unjust access or custody order). This bifurcation of justice fractures the legal system by forcing individuals to litigate two separate fights in two separate for, with no promise of coherence or timely adjudication. It imposes a gross strain upon already meritorious litigants, to the end that our procedural doctrine has radically changed from procedural protection into procedural exhaustion (Pakistan Judiciary Academy, 2021).

Against the backdrop of domestic law, these constitutional failures also violate Pakistan's international commitments, in particular to the United Nations Convention on the Rights of the Child (UNCRC), a treaty to which it is a party. The principle of the "best interests of the child", as enshrined in both local case law and international child rights instruments, cannot be maintained where children are placed in interim custody situations with no opportunity of prompt review, even in the face of real allegations of abuse, neglect or manipulation. In sum, the current structure of Section 12 is more than a procedural flub—it is a constitutional deficiency. It's unchecked for discretion, unequal for remedy, and it places children at risk without due process. Until this gap is filled with statutory enlightenment, the constitutional rights that Articles 10-A and 25 purports to provide will remain empty promises to those mired in the labyrinth of our family courts (Peshawar High Court, 2024).

COMPARATIVE JURISPRUDENCE

Failure to provide an appellate remedy against the interlocutory orders for custody in Pakistan by way of Section 12 of Guardian and Wards Act casts a major anomaly compared to the other common law systems. In jurisdictions with similar colonial heritage or comparable legal philosophy, interim custody orders are considered to be an important judicial determination which ought to generate an immediate right to appeal or at worst an urgent review. These jurisdictions understand that the lives of the child and the parents will be long affected by custody determination, even if it is an interim one. So they have put in place mechanisms to promptly rectify judicial mistakes, as early as practicable (Grassroots Research Journal, 2023).

In India, for example, when we read the Guardians and Wards Act along with the Civil Procedure Code, we are provided a codified appellate procedure. Appeal against ad-interim orders such as interim custody orders is maintainable under Sec 47 CPC if they affect the rights and liabilities of any party. Indian courts have consistently held that interim custody is not a matter of procedure and does bear upon the child's welfare. It has also been made clear by the court in India that ad interim orders are also interim and subject to appeals, particularly when there are issues of child safety or if there is misinformation (Sabreen, 2022).

A comparably responsive legal response is available in the United Kingdom by the Children Act 1989 which and child welfare law. The Act requires that interim child arrangements, for example where a child should live or have contact pending the outcome of proceedings, are considered to be "in the child's best interests" at the heart of the Act. Under UK law, parents can apply for the urgent review or appeal of any interim order, where there has been a change of circumstances, on the grounds that the other party is not acting in the best interest of the child. Courts place a premium on promptly setting such matters for hearing, recognizing the importance of time-sensitive intervention in the child's life and schedules (Sabreen, 2022).

Family Law in the US Family law is mainly controlled at the state level, in the US, however, the interlocutory appeal principle is a commonality among jurisdictions. In many state courts in the U.S., temporary orders of custody - commonly issued in cases of divorce or when a guardianship is being contested– may be challenged quickly through interlocutory appeals or by motions for reconsideration. As the courts also hold, orders like these should be handled with particular caution, for delays in and postponements of these orders can mean that a child must endure yet more trauma — or even abuse — at the hands of parents who are all too willing and able to exploit the system. Furthermore, most US appellate courts strictly interpret the "best interests of the child" standard so that procedural economies do not come at the expense of children's safety (UK-Pakistan Judicial Protocol on Children Matters, 2023).

These digests illustrate a shared international understanding amongst common law jurisdictions that, as regards interim custody orders, judicial discretion at such a critical stage cannot go unchecked and must be accompanied by safeguards for prompt review. The access to appeal or review an interlocutory order should not be considered an administrative annoyance, but as a protection of the rights to due process and the interests of the child.

When seen against this comparative standard, the legal framework of Pakistan seems retrogressive and constitutionally inadequate. The absence of an appellate review under Section 12 of Pakistan is inconsistent with both international human rights standards and good practice in judicial administration. But even more so, it indicates a lack of respect for the concept of "reversible harm"–the idea that even temporary judicial missteps can sadly leave lifelong emotional and legal scars, especially in the lives of vulnerable children (UK-Pakistan Judicial Protocol on Children Matters, 2023).

This comparative jurisprudence therefore not only reinforces the need for reform but also offers models through which Pakistan could reform its family law and bring it in line with its constitutional requirements and its international responsibilities in respect of the UN Convention on the Rights of the Child (CRC).

LEGISLATIVE REFORM PROPOSAL: DRAFT AMENDMENT

In view of the grave procedural and constitutional infirmities in the operationalisation of interim custody under Section 12 of the Guardian and Wards Act, 1890, it is essential that a legislative change be brought in, which serves as an efficacious, affordable, and time-bound appellate process. The assertion implicit in such reform is that the principles of due process and accountability among judges will come second to the best interests of the child at each stage of the guardianship process. For this, the amendment suggested below, to introduce Section 12-A, is proposed to be enacted as legislation (Grassroots Research Journal, 2023).

PROPOSED NEW SECTION: 12-A – APPEAL AGAINST INTERIM CUSTODY ORDERS

"12-A. Appeal Against Interim Custody Orders.

(1)Notwithstanding anything contained in this Act, any party aggrieved by an order passed under Section 12 regarding the interim custody of a minor may, within fifteen days from the date of the order, prefer an appeal before the District Judge or the High Court, as applicable.

(2) The appellate court shall dispose of such appeal within thirty days from the date of filing, giving due regard to the welfare of the minor and the principles of natural justice.

(3) No stay shall be granted on the operation of the original order unless the appellate court finds prima facie material irregularity or risk of irreparable harm to the minor.

(4) This section shall operate notwithstanding any limitation or bar to appeal under any other provision of this Act."

We propose to address this current gap in the law by creating a right to appeal the aforementioned Section 12 interim custody order. In enabling aggrieved parties to apply to either the District Judge or the High Court the amendment acknowledges the necessity for flexibility and availability in the choice of procedure though not at the cost of introduction of anything more than necessary procedural rigidity in keeping the forum available and apt for cases which not infrequently necessitate urgency as inevitably attendees disputes of custody would (Peshawar High Court, 2024).

The short period of fifteen days to file the appeal is also to indicate that the interim orders are tentative and transitory in nature; and the parties must as far as possible resolve the dispute within that... The amendment, however, also requires the appellate court to expedite final disposition of these appeals (thirty days), which will serve to curtail continued litigation that places the life of the child in continued chaos. It is also for the purpose of avoiding unnecessary delays and the arbitrary adjournments of cases introduced by this provision that judicial economies is sought to be fought (Peshawar High Court, 2024).

The proposed amendment (clause (3)) provides a check also on the interim orders the appellate court may pass -- the same shall not be stayed by the appellate court, as a matter of routine, except on a finding of prima facie case of material irregularity or material risk to the minor. This tries to strike a balance where we don't have a frivolous kind of delaying

tactic, and we also don't have someone abusing our custody orders, but we keep a child safe and stable. It also ensures that the appeal process is not manipulated as a mere obstacle course or as revenge, two frequent vectors in the highly charged skein of family disputes (Pakistan Law Digest, 2022).

Lastly, sub-section (4) declares the supreme authority of sub-sections (1) to (3), that it shall prevail over anything contrary from anywhere in the Act. The purpose of this provision is to forestall an objection that an appeal is not competent on a technical ground (such as non-appealability) and avoid stifling of the appeal by procedural quibbles or legislative lacunae. In other words, this proposed amendment is constitutional method in family law and rights. It is consistent with due process (Article 10-A), equality before law (Article 25) and the welfare of the child, and brings Pakistan's laws on guardianship in line with international standards, as set out in the United Nations Convention on the Rights of the Child (CRC). It is a commonsense, focused and legally coherent answer to one of the greatest injustices in Pakistan's family court procedures (Pakistan Law Digest, 2022).

KEY BENEFITS OF THE PROPOSED AMENDMENT

As long as the Supreme Court does not share the reasons of the judgment, the secret behind Section 12-A into the Guardian's and Wards Act that appears to be a pick of transformational attributes is that it emphatically proposes to remedy the system-related malfunctioning that underpins family court practice in Pakistan. For one, the amendment would fill the procedural void created by Section 12 which is currently granting interim custody orders with no avenue to formally appeal. The reason that Statute of Limitations extension legislation like the VOTE Act has been stymied by no less than a decade of steady efforts and outreach to elected representatives by organizations and teachers and survivors and victims' all across New York has nothing to do with caring about the victims.

Secondly, the announcement of proposed amendment will provide real-time judicial accountability in family courts - an area that had escaped the purview of time bound accountability. Forcing trial and appellate courts to act more quickly and judiciously – two qualities that are paramount in disputes involving the custody and emotional well-being of children – the proposed process would impose definite time constraints for appealing and ruling on appeals. Such a time bound procedure would not only expedite justice it would also reduce opportunities for procedural maneuvers by either of the parties.

Third, and most important, the amendment functions as a cloak to shield children from harmful or unstable circumstances. In the system as it currently stands, this child could stay with an unfit or coercive parent in the temporary order for months if not years because there is no appellate recourse. The new section 12-A would enable courts to swiftly review such arrangements in cases of a showing of credible allegations to make sure that the child's best interests is the paramount objective throughout all facets of the litigation process.

Moreover, the amendment will serve to reinforce public faith in the judiciary, and more significantly in the volatile and sensitive arena of family law. Fairness, transparency and justifiable responsiveness are important processes that reinforce the legitimacy of legal institutions. When litigants and the public at large perceive that the judiciary includes constraints on itself to correct its mistakes, and answers to complaints of injustice, confidence that integrity and competence will serve as the lodestar of our judicial system is bolstered.

Finally, the amendment would help increasing the burden on constitutional courts by means of diminishing the reliance on Article 199 writ petitions. Currently, aggrieved parties take recourse to constitutional remedies due to lack of structured appellate mechanism, and this creates unwarranted burden on the High Courts and results in conflicting judgments. The statutory path for filing appeals would go a long way toward rationalizing the overall legal process; the law, decoupling, as it would custody-related cases from disputes of fact, wouldenable constitutional courts to concentrate on larger issues of fundamental rights and state accountability beyond disputes of fact. Finally, in the above analysis, the proposed amendment would end a persistent procedural injustice and form the groundwork for a more humane, accountable and constitutionally valid system of family justice for Pakistan (Pakistan Law Digest, 2022).

INFORMAL NETWORKS, NEPOTISM, AND CLERICAL INTERFERENCE

The fact that the integrity of Pakistan's justice system, especially the family courts, is devastated by much a much less glaring, yet more debilitating aspect of informal clans, nepotism and clerical influence, is a factor that is seldom, if ever, appreciated. While not directly documented as part of the judicial record, these trends are well-known by the mainstream legal community and are supported by anecdotal evidence, legal complaints and insider reports. Worse still is the creation of informal digital platforms of communication – Whatsapp groups sustained and cajoled by the Judiciary. "The private space of the judge's private group" In those private groups, it is claimed that they discuss sensitive case information, form judicial preferences, and exchange favors -- much of which may directly affect cases currently before them. This violates the Principles of separation of power, and independence of the judiciary in general, because judges may be moved by group dynamics, external pressure, or non-codified commitments, rather than the substance of the case at hand.

Part of the issue is the rarely challenged unchecked power that clerks of court and administrative officials hold. No longer does the mass of these lower level functions, who should serve as neutral intermediaries to court processes, serve as court access facilitators; they serve as gate keepers to judicial access (using the `gatekeeper model') to control which matters are listed when, before who and to mold courtroom atmospheres. In other cases clerks can serve as gate-keepers for litigants or attorneys who wish to obtain a favorable decision, and take cash bribes or make use of a network of relatives. Poorer or more socially isolated claimants are clearly not so fortunate: their cases are held up, struck out or dealt with in a cavalier fashion. At the same time, those who have links to the clerical structure are granted quicker hearings, placed in more favorable circumstances and even enjoy advantageous procedural rulings.

This culture of nepotism combined with architecture of silence is toxic and flourishes in the absence of meaningful checks and balances. Internal reporting channels fail or are snubbed, and the judicial accountability agencies seldom act to discipline wrongdoing judges in the absence of extraordinary public opprobrium. Public silence that surrounds these practices has led to their perpetuation, with an adverse impact on the confidence of the public in the judiciary. An already emotionally and financially exhausting public has to not only confront labyrinthine legal disputes, but also navigate through an opaque and politicized judicial bureaucracy.

In the end, such informal networks and clerical tampering subvert more than a single case: They corrode the very basis of institutional justice. When you have football games in the courtroom rather than justice, when the rule of law is replaced with capricious arbitrariness then you don't have a justice system at all. Dealing with these issues will involve wide-ranging institutional reform, such as the digitization of case management, independent judicial conduct oversight, tightening regulation on court personnel and establishing clear avenues for whistle-blowing. Without these reforms, Pakistan's family courts are unlikely to deliver on the promise of justice anytime soon.

GENDER, EXPECTATIONS, AND JUDICIAL INCOMPETENCE

Introduction Appointment of women judges in family courts in Pakistan was heralded as a progressive move to bring empathy, sensitivity and understanding in handling legal matters including the dissolution of marriage, child custody and guardianship, which often involves highly personal and emotionally-charged processes. The policy was one of a range of measures aimed at promoting gender inclusion in the judiciary and ensuring that the justice system better reflected the lived realities of women and children – who were typically the most affected parties in family disputes, Davis said. It was based on the assumption that as the particular species of gender beings, female (or female-identified) judges would bring greater humanity to bear in cases that had historically been plagued by patriarchal readings of the law and by formalism of the most stilted order.

But in practice, the results of this policy have been uneven — if not downright counterproductive in some cases. Even though it is positive for family court judges to be "humanized," too many of these judicial appointments have thrown out the baby with the bathwater by ignoring merit, relevant legal training, and institutional capacity. Reports and anecdotal evidence from the legal community suggest that not all of the women named to the bench, especially in the lower court system, are properly endowed with judicial temperament, independence and procedural acumen to handle family disputes involving millions of dollars. In guardianship and custody whose orders have long-term effects on minors, such laps can lead to delay in justice, irregularities or even miscarriage of justice (Islamic and Pakistani law in child custody matters, 2023).

It must be emphasized that this criticism is not about "women judges" per-se, nor does it undermine the credibility of women holding judicial office. Instead, it reveals a systemic problem in the application of gender-based reform, where, as it were, as an alternative of genuine change what is often sought and accepted is symbolic representation. Appointments forced merely to fulfil diversity quotas or political purposes that fail to ensure the appointee's professional competence and sense of ethics threaten to erode the very reasons for these policies in the first place. R R "…When it comes to the broader representation issue, the judge's lack of preparation is reflected in a second but related observation. In the end the judge imposed a context in which representation sprouts without preparation. By that I mean: Representation without preparation is not empowerment; it is institutionalized demagoguery of a species which puts the 17 judge and the page 7 litigants at risk.

"Real judicial reform doesn't come in the form of optics. Representation of women must be supported by strong judicial training, continuous professional capacity-building, ethical mentorship and avenues for accountability. Judges need to know procedural law, the psychology of children, the burden of proof, principles of evidence, and constitutional responsibilities. Without such crutches, even virtuous judges are at risk of external pressure and internal weakness or vacillation, especially in sensitive matters that require lucidity, strength, and sensitivity.

In the present climate, the inability to pair gender diversity with judicial effectiveness leaves litigants not only being subjected to arbitrary decision-making results, but also undercuts the larger push for greater gender representation in the legal profession. If appointments are regarded as a matter of performance, not principle, public trust in the judiciary and

gender-related reforms will be eroded, revealing a regression of decades of striving towards gender inclusion and institutional fairness. So for Pakistan's family court system to be genuinely equitable, meritocracy and morality, as well institutional commitment, ought to predominate the gender issue — not just headcounts on gender (Islamic and Pakistani law in child custody matters, 2023).

BROADER IMPLICATIONS: RULE OF LAW AND NATIONAL PROGRESS

The abject failures of Pakistan's family court system, especially those with regards to judicial apathy and institutional prejudice, have wider implications that go beyond individual cases – and have a real impact on the rule of law and the country's overall socio-political evolution. In situations like this, where a court is meant to safeguard the interests of the most vulnerable, particularly children, and instead makes judgments based on an incomplete body of evidence, judicial bias or bureaucratic whim, it is not just that a decision has been made, it is a whitewash of an institution. Our society cannot afford to imply to the next generation that the justice process compromises the best interest of children in favor of convenience and connections when unfit parents (or killers) lazily labeled as "the primary caregiver" steal their child from fit parents again and again and again at the sound of the poor man's gun!

The miscarriages of justice reverberate. On a micro level, they cause psychological trauma, which is impossible to undo, to children who end up spending a good portion of their formative years locked in hostile or uncaring households. This lack of judicial regard for age-appropriate emotions and developmental needs of minors leads to the possibility of trauma, mental health, and behavioral challenges. If you're a mother or a father, and you lose custody due to biased or misinformed interim rulings, you have no recourse which results in long-term emotional and financial devastation for the whole family.

These failures also fuel gendered oppression in the criminal justice process. Women, especially women of lesser means, can be unfairly disadvantaged in the context of family law. In such cases, if the courts are unwilling to probe abuse allegations, ignore procedural abuses and render unfair financial orders, they are complicit in reinforcing structural inequalities, which make women and children susceptible to inducement, poverty and victimization.

On a macro scale the undermining of public confidence in the family court system is an existential threat to rule of law. Courts need to be seen as legitimate institutions, and their legitimacy is based not on the number of cases they process, but on the impartiality, fairness, and integrity of their decisions. When people—especially those in positions of vulnerability—begin to believe that courts are biased, ineffective or corrupt, they are less inclined to approach the law for resolution of disputes and will fall back on informal or extra-legal methods of dispute redress. This risks eroding the state's monopoly over justice and damaging its capacity to maintain the uniform protection of rights (Pakistan Judiciary Academy, 2021).

And, also, the persistent dysfunction of the judiciary has become a stumbling block for the country. The progress of a nation, that is, in terms of social, economic and political progress, is directly correlated to the robustness of its institutions. In the South Asian context, of abysmally low access to justice coupled with judicial backlogs, corruption and rights abuses, Pakistan's failure to reform its family court system effectively illustrates the failure of governance. A judicial order that does not protect its weakest citizens – especially children – is unfit to navigate wider reform of a democratic or developmental nature.

The problems in Pakistan's family courts, in short, are not just isolated administrative deficiencies but indicative of a broader institutional sickness. Meeting these challenges is not only a question of justice to the affected families, but a matter of national rescue that is linked to confidence in the state, quality of its democratic order and the enjoyment of human rights by every one in the country (Pakistan Judiciary Academy, 2021).

CONCLUSION AND RECOMMENDATIONS

The findings reported in this article paint an extremely disheartening picture of family court matters in Pakistan—especially matters related to guardianship and custody. The absence of due process, the absence of any appellate panacea for interim custody orders under Section 12 of the Guardian and Wards Act, and the prevalence of unchecked judicial discretion, together highlight grave structural cracks in the system. These weaknesses not only violate the rights of litigants but, even worse, put at risk the well-being of minors whose destinies are shaped within this imperfect legal environment. The fact that these issues continue to exist makes a strong case for change at both a legislative and institutional level, to restore the credibility of family courts and respect the constitutional rights of those who demand justice on such a personal front.

There is an urgent requirement is to create an independent Judicial appointment commission,. The process for selecting judges is, in fact, still opaque, particularly at the lower courts, and it is open to political meddling and politicking. 4 Such a system would be based on merit and transparency and be monitored by a neutral commission with members culled from the judiciary, legal academia, civil society and the bar 5 This would harmonize the judiciary with the legal bodies of other countries. This kind of reform is essential to restoring public confidence in judicial impartiality and to insuring that family courts are staffed by judges who are able to manage emotionally difficult, legally complex cases.

Second, the statutory right of appeal of interim custody orders is necessary—particularly where claims of fraud and abuse or procedural abuse have been alleged. Looking in another direction, the proposed insertion of Section 12-A of the Guardian and Wards Act would fill this time-honored legislative vacuum by providing the recourse to litigants aggrieved of interim custody orders to invoke a formal, time-bound appellate process. Not only would it alleviate the horrors of an unjust or dangerous custody arrangement, but it would implement a higher level of judicial evaluation at the trial level, when the judges realize that their decision is an appealable one.

Third, the current culture of lawlessness of some officers and clerical staff has to be handled with the firmest disciplinary measures. Judges and their court staff who dally with touting, unauthorised ex parte communications, procedural misbehaviour and listing rigging must be subject to a disciplinary regime with a warning/suspension/striking off mechanism. The impunity of such men diminishes the credibility of the institution and distances society from the law. Of course with impunity for unethical behaviour, legislative change is little use.

Just as important, is mandatory training for all family court judges (male and female)! Family law judicial competence has to mean more than a knowledge of the law--it has to mean knowledge of child psychology, trauma-informed decision-making, how to assess evidence in guardianship cases, ethical considerations in family disputes and more. Training specifically designed and required for appointment, or continued service, in the family courts should be established. These programs must be regularly reviewed and include case simulations, peer mentoring and interdisciplinary guidance in the form of child development experts, psychologists and legal scholars.

Another, is that an independent Judicial Oversight Board needs to be established, one that is separate and more powerfully constituted than the existing High Court Member Inspection Team (MIT). This should be the body responsible for hearing complaints of misconduct, overseeing the quality of judgements and assessing the procedural management of judges and officials in family courts. However, it should have the power to apply sanctions and implement remedial measures to keep judicial behaviour in conformity with constitutional prescription and public expectation.

The current laws, especially with respect to temporary custody under the Guardian and Ward Act, are insufficient to furnish any real remedies against judicial overreach or tainted proceedings. The frequent resort to discretionary constitutional applications under Article 199—albeit where it sometimes provides relief—is no substitute for a reliable, coherent, and statutory appellate system. Writ jurisdiction is after all an ill-defined privilege and its scope is not consistent from State to State, with the unfortunate result that the litigants are reduced to helplessness when faced with injustice at the trial. This off-the-cuff remedy does not satisfy the constitutional requirement of due process as set forth by Article 10-A and provides inadequate protection to our state's children who are caught in inappropriate, even harmful, custody situations.

Last but not least this paper fervently recommends that Section 12-A should be formally recognized as law by amendment of Guardian and Wards Act. This reform is not just due for procedural reasons. rather, it is morally and constitutionally necessary. It will be a step to bring Pakistan's family law regime into line with its international obligations under the UN Convention on the Rights of the Child (CRC), and will demonstrate that it takes justice, transparency, and child protection seriously. In so doing, the judiciary can take a critical step in rebuilding its reputation, protecting families that are the most vulnerable, and in supporting the basic principle that none of our children's welfare can be decided upon in a process where there is no access to justice.

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