

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)



Bench-I:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.R.P. No. 458/2024 IN C.P.L.A. No. 2514/2024

*(Against the order dated 18.07.2024 passed by this Court in Civil
Petition No.2514/2024)*

Dr. Muhammad Asif

... *Petitioner*

Versus

Dr. Sana Sattar and others

... *Respondent(s)*

For the petitioner(s): Mr. Niaz Ullah Khan Niazi, ASC.
a/w Dr. Muhammad Asif-petitioner.

For the respondent(s): Barrister Haris Azmat, ASC.
a/w Dr. Sana Sattar-respondent No.1.

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk,
Supreme Court of Pakistan.

Date of hearing: 16.05.2025.

JUDGMENT

Syed Mansoor Ali Shah, J.- *"Children are not
the people of tomorrow; they are people today. They have a right to
be taken seriously."*¹

Brief facts

The present review petition arises out of a custody dispute concerning two children, A and B², aged eight and seven years, respectively. The proceedings were initially instituted by respondent No. 1 (mother), who filed an application for custody before the Senior Civil Judge (Family Division), Layyah. The said application was dismissed *vide* order dated 14.07.2023; however, a visitation schedule was framed to facilitate meetings between respondent No. 1 and her children. Aggrieved, both parties³ filed separate appeals

¹ Janusz Korczak (1878-1942) was Polish doctor, educator, author, and advocate for children's rights, known for his dedication to orphaned children. He established and directed an orphanage in Warsaw and was a prominent figure in Polish education and children's literature. Tragically, he perished in the Treblinka extermination camp during the Holocaust, along with the children under his care.

² For the sake of confidentiality, the names of the children have been kept anonymous.

³ The petitioner challenged the visitation rights given to respondent No.1, while respondent No.1 assailed the order passed by the Senior Civil Judge.

before the learned Additional District Judge, Layyah. *Vide* judgment dated 25.04.2024, the appellate court allowed the appeal filed by respondent No.1 (mother) and granted her custody of the children, and maintained a visitation arrangement for the petitioner (father), while dismissing his appeal. The petitioner then filed a constitutional petition before the Lahore High Court, Multan, which was dismissed *vide* judgment dated 24.05.2024. A civil petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), was preferred before this Court, which was dismissed *vide* order dated 18.07.2024 ("impugned order"). The present petition seeks review of the impugned order.

Review and Child Justice

2. While fully mindful of the limited scope of our review jurisdiction⁴, we deemed it necessary to revisit the matter in light of two foundational principles enshrined in the UN Convention on the Rights of the Child⁵ ("CRC"): Article 3, which mandates that the best interests of the child shall be a primary consideration in all actions concerning them; and Article 12, which guarantees every child the right to express their views freely in all matters affecting them, with due weight given in accordance with their age and maturity. The earlier proceedings regrettably failed to provide the children an opportunity to be heard, an omission that undermines both domestic constitutional protections and our international commitments. Given the central importance of a child's voice in

⁴ Federal Public Service Commission v. Kashif Mustafa 2025 SCP 170 (SCP citation); Justice Qazi Faez Isa v. President of Pakistan PLD 2022 SC 119; M/s Habib and Co. v. Muslim Commercial Bank PLD 2020 SC 227; Engineers Study Forum v. Federation of Pakistan 2016 SCMR 1961; Government of Punjab v. Aamir Zahoore-ul-Haq PLD 2016 SC 421; Haji Muhammad Boota v. Member (Revenue) BOR 2010 SCMR 1049 and Mehdi Hassan v. Province of Punjab 2007 SCMR 755.

⁵ The United Nations Convention on the Rights of the Child ("CRC") was adopted on 20 November 1989. In interpreting the Articles of CRC and in particular Articles 3 and 12 of the United Nations Convention on the Rights of the Child (CRC) constitute foundational pillars of child-centered justice, requiring that in all actions concerning children, their best interests shall be a primary consideration and that children capable of forming their own views shall be heard and those views given due weight in accordance with age and maturity. These principles are not to be applied in isolation but are to be interpreted in the light of the broader international legal framework that operationalizes and reinforces them. General Comment No. 14 (2013) provides authoritative guidance on the application of Article 3, offering a structured approach to determining and balancing best interests in judicial proceedings, while General Comment No. 12 (2009) elaborates the procedural and substantive dimensions of Article 12, affirming that the right to be heard is not merely formal but must be meaningful, safe, and age-appropriate. These general comments are complemented by instruments such as the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005), the Guidelines for the Alternative Care of Children (2009), and regional conventions including the European Convention on the Exercise of Children's Rights (1996) and the African Charter on the Rights and Welfare of the Child (1990), all of which underscore the legal and moral imperative to integrate the child's voice and best interests in every decision affecting them. Courts, therefore, are under a binding obligation, both moral and legal to embed these interpretive tools in their reasoning, thereby transforming child justice from a paternalistic paradigm to one that upholds the agency, dignity, and evolving capacities of the child.

custody determinations, we found it imperative to re-examine the case to ensure that these rights are not only acknowledged but meaningfully upheld. To rectify this oversight and to ensure that the children's welfare and perspectives were given due consideration, this Court deemed it necessary to interact directly with both children involved. The interaction enabled the Bench to make an independent assessment of their emotional well-being, level of comfort, and expressed preferences.

The journey from the Guardian and Wards Act, 1890 to the United Nations Convention on the Rights of the Child, 1989

3. As a contextual background, we emphasize that Section 17⁶ of the Guardians and Wards Act, 1890 ("Act") provides that, in appointing a guardian, the court shall be guided by what "appears in the circumstances to be for the welfare of the minor". While this provision rightly places "welfare" at the center of the determination⁷, it operates within a framework that is broadly discretionary, adult-centric, and lacking in normative clarity. Rooted in colonial legislative thought, the concept of "welfare" under this Act has often been applied in an arbitrary and paternalistic manner, devoid of structured criteria or meaningful inclusion of the child's own perspective. The journey from the Act to the CRC represents a profound philosophical transformation in the domain of child justice, from a paternalistic, adult-driven notion of "welfare" to a rights-based, participatory understanding of the "best interests of the child." Under the colonial-era framework, the child was largely viewed as an object of adult protection, with minimal recognition of their evolving capacities, autonomy, or voice. While the child's welfare was nominally a guiding principle, it remained vague and was frequently interpreted through the subjective lens of what adults, typically courts or guardians assumed to be appropriate, without affording the child an opportunity to be heard. In stark

⁶ **17. Matters to be considered by the Court in appointing guardian.** – (1) ...

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

⁷ Shaista Habib v. Muhammad Arif Habib PLD 2024 SC 629; Rashid Hussain v. Additional District Judge, Islamabad PLD 2022 SC 32; Raja Muhamamd Owais v. Nazia Jabeen 2022 SCMR 2123; Mst. Hameed Mai v. Irshad Hussain PLD 2002 SC 267; Mst. Talat Nasira v. Mst. Munawara Sultana 1985 SCMR 1367; Feroze Begum v. Lt. Col. Muhammad Hussain 1983 SCMR 606; Rahimullah Choudhury v. Helali Begum 1974 SCMR 305 and Khizar Hayat Khan Tiwana v. Zanib Begum PLD 1967 SC 402.

contrast, the CRC revolutionized this paradigm by anchoring child justice in the principles of dignity, autonomy, and participation. Articles 3 and 12 of the CRC collectively reinforce the child's right to life, equality, protection, and most crucially participation. Article 3 requires that the best interests of the child be a primary consideration in all actions concerning them.⁸ 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.⁹ 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. While the terms "welfare" and "best interests" may occasionally overlap in practice, they are not synonymous. The former often reflects subjective adult assumptions, whereas the latter is grounded in objective legal principles that prioritize the rights, agency, and holistic well-being of the child. The CRC thus replaces a discretionary and protective approach with a rights-based and participatory one mandating not only the protection of the child but also their meaningful inclusion in decisions that shape their lives.

Reading Section 17 of the Act with CRC through the lens of the Doctrine of Updating Construction of Statutes

4. In this light, Section 17 of the Act, must be interpreted through the lens of the CRC and the doctrine of updating construction of statutes. This interpretive approach empowers courts to move beyond archaic conceptions of "welfare" and adopt a rights-based framework that gives full effect to the dignity, agency,

⁸ *Gaurav Nagpal v. Sumedha Nagpal* (2009) 1 SCC 42; *S v. M* [2007] ZACC 18; *Re G (Children)* [2006] UKHL 43; *Troxel v. Granville* 530 U.S. 57 (2000); *Minister for Welfare v. Fitzpatrick* [2000] ZACC 6; *Gordon v. Gordon* [1996] 2 SCR 27; *Young v. Young* [1993] 4 SCR 3; 18; *J v. C* [1970] AC 688 and *Santosky v. Kramer* 455 U.S. 745 (1892).

⁹ *M and M v. Croatia* [2015] ECHR 759; *Re D (A Child)* [2010] UKSC 12 and *S v. M* [2007] ZACC 18.

and voice of the child. To harmonize Section 17 with the CRC, the term “welfare” must not be understood in isolation. Instead, it must be interpreted within the CRC’s normative framework, thereby transforming the concept into one that is inclusive, participatory, and rights-affirming. While “welfare” is a broader, more traditional term, and “best interests” its more structured and contemporary legal counterpart, the two are not irreconcilable. Through a dynamic interpretation of “welfare” using the doctrine of updating construction, courts can incorporate the core elements of the best interest’s standard, most notably, the child’s right to participation. Such an interpretation not only aligns domestic law with Pakistan’s international obligations but also with its constitutional values, notably the rights to life, dignity, equality, and the protection of childhood, as guaranteed under Articles 9, 14, 25, and 34 of the Constitution. Though Section 17 was enacted in a different era, it must now be read as a “living” provision. The principle that statutes extends to new circumstances has evolved into the modern doctrine of updating construction.¹⁰ Given that continuous statutory revision is rarely feasible and societies often function under inherited laws, courts operate on the presumption that legislation is “always speaking”, meant to apply in evolving social and legal contexts.¹¹ This interpretive approach ensures that statutes remain effective and aligned with contemporary values, including shifting constitutional and human rights norms. The phrase “welfare of the minor” can no longer be confined to its colonial-era meaning. Instead, it must be enriched by the modern, internationally recognized concept of the best interests of the child, as codified in Article 3 of the CRC, to which Pakistan is a State Party.¹² The “welfare” standard is thus not static, it is a living standard that encompasses a child’s emotional, psychological, cultural, and developmental needs, extending far beyond material well-being or parental preference. Moreover, the right of the child to be heard, as guaranteed by Article 12 of the CRC, must also be read into the application of Section 17. Any genuine assessment of the child’s welfare or best interests is incomplete without ensuring the child’s meaningful participation in the proceedings, appropriate to their age

¹⁰ See P St J Langan (ed), Maxwell on the Interpretation of Statutes (10th edn, Sweet & Maxwell 1953) and Fakir Muhammad v. Federation of Pakistan PLD 1958 SC 118.

¹¹ Meera Shafi (Meeshah Shafi) v. Ali Zafar PLD 2023 SC 211.

¹² Pakistan ratified the United Nations Convention on the Rights of the Child on 12 November 1990 which provided broader guidelines for the promotion and protection of child rights.

and maturity.¹³ By interpreting Section 17 in this harmonized manner, consistent with both international obligations and constitutional values, courts affirm that the provision requires not only an objective inquiry into what serves the child's welfare but also a procedural obligation to hear the child and give due consideration to their voice. This interpretive approach ensures that even a law as old as the Act remains a relevant and effective tool for delivering justice that is sensitive to the rights and realities of children today. To interpret it otherwise would be to render the statute obsolete, unfit for the constitutional and child-rights-informed present.

Voice of the Child

5. 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.¹⁴ Listening to a child does not mean obeying them, but rather understanding their perspective deeply enough to act in their best interests.¹⁵

Child Justice – Integrating CRC Principles and the Constitution

6. The principles enshrined in Articles 3 and 12 of the CRC, the primacy of the child's best interests and the right to be heard find clear constitutional resonance in Articles 9, 14, 25 and 34 of the Constitution. Article 9 guarantees the right to life, which includes the right to a *healthy, secure, and meaningful life*. Article 14 protects the *inherent dignity* of every person, including children. Article 25 enshrines *equality before the law and non-discrimination*, and Article 34 obligates the State to ensure the *protection of motherhood and childhood*. Collectively, these

¹³ See Laura Lundy, John Tobin and Aisling Parkes, 'The Right to Respect for the Views of the Child' in John Tobin (ed), The UN Convention on the Rights of the Child: A Commentary (OUP 2019).

¹⁴ See UN Committee on the Rights of the Child, 'General Comment No. 12: The Right of the Child to be Heard' (CRC/C/GC/12, 20 July 2009). The UN General Comments are authoritative interpretations and clarifications issued by the United Nations treaty bodies, especially the Human Rights Committee and the Committee on the Rights of the Child (CRC Committee), among others. These General Comments elaborate on the meaning, scope, and application of specific articles in international human rights treaties.

¹⁵ Albie Sachs, The Strange Alchemy of Life and Law 69 (Oxford Univ. Press 2009).

provisions establish a strong constitutional foundation for child justice and child-centered adjudication, aligning Pakistan's constitutional values with its international obligations under the CRC and other international instruments it has ratified¹⁶. The Constitution further reinforces these obligations. Article 25(3) empowers the State to enact special provisions for the protection of children, including measures that may favorably differentiate them from adults. Article 25A mandates free and compulsory education for children aged 5 to 16 years. Article 35 specifically ensures the protection of marriage, the family, the mother, and the child. Article 37(e) guarantees just and humane working conditions, explicitly prohibiting child labour in vocations unsuitable to their age or sex. These provisions collectively prioritize the well-being, rehabilitation, and integration of children into society, and provide a solid legal basis for rights-based adjudication in matters affecting them.

Judicial Obligation to apply a Child-Centered Framework

7. 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.¹⁷ The concept of child justice is broad and inclusive. 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. As custodians of justice, courts bear a heightened responsibility to prioritize the best interests of the child in all decisions affecting them. This principle, central to international child rights jurisprudence, demands that the judiciary transcend procedural formalism and engage substantively with each child's unique vulnerabilities, developmental needs, and future

¹⁶ Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Universal Declaration of Human Rights, UN Convention on the Elimination of All Forms of Discrimination against Women, UN Convention on the Rights of Persons with Disabilities, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Framework Convention on Climate Change and UN Genocide Convention.

¹⁷ UNICEF, Introduction to the Five Advocacy Briefs on Child Justice and Child Friendly Justice (November 2022).

potential.¹⁸ Such an approach requires judicial sensitivity, active participation of children in proceedings (where appropriate), and the creation of child-sensitive courtroom environments that respect their dignity and ensure their voices are not only heard but meaningfully considered.

Hearing the Children: A Participatory Approach

8. Guided by this constitutional and international framework, the Court adopted a child-friendly, participatory approach in the present case. Both children were invited to approach the Bench, not from the rostrum, but in a relaxed and informal manner, reducing the psychological distance between them and the Court. The interaction was designed to be warm and non-intimidating: we greeted them, shook hands, and engaged in a gentle conversation to elicit their views and preferences. The elder child conveyed a heartfelt desire to be with both parents, reflecting a deep emotional need for unity. The younger child, facing developmental delays, was unable to express his views meaningfully. The Court gave due weight to their expressed preferences and developmental contexts, ensuring emotional and psychological well-being remained central to adjudication. Only after internalizing their perspectives did the Court proceed to hear submissions from counsel.

Examining "Best Interests" of the Children

9. Learned counsel for the petitioner (father) submitted that the petitioner has since remarried and has a one-year-old child from his second marriage. He is a qualified child specialist and operates a private hospital in District Layyah. It was emphasized that the petitioner had personally overseen various therapies for child B during the period the child was in his custody as he has significant developmental delays. He further submitted that his parents (the children's paternal grandparents) reside with him and maintain a close and affectionate bond with the children. On this basis, it was argued that the best interests of the children would be served by placing them in his custody.

10. Conversely, learned counsel for respondent No. 1 (mother) submitted that she is also a medical doctor employed in government

¹⁸ Ursula Kilkelly and Stefaan Pleysier, 'Rights of the Child in the Justice System' (2023) 23(2) Sage Journal.

service and has likewise remarried. However, she clarified that her husband's children are adults and do not reside with them. The children live with her and her husband alone. The elder child is currently enrolled in a renowned private school, where he is performing well, while the younger child is undergoing therapy at a recognized institution in Lahore. She asserted that she is the primary caregiver and has been diligently attending to both the educational and therapeutic needs of the children. Unlike the professional commitment of the petitioner-father, her government job allows her to attend to her children. In any case the mere fact that the mother, is a working mother, cannot be held against her in custodial determinations as her professional commitments do not diminish her role as a mother and the primary caregiver, unless established otherwise. Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") recognizes the right of women to work and to be protected from discrimination in matters relating to marriage and family responsibilities¹⁹, while Article 16 ensures equality in matters of marriage and family life, including the rights and responsibilities of parents, irrespective of marital or employment status.²⁰ General Recommendation No. 21 on equality in marriage and family relations under Article 16 specifically calls for states to ensure that custody and guardianship laws do not discriminate against women on the basis of their employment status and uphold shared responsibility of parents for child-rearing.²¹ To penalize a mother for exercising her right to work would run afoul of these guarantees.

11. We have paid particular attention to the condition of child B, aged seven, who has significant development delays and requires sustained therapeutic care. The petitioner-father, being a child specialist, emphasized his familiarity with the child's needs and past efforts to ensure regular therapy. Respondent No.1-mother, however, also demonstrated serious attentiveness to the child's condition and B is undergoing special intervention/therapy in Lahore. Both parents appear committed to the children's welfare and capable of providing stable, loving environments. However, we note

¹⁹ Pakistan ratified the CEDAW on 3 December 1996. See CEDAW, Article 11.

²⁰ Ibid, Article 16.

²¹ Committee on the Elimination of Discrimination against Women (CEDAW), 'General recommendation No 21: Equality in marriage and family relations' (1994) UN Doc A/49/38/Rev.1 at 112 (CEDAW General Recommendation 21).

that the father has remarried, has a one-year-old child from his second marriage, and is employed full-time during the day while also maintaining a private practice in the evenings, leaving him largely unavailable at home. After considering the age, educational continuity, psychological health, children's emotional, medical, and educational continuity in light of their evolving needs, the stability of home environment, and the city of residence of the children and after assessing the current circumstances and capacities of the parents we conclude that the best interests of the children, particularly the child with special needs, are best served by remaining in the custody of their mother. No alternative caregiver can fully replicate the intuitive care, emotional constancy, and protective environment a mother is uniquely positioned to offer. The fact that she is a working professional does not detract from her suitability as a custodial parent. On the contrary, it reflects her resilience and her commitment to providing a secure, nurturing, and dignified upbringing for her children.

ADR and Child Justice: An Important Intersection

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

²² UN Committee on the Rights of the Child, 'General Comment No. 12: The Right of the Child to be Heard' (CRC/C/GC/12, 20 July 2009), p. 68-70.

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.

Directive to Courts: Hear the Voice of the Child

13. Before parting with this judgment, we find it necessary to underscore that this decision must serve as a directive to all courts, particularly Family Courts and judges of the District Judiciary: *the voice of the child must be heard and respected in every custody and guardianship matter*. This is not an aspirational goal but a binding obligation under the CRC. We conclude this judgment with the words of James Baldwin, who said: "*The children are always ours, every single one of them, all over the globe; I am beginning to suspect that whoever is incapable of recognizing this may be incapable of morality.*"²³ These words are a solemn reminder that courts, especially Family Courts have a moral and legal responsibility to see, hear, and protect every child not as a passive subject of proceedings, but as a rights-bearing individual whose dignity must be safeguarded at every stage of the judicial process.

14. In view of the foregoing, and as custody already stands vested with the mother, we are of the considered view that no case for review of the impugned order is made out. Accordingly, this petition is dismissed. The parties are directed to strictly adhere to the visitation schedule determined by the lower appellate court. Custody of the children shall continue with the mother unless and until the petitioner-father moves a fresh application for custody and the same

²³ James Baldwin (1924–1987) was an American writer, essayist, novelist, and civil rights activist whose work profoundly shaped discussions on race, identity, and justice in the 20th century. He is best known for his incisive explorations of the Black experience in America, particularly the intersection of race, sexuality, and class.

is adjudicated by the competent forum in light of any material change in circumstances.

15. Copy of this judgment be dispatched to the Registrars of all High Courts for further circulation to judges of the District Judiciary, for their information and future guidance.

Judge

Islamabad,
16th May, 2025.

Judge

Approved for reporting
Sadaqat