

# **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

## **PRESENT**

Mr. Justice Syed Hasan Azhar Rizvi  
Ms. Justice Musarrat Hilali  
Mr. Justice Shakeel Ahmad

## **Civil Petition No. 3920 OF 2024**

[Against the judgment dated 01.07.2024 passed by the Lahore High Court, Lahore in W.P.No. 6032/2020]

***Asjad Ullah***

*...Petitioner(s)*

***Versus***

***Mst. Asia Bano and others***

*...Respondent(s)*

For the Petitioner(s) : Ch. Afrasiab Khan, ASC  
a/w petitioner in-person

For the Respondent(s) : N.R.

Date of Hearing : 22.04.2025

## **JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this petition, the petitioner has challenged the judgment dated 01.07.2024 (“**Impugned Judgment**”) passed by the Lahore High Court, Lahore (“**the High Court**”) whereby the constitutional petition (W.P.No.6032/2020) filed by petitioner was dismissed.

2. Brief facts of the case are that the marriage between the petitioner and respondent No.1 was solemnized on 18.03.2012. Out of the said wedlock, one daughter, namely Abiha Zainab (minor), was born on 20.12.2012, who is presently residing in the custody of respondent No.1 (mother of the minor). Thereafter, the petitioner pronounced divorce upon respondent No.1 on 10.11.2015. At the time of pronouncement of divorce, the petitioner was residing in Greece. Subsequently, the petitioner filed an application (*Application No.18/2018 dated 10.04.2018*) under Section 25 of the Guardian and Wards Act, 1890 (“**the Act**”), seeking custody of the minor before the Court of Ms. Sobia Shahnawaz, Judge Family Court/Guardian Judge, Gujrat (“**Trial Court**”). It is pertinent to

observe that the application for custody was filed after a lapse of more than five years from the birth of the minor. During this entire period, the petitioner neither made any effort to seek visitation rights nor even attempted to meet the minor. The learned Trial Court, after recording the evidence of both parties and providing them ample opportunity of hearing, dismissed the said application by an order dated 19.10.2019. However, the learned Trial Court, while doing so, fixed a visitation schedule, allowing the petitioner to meet the minor during his visits to Pakistan. Even though the petitioner neither filed an application under Section 12 of the Act nor sought any specific relief for visitation in his custody application.

3. Being dissatisfied with the decision of the learned trial Court, the petitioner preferred Guardian Appeal No.172/2019 before the Court of Saima Husnain, Additional District Judge, Gujrat (“**Appellate Court**”), however, the findings of the trial Court were upheld and the appeal was dismissed vide judgment dated 20.11.2019. Thereafter, the petitioner filed a constitutional petition before the High Court, which also met with the fate of dismissal through the impugned judgment. Hence, the present petition.

4. Learned counsel for the petitioner contends that the impugned judgments and orders concurrently passed by the learned courts below are illegal, unjustified, and in violation of the injunctions of Islam; that respondent No.1 has contracted a second marriage with one Faisal Munir, who is a complete stranger to the minor daughter of the petitioner; that the petitioner, being the natural guardian, has a vested right to claim custody (Hizanat), particularly as the minor has attained the age of 12 years, therefore, prays that impugned judgment may be set aside.

5. We have heard the arguments advanced by the learned counsel for the petitioner and perused the material available on record.

6. The central issue raised in this petition is whether a father, who has never met his minor daughter and resides abroad since her birth, can claim custody of minor on the sole ground of being natural guardian when natural mother of minor has contracted a second marriage?

7. Section 25 of the Act deals with the matters of custody of minors and is reproduced below:-

“25. Title of guardian to custody of ward.--- (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.”

In the same vein, the determination of custody of a minor is also governed by Section 17 of the Act, which provides as follows:

“17. Matters to be considered by the Court in appointing guardian.---

(1) In appointing or declaring the guardian of the minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(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.”

Bare perusal of Section 17 of the Act reveals that, in determining the appointment of a guardian for a minor, the courts must primarily take into consideration the welfare of the minor.

8. It is a settled principle of law that the welfare and best interests of the minor(s) shall be the prime and overriding consideration in determining an application for custody, with no other factor taking precedence as noted by this Court in the case of Khan Muhammad v. Mst. Surayya Bibi and others (2008 SCMR 480). Now determination that what

constitutes welfare of a minor is a question of fact that must be established through cogent and reliable evidence in each case rather than presumptions as observed earlier by this Court in the case of Rahimullah Choudhary v. Mrs. Sayeda Helali Begum and others (1974 SCMR 305).

9. The expression "welfare of the minor" includes the minor's moral, spiritual, physical, psychological, educational, and material well-being. It further encompasses considerations relating to the minor's health, academic progress, religious upbringing, and overall emotional development. In determining welfare, due weight must also be given to the minor's happiness and emotional attachment to the proposed custodian. Reference may be made to the case of Feroze Begum v. Muhammad Hussain (1978 SCMR 299) wherein it has been held that:-

"8. The question, therefore, that arises for consideration is as to whether it would be at all in the welfare of the minors to up-root the two students from their respective local Government schools in which they are studying in the hope that they shall do better in a more promising institution away from their home town. This question has escaped the attention of the trial Court as well as the High Court and has remained unanswered in their impugned orders.

Under the Shariat Law, the mother is entitled to the custody (hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. The -right continues though she is divorced by the father of the child. Needless to mention here that the father is the natural guardian of his minor children and the mother's custody is a subordinate, custody and is subject to the control of the father. But the mere inability to maintain the children is not a ground for depriving the mother of the custody of her children. In Harbai v. Usman (P L D 1963 Kar. 88 ) it ' was held that mother's poverty is no hindrance to the custody of her minor daughter. Indeed in law it is for the father to provide for their maintenance.

...  
The welfare of a minor means his material, intellectual, moral and spiritual well-being. The High Court accepted the offer made by the respondent herein in putting the two minors in a good school at Rawalpindi or at Murree as boarders. But, in doing so, it did not even consider whether or not it would be at all advisable for Mst. Sajida minor, who is about to, attain puberty, to admit her in a hostel away from her parents."

**[Emphasis supplied]**

Thus, while determining the welfare of the minor, the Court shall take into account the age, sex, religion, and other relevant circumstances of the minor, the character and capacity of the proposed guardian, as well

as the preference of the minor, provided the minor is of sufficient maturity to express an intelligent preference.

10. It is the duty of the Court to ensure that the welfare of the minor is of paramount concern, and that the actions of the litigating parties are not motivated by personal vendettas, vanity, or emotional desires for affection, but solely in the best interest of the minor. In matters concerning the custody of a child, the Family Court is not obliged to delve into the intricacies or technicalities of the case but must focus on determining what is in the best interest of the minor. Reference may be made to the case of *Mehmood Akhtar v. District Judge, Attock and 2 others* (2004 SCMR 1839) wherein this Court has categorically held that:-

“4. The right of custody of minor is not an absolute right rather it is always subject to the welfare of the minor. The Court in the light of law, on the subject and facts and circumstances of each case considers the question of custody on the basis of welfare of minors and there can be no deviation to the settled principle of law that in the matter of custody of minor the paramount consideration is always the welfare of minor. No doubt general principle of Muhammadan Law is that a Muslim father being the natural guardian of the minor, has the preferential right of custody of minor but this rule is always subject to the welfare of the minor which is the prime consideration in determination of the question of custody....”

[Emphasis added]

11. Under Islamic law, the father is generally entitled to custody of a boy after the age of seven years and of a girl after puberty. This Court, however, in the case of *Tahira v. Additional District Judge, Rawalpindi and others* (1990 SCMR 852) has categorically held that this entitlement is subject to the overriding consideration of the minor's welfare. Even where custody would otherwise shift to the father upon attainment of the prescribed age, the Court may refuse custody if the welfare of the minor so demands. It was further observed that in case of any conflict between the rights of the parents and the welfare of the minor, the welfare of the minor shall prevail. The Court is not bound by

any agreement between the parents if it is contrary to the interests of the minor.

12. The concept of the welfare of the child is internationally recognized as being embodied in the principle of the "best interests of the child." This principle, affirmed under Article 3(1) of the United Nations Convention on the Rights of the Child, 1989 ("UNCRC") serves as a paramount consideration in all actions concerning children, whether undertaken by public or private institutions, courts of law, or administrative authorities.

13. Even internationally, it is a well-established principle among all civilized nations that children possess rights by virtue of being children. These obligations are of an *erga omnes* character and have been codified in the UNCRC. The UNCRC constitutes an international treaty that sets forth the rights guaranteed to children. The Islamic Republic of Pakistan ratified the UNCRC on 12.11.1990, initially subject to a reservation that its provisions would be interpreted in the light of Islamic injunctions. However, said reservation was withdrawn in 1997, thereby rendering Pakistan's ratification absolute and unconditional. Article 27 of the UNCRC is reproduced below: \_

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

Said Article must be read with Article 3 paragraph 1 of the UNCRC, which reads as under;

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

14. The concept of the “child's best interests” is not novel. Indeed, it pre-dates the UNCRC and was already enshrined in the 1959 Declaration of the Rights of the Child,<sup>1</sup> the Convention on the Elimination of All Forms of Discrimination against Women, 1979,<sup>2</sup> as well as in regional instruments and many national and international laws.<sup>3</sup> In assessing and determining the best interests of the child, the State is under an obligation to ensure the provision of such protection and care as is necessary for the child’s well-being.<sup>4</sup> The term “well-being,” when interpreted broadly, encompasses the child’s fundamental material, physical, educational, and emotional needs, in addition to his/her requirements for affection and security.<sup>5</sup>

15. With regard to the contention raised by the learned counsel for the petitioner that the father, being the natural guardian, is entitled to the custody of the minor, it is correct that the petitioner is indeed the natural guardian of the minor. However, the law draws a clear distinction between the concepts of custody and guardianship and the respective rights and obligations arising therefrom under the Act. The definition of "guardian" as provided under Section 4(2) of the Act appears to encompass the concept of custody, unless custody has been exclusively awarded by the Court to a party other than the natural guardian. Custody, within the meaning of the Act, primarily involves the right to the upbringing of the minor, whereas guardianship entails an overarching responsibility for the welfare of the minor, including in situations where the guardian does not have actual physical possession

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<sup>1</sup> Declaration of Rights of Child, 1959, para.2.

<sup>2</sup> Article 5(b) and 16(1)(d).

<sup>3</sup> UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para.2.

<sup>4</sup> UN Convention on Rights of Children, 1969, Article 3 para 2.

<sup>5</sup> UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para 71.

of the minor. A father, by virtue of being the natural guardian, remains obligated to provide financial support for the minor even after separation from the mother and even when the custody of the minor is granted to the mother. It is well-settled that the liability of the father to maintain the minor is not only religious and moral but is also a legal obligation. It has been consistently held that the right to custody is subordinate to the paramount consideration of the welfare of the minor. The inability of the mother to financially maintain the minor cannot, by itself, deprive her of custody, as the primary duty to provide maintenance rests upon the father. This principle was affirmed in Mst. Feroze Begum v. Lt.-Col. Muhammad Hussain (1983 SCMR 606), Munawar Bibi v. Muhammad Amin and another (1995 SCMR 1206), Mst. Razia Bibi v. Riaz Ahmad and another (2004 SCMR 821), and further reinforced in Mst. Beena v. Raja Muhammad and others (PLD 2020 SC 508).

16. Insofar as the contention of the learned counsel for the petitioner that respondent No.1 has contracted a second marriage with a person who is a stranger to the minor and, therefore, is not entitled to the custody of the minor, it is by now a settled principle of law that the mere fact of a mother's remarriage does not ipso facto disentitle her from the custody of the minor.

17. As per D.F. Mulla's Principles of Muhammadan Law (Paragraphs 352 and 354), a mother's right of custody continues after divorce but may be forfeited upon remarriage, particularly if she marries a person not related to the minor within the prohibited degrees. However, Section 17 of the Act requires that the welfare of the minor must be of the paramount consideration. This Court has consistently held that the rules in Muhammadan Law regarding disqualification of a mother upon remarriage are not absolute. In Shabana Naz v. Muhammad Saleem (2014 SCMR 343), it has been affirmed that if the welfare of the minor



lies with the mother, custody may be granted to her notwithstanding her second marriage.

18. Therefore, each case must be decided on its own facts, with the welfare of the minor remaining the paramount consideration. In such cases, if the welfare of the minor is best served by awarding custody to the mother, even after remarriage, the court may grant her custody as held in the case of Raja Muhammad Owais v. Mst. Nazia Jabeen and others (2022 SCMR 2123). This Court, in the case of Mst. Shahista Naz v. Muhammad Naeem Ahmed and another (2004 SCMR 990), observed that the right of Hizanat having the force of Injunction of Islam is an accepted principle of Islamic Law. Moreover a female, on account of re-marriage may be disqualified to exercise this right, but a mother on account of remarriage is not absolutely disqualified to be entrusted the custody of a minor child rather she may lose her preferential right of custody.

19. In the case of Mst. Beena vs. Raja Muhammad and others (PLD 2020 SC 508) this Court emphasized the critical importance of the mother-child bond, stating that removing a child from the mother disrupts their relationship and deprives the child of the love and care essential for his/her upbringing. The relevant paragraphs are reproduced below:-

“11. .... If a child is taken away from the mother, deprived of her love and the benefit of her upbringing the mother and the child’s relationship is fragmented.

12. Another of the principles provides that Muslims must be enabled to live their lives in accordance with the fundamental principles and basic concepts of Islam and to promote unity and the observance of the Islamic moral standards. The religion of Islam gives a high status to expectant ladies and mothers. When performing the Hajj and Umrah pilgrimages, Muslims run between the mounts of Safa and Marwah (Sa’ee) in the footsteps of the lady Haajar to emulate her when she desperately searched for water for her child, Ismail (peace be upon him). Haajar the esteemed mother is commemorated in perpetuity by incorporating her actions as an integral component in the performance of Hajj and Umrah of the Islamic Faith. A mother-child bond and a mother’s agony instituted a religious obligation, a rare if not the only example, in world religions. The mother of Islam’s progeny, lady Haajar is buried next to her son, the Prophet Ismail (peace

be upon him), in the Hateem, the crescent shaped enclosure adjacent to one of the walls of the Holy Ka'ba, also known as Hijr Ismail, the shelter constructed by Prophet Ibrahim (peace be upon him) for his wife and child. Pilgrims from all over the world circumambulate the Holy Ka'ba, including the Hijr/Hateem.

13. The high status of motherhood is reflected in the naming of a chapter of the Holy Qu'ran after Maryam (Mary), peace be upon her, the only chapter named after a woman. Almighty Allah recalls her qualities and bestows on her a number of titles: a purified (tahharaki) and chosen (istafagi) one, a sin (ayatan) of God, truthful (siddiqatun) and devoutly obedient (qanitina). The lady Maryam (peace be upon her) is mentioned 34 times in the Holy Qur'an. The mother of the Prophet Isa (peace be upon him) faced the pangs of childbirth alone. She, like the lady Haajar, overcame formidable odds to care for her child. These great ladies are acknowledged and incorporated into the Faith, enriching Islam's glorious tradition. It is for believers to ponder and reflect upon their lives, and to derive lessons from it. To be financially underprivileged, to be weighed down with a child, to give birth or to have a disability is not something to be derided. For a mother to bear the pain of childbirth, the greatest human natural pain, but then to have her child wrested away from her on the pretext that she is incapable of taking care of the child is insensitive in the extreme, and may also be characterized as hypocritical."

**[Emphasis added]**

Reference may also be made to the case of Shabana Naz v Muhammad

Saleem (2014 SCMR 343), wherein it has been observed as under:-

"As regard the second marriage with another woman by respondent No.1, it may be noted that this fact alone will not disentitle respondent No.1 from obtaining custody of his minor daughter. Moreso, when it is an admitted fact that the appellant too has remarried another person, namely, Haji Syed Wali with whom the minor has no relationship.

"11. Para 352 of the Muhammadan Law provides the mother is entitled to the custody (Hizanat) of her male child until he has completed the age of 7 years and of her female child until she has attained puberty and the right continues though she is divorced by the father of his child unless she marries a second husband in which case the custody belongs to the father.

"12. Para 354 provides for disqualification of female from custody of the minor, which includes the mother and one of the instance laid down is that if she marries a person not related to the child within the prohibited degree e.g. a stranger but the right revives on the dissolution of marriage by death or divorce.

"13. Thus, it is apparent from reading of the two paras of the Muhammadan Law that though the mother is entitled to the custody (Hizanat) of her minor child but such right discontinues when she takes second husband, who is not related to the child within the prohibited degree and is a stranger in which case the custody of minor child belongs to the father. It has been construed by the Courts in Pakistan that this may not be an absolute rule but it may be departed from, if there are exceptional circumstances to justify such departure and in making of such departure the only fact, which the Court has to see where the welfare of minor lies and there may be a situation where despite second marriage of the mother, the welfare of minor may still lie in her custody.

**[Emphasis added]**

20. While it has been settled that a mother's second marriage, even to a person stranger to minor, does not in itself disqualify her from custody of the minor, provided that the welfare of the minor is best served by her continued care. It is significant to note that the petitioner himself has contracted a second marriage and is residing abroad. Furthermore, upon a specific query posed by this Court during the course of arguments regarding the frequency of his visits to Pakistan, the petitioner admitted that he visited Pakistan only after a lapse of four years and, even then, did not file any application seeking visitation rights in respect of the minor. This conduct further reflects the petitioner's lack of genuine interest in the welfare and upbringing of the minor. It is further an undisputed fact that the petitioner has no surviving parents. Considering that the petitioner is residing abroad and has contracted a second marriage, it raises serious concerns as to who would assume responsibility for the minor's day-to-day care, supervision, and emotional needs in his absence. This Court in the case of Mst. Firdous Iqbal v. Shifaat Ali and others (2000 SCMR 838) has noted that:-

" 15. ... It would, thus, be noticed that right of the father to claim the custody of a minor son is not an absolute right, in that, the father may disentitle himself to custody on account of his conduct in the light of the facts and the circumstances of each case. In the instant case, the evidence on the record showed that the respondent father who sought custody of the minor, neglected the child since the separation of the spouses inter se and had voluntarily left the custody to the petitioner-mother. She had brought him up and educated him till she had to opt for her second marriage. Even then she had not been negligent in the tare of her minor son. She had entrusted that duty to her mother and father and minor is being properly educated till date in a local school. All along this entire period, the father never bothered even to go to meet the minor much less than providing maintenance to him, when the petitioner-mother sued him for providing maintenance allowance to the minor. It is only then that he had made an application for custody of the minor. Again the respondent-father has also taken another wife who has got one or two children out of the wedlock. The second wife of the respondent is living in the village of the respondent whereas the respondent himself is an Army Personnel in service of Pakistan Army and remains under posting from one cantonment to another. Consequently, he would also not be present in the house where he proposed to lodge his son. The minor would be exposed to the onslaughts of the step-motherly treatment of his second wife. There would be no one to stop the step-mother from the well-known step motherly treatment. It was in these

circumstances that the learned Courts below had concurrently found as a fact that the welfare of the minor lay in leaving him to the custody of the real mother through her parents rather than giving him to the respondent who is himself away from his household which had been left to the charge of the step-mother.”  
**[Emphasis added]**

21. In the event of remarriage of either or both parents, the Court must consider the surrounding circumstances of both parties, including their educational qualifications, financial status, character, and ability to care for the minor. Due weight is also given to the emotional attachment of the minor. In *Sardar Hussain and others v. Mst. Parveen Umer* (PLD 2004 SC 357), custody was awarded to the mother despite her second marriage, as the minor had developed a strong emotional bond with her and regarded the father as a stranger, despite a short period of residence with him.

22. Perusal of the record reveals that the petitioner is residing in Greece and, merely two months after his marriage with respondent No.1, he returned to Greece while respondent No.1 stayed in Pakistan. The petitioner pronounced divorce upon respondent No.1 while residing in Greece. Furthermore, the petitioner has neither seen his minor daughter since her birth nor made any effort to meet her. He did not return to Pakistan to pursue the custody of the minor but, instead, filed an application for custody after his arrival in Pakistan due to the demise of his father.

23. The petition and subsequent appeal were filed through his attorney, Ihsanullah, his real brother, who represented him in the proceedings. This fact has been admitted by the Ihsanullah (attorney of petitioner) (A.W.1) before trial court in his cross examination wherein he stated that:

"میں نے اپنے بھائی کو اپنے والدین کے لئے اپنا حق نہیں دیا، اس لئے میں نے اپنے والدین کو اپنا حق نہیں دیا۔"

Moreover, the petitioner did not appear personally in either the trial or appellate court or in constitutional petition.

24. This clearly demonstrates that the petitioner's application for custody is not motivated by affection or concern for the minor, but appears instead to be a retaliatory measure in response to the suit instituted by Respondent No.1 for recovery of dowry articles and maintenance. Moreover, there is no evidence on record to suggest that respondent No.1, the mother, has failed in her duty to properly care for the minor or to provide her with proper education and upbringing.

25. It is evident that the minor is now about 13 years of age. She has never seen her father, who has been residing outside Pakistan since before her birth. Throughout her life, she has developed a strong emotional attachment with her mother, who has been her sole source of love, care, guidance, and financial support. On the contrary, the petitioner, as the father, has never made any attempt to contribute towards the minor's educational expenses, nor has he inquired about her schooling or well-being.

26. It is also an admitted fact that the minor is receiving quality education in a reputable private school and has consistently been securing top positions in her class, which reflects her academic excellence, proper upbringing, and stable environment. At this delicate and formative stage of adolescence, when emotional security, proper moral upbringing, and a strong educational foundation are of paramount importance for the minor's future growth and development, any unwarranted disturbance or change in her environment would likely cause irreversible harm to her personality and career. Therefore, keeping in view the welfare, betterment, and best interests of the minor, it is imperative that her custody remains with her mother.

27. In view of the above discussion, we find that impugned judgment is well-reasoned and the High Court has considered all the material aspects of the case. Learned counsel for the petitioner has failed to point out any illegality or infirmity in the concurrent findings of the courts below.

28. Consequently, this petition, being devoid of merit, is dismissed and leave refused.

29. Above are the reasons for our short order of even date reproduced below:-

“Heard the learned counsel for the petitioner and perused the record with his able assistance. The petitioner is also in attendance.

For the reasons to be recorded separately, leave is refused and the petition is dismissed by majority of 2 to 1 (Musarrat Hilali, J. dissenting). However, if any application for visitation rights is filed, at any stage, before the concerned Guardian Court, the same shall be decided on its own merits in accordance with law.”

**JUDGE**

**JUDGE**

**JUDGE**

Islamabad

22.04.2025

**APPROVED FOR REPORTING**

Paras Zafar, LC/\*

**Musarrat Hilali, J.**— While I differ with my learned colleagues in dismissing the petition in *limine*, I feel compelled to briefly state my reasons.

The petitioner, being the biological father of the minor, seeks the custody of his minor daughter presently residing with her maternal grandmother. The mother, respondent No.1, had already remarried and is settled abroad whereas, the petitioner has not remarried.

Given the sensitive nature of custody matters and the paramount importance of the welfare of the minor, I was inclined to form an opinion to issue notices to the respondents before forming any conclusive view. In my opinion, the assertions raised in the petition, though not determinative at this stage did merit issuance of notice, which in the instant case would have enabled a more comprehensive assessment of the matter. A father holds a position of vital importance in a child's life, offering not only emotional stability but also social identity and support within our societal structure.

Nonetheless, I could not agree with the dismissal of the petition in the manner as decided by my learned colleagues.

**Judge**