

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Syed Mansoor Ali Shah

Mrs. Justice Ayesha A. Malik

C.P.L.A.2250-L/2016

(Against the order dated 11.05.2016 passed by the Lahore High Court, Lahore in Writ Petition No.33486/2015)

Malik Mahmood Ahmad Khan

..... **Petitioner**

Versus

Malik Moazam Mahmood, etc.

.... **Respondent(s)**

For the petitioner: Mr. Khalid Ikram Khatana, ASC.

For the respondent(s): Not represented.

Date of hearing: 19.12.2024

ORDER

Syed Mansoor Ali Shah, J. – A child (hereinafter referred to as “**respondent No.1**”), following the divorce of his parents in 2009 and the subsequent death of his mother, filed a suit for maintenance through his maternal grandmother against his father (“**petitioner**”). The trial court decreed the suit, fixing the maintenance allowance at Rs. 5,000/- per month, effective from November 2009 until respondent No.1 attained the age of majority, with a 10% annual increment, *vide* judgment dated 21.09.2015. Feeling aggrieved, the petitioner preferred an appeal before the learned Additional District Judge, Lahore, which was dismissed as non-maintainable *vide* order dated 17.10.2015. Subsequently, the petitioner challenged the judgment before the Lahore High Court, Lahore which was dismissed in limine *vide* order dated 11.05.2016 (“**impugned order**”). Hence, the present petition.

2. Courts must approach cases involving children with a dedicated child justice approach, rooted in a legal and moral obligation to protect, nurture, and rehabilitate children, ensuring their rights and well-being within the justice system. Child justice encompasses both children in conflict with the law, who require rehabilitative interventions rather than punitive measures, and children in contact with the law, who must be safeguarded and

supported throughout judicial processes. As custodians of justice, courts must adopt a child justice approach that prioritizes the best interests of the child, recognizing their vulnerabilities, developmental needs, and potential. This approach demands sensitivity to their circumstances, ensuring access to education, shielding them from exploitation, and fostering an environment conducive to their growth and reintegration into society. As Nelson Mandela aptly said, "There can be no keener revelation of a society's soul than the way in which it treats its children."¹ By adhering to these principles, the judiciary not only fulfils its legal obligations but also demonstrates judicial sensitivity towards children, contributing to a just and compassionate society.

3. The Constitution of Pakistan, 1973, provides a robust framework for child justice. Article 25(3) empowers the State to enact special provisions for the protection of children, including measures that may favourably differentiate them from adults. Article 25A mandates free and compulsory education for children aged 5 to 16 years. Article 35 obliges the State to protect children, while Article 37(e) ensures just and humane working conditions, explicitly prohibiting the employment of children in vocations unsuitable to their age or sex. This constitutional framework underscores child justice, prioritizing the well-being, rehabilitation, and reintegration of children into society, while addressing their unique rights and vulnerabilities within judicial processes.

4. As a signatory to the the United Nations Convention on the Rights of the Child ("**UNCRC**") in 1989, Pakistan is under an international obligation to take special measures to protect and rehabilitate children who come into conflict with the law.² The UNCRC provides a framework for child justice systems globally, emphasizing dignity, rehabilitation, and reintegration. Pakistan's constitutional mandate, combined with its international obligations, has catalyzed the establishment of a child justice system in the country. The adoption of UNCRC in 1989, almost universally ratified, marked a global paradigm shift in the international

¹ Address by President Nelson Mandela at the launch of the Nelson Mandela Children's Fund, Pretoria, South Africa (May 1995).

² 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.

community's perspective, recognizing children as rights holders, not merely vulnerable dependents in need of special care.³

5. To fulfil the mandate of child justice, the UNCRC outlines guiding principles⁴ affecting children. These principles, *inter alia*, include: (i) Ensuring that the best interests of the child is given primary consideration⁵; in all actions where children are directly, or indirectly involved or affected by the justice system, the best interests of the child should be a primary consideration, (ii) Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination; a child in conflict with the law shall be treated without discrimination of any kind, (iii) Advancing the right of the child to express his or her views freely and to be heard; all children in conflict with the law have the right to participate in decisions affecting them, and in particular, to be given the opportunity to be heard in any judicial or administrative proceedings; (iv) Protecting every child from abuse, exploitation and violence⁶; children in contact with the law should be protected from any form of hardship while going through state and non-state justice processes and thereafter. (v) Treating every child with dignity and compassion⁷; children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity, (vi) Respecting legal guarantees and safeguards in all processes; basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice, (vii) Preventing conflict with the law as a crucial element of any juvenile justice policy; within juvenile justice policies, emphasis should be placed on prevention strategies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, and (viii) Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time; provisions should be made for restorative

³ Ton Liefwaard, 'Access to Justice for Children: Towards a Specific Research and Implementation Agenda' International Journal of Children's Rights 27 (2019) 195–227.

⁴ Guidance Note on the Secretary-General, UN Approach to Justice for Children, United Nations < https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf > last accessed 21 December, 2024.

⁵ Article 3, United Nations Convention on the Rights of the Child.

⁶ Ibid, Article 37.

⁷ Ibid, Article 40.

justice, diversion mechanisms and alternatives to deprivation of liberty. By adopting these principles and a child-centered approach, justice systems can provide fair, equitable, and effective solutions tailored to children's unique needs and circumstances. This also aligns with the the principle of restorative justice which is an approach to justice that focuses on repairing the harm caused by a crime or conflict, rather than solely punishing the offender. It involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.⁸

6. A child-centered approach in the judiciary is essential because it acknowledges that children, unlike adults, are still in their formative years and are particularly vulnerable to the psychological and emotional impacts of legal proceedings. Scholars such as Karl Hanson and Olga Nieuwenhuys have emphasized that a child-centered approach recognizes that "children shape, interpret, and practice what their rights are," and emphasizes "living rights" — rights as dynamically experienced and realized by children.⁹ This approach advocates for judicial processes that are rehabilitative rather than punitive, protecting the child's dignity while fostering rehabilitation and reintegration into society. Such a framework aligns with both national and international legal standards, ensuring that children's voices are heard, their rights safeguarded, and their future prospects protected.

7. Courts, particularly at the district level, must adopt this approach to ensure that the justice system meets the unique needs, rights, and vulnerabilities of children. By prioritizing children's best interests in judicial decisions, the judiciary can promote long-term societal benefits, reduce recidivism, and support the development and well-being of future generations. As the saying goes, "In serving the best interests of children, we serve the best interests of all humanity."¹⁰

8. We have examined the present case with a child justice lens, prioritizing the best interests of the child – an approach that the courts must employ when dealing with cases involving children

⁸ Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002).

⁹ Karl Hanson and Olga Nieuwenhuys, 'A Child-Centered Approach to Children's Rights Law' in Jonathan Todres and Shani King (eds), *The Oxford Handbook of Children's Rights Law* (OUP 2020).

¹⁰ Words of Carol Bellamy, Executive Director UN Children Fund.

in contact or in conflict with the law. In this case, we see no jurisdictional error, illegality, or procedural irregularity in the impugned order. Therefore, we are of the view that the impugned order does not warrant any interference. Leave is, therefore, declined, and this petition is dismissed.

Judge

Judge

Lahore,
19th December, 2024.
Approved for reporting
Iqbal/Umer A. Ranjha LC