

HIGH COURT OF AZAD JAMMU AND KASHMIR
SHARIAT APPELLATE BENCH

FAMILY APPEAL NO. 209/2023

Muhammad Rameez Khan vs. Iram Iftikhar, etc.

JUDGMENT

Date of decision :	10.10.2025
Appellant by :	Mr. Abdul Razzaq Chaudhary, Advocate
Respondent :	Mr. Awais Ahmed Qureshi, Advocate

JUSTICE SYED SHAHID BAHAR :- What evidence previously unaddressed or fundamentally misread, empowers the First Appellate Forum i.e. High Court to conclude that the minors’ paramount interest the — cornerstone of every custody dispute — lies not with the mother, as determined by the trial Court, but is instead imperatively compelling their immediate relocation to the father’s case, is the central and focal proposition of the appeal at hand before the AJK High Court, the resolution of which will either affirm judicial restraint or necessitate a critical re-evaluation of the entire trial record.

2. This legal saga details the grounds for the appeal filed by the father against the judgment of the Guardian Judge, Samahni dated 16.11.2023. The Guardian Judge’s decision was reached pursuant to framing four core issues based on two radically different versions of the marital collapse and the children’s whereabouts.

The Foundation of the Suit

Mother's Allegations

3. The mother's case rested on the father's alleged **beating and abuse**, his **illicit relations**, and his final deceptive act of **ousting her** and then **seizing the children**. Her suit sought custody based on her status as the children's mother.

Father's Counter-Defense

4. The father's defense directly contested these points, alleging the mother herself **voluntarily relinquished the children** in Lahore and requested to take charge of their lives, which he did, thereby prayed for the dismissal of the custody suit.

Impugned Ruling: Subject of Appeal

5. Pursuant to framing four distinct issues besides recording of conflicting testimonies from both contesting parties witnesses, the learned Guardian Judge, Samahni issued its judgment dated 16.11.2023, whereby the suit/application for the custody of minors was **allowed** in favour of the mother, Iram Iftikhar. However, the right of visitation was simultaneously **granted to the father**, Rameez Khan.

Father's Arguments

6. Learned counsel representing the father i.e. Ch. Abdul Razzaq, argues forcefully that the impugned custody ruling is a serious mistake hence it must be thrown out. His case focus on two simple but crucial points about the children's best interests:

*i. **The School Problem: Don't Disrupt their Exams***

The father's counsel claims that the Guardian Judge completely **ignored the pivotal aspect of kid's education**. The three children are all settled in school in Mirpur, and their exams are right around the corner. Ripping them out of their classes now would be a huge blow to their schooling and future – an unacceptable disruption to their stability besides their inviolable fundamental right of education.

*ii. **The Emotional Bond: Where the Kids Feel Safe***

Learned counsel emphasizes that the Guardian Judge failed to consider the children's **deep attachment to their father and grandparent**. For the children's **welfare** – the most important thing in any custody case – their life must stay consistent. Forcing them into a new environment breaks these vital family bonds and is simply harmful.

Mother's Defense: Upholding the Judgment

7. Learned counsel representing the mother, Awais Ahmed Qureshi, Advocate, vigorously contends that the appeal should be dismissed, asserting that the trial Court's judgment is **sound and fully supported by both law and facts**. Learned counsel vehemently contends that the **minors are currently happy and well-cared for by their mother**. She is fully tending to their needs and is capable of providing them with a **proper education** in school. In support of dismissing the father's appeal, learned counsel for the mother relies on the following case laws:

- i. 2015 SCR 1455.
- ii. PLD 2019 High Court (AJ&K) 1.
- iii. 2019 YLR 2792.
- iv. 2017 YLR 994.
- v. PLD 2018 Sindh 377.

8. This Court has taken stock of the submissions of both learned counsels and meticulously reviewed the judicial record. The entire case comes down to whether the father's claim about **school disruption** is strong enough to **reverse the custody order**, or if the mother's evidence of the children's **current welfare** will secure her win.

Determination

9. The welfare of the minor is the paramount consideration for this Court. This is not merely a fixed criteria but the ultimate yardstick against which every fact including the child's age, sex and religion must be measured.¹

10. As a custodian of these minors, the Court holds this principle inviolable: No order shall be passed that is inimical to the child's demonstrated welfare.²

11. For the safe administration of justice, and acknowledging the minors' current residence with the father, this Court summoned the children for an election between their parents. These minors, having been offered the choice, unequivocally **refused to reside with their mother.**

12. While the welfare of the minor remains paramount, it is settled law that a father's subsequent marriage does not, ipso facto, remove his constructive custody just like mother's second marriage does not remove hers.³ Furthermore, the opinion of a minor is a vital component of their welfare, and Section 17(3) of the Guardians and

¹. Section 17(1) and Section 17(2) of the Guardians and Wards Act, 1890.

². Hukam Jan v. Muhammad Yaseen (2016 SCR 487); Muhammad Yaqoob vs. Yasmeen Tahira (2015 SCR 1470); and Hafiz Saleem Akbar v. Uzma Kanwal (2015 SCR 1455).

³. Muhammad Owais v. Nazia Jabeen (2022 SCMR 2123).

Wards Act, 1890, mandates that the Court may consider the **intelligent preference** where it is clearly expressed.

Application of the Law: The Inviolable Test

13. In a case titled Abdul Ghafoor vs. Kiran Mukhtiar reported as **[2024 SCR 425]**, the Honorable Apex Court of Azad Jammu and Kashmir, in an identical matter held as infra:-

“In cases concerning the guardianship of a minor, it is widely recognized that the welfare and best interests of the minors are of paramount consideration. Section 17, sub-section (3) of the Guardians and Wards Act, 1890, stipulates that the opinion of a minor may be duly considered if the minor is old enough to express an intelligent preference. The learned High Court understanding its obligation to assess the welfare and preference of the minor, summoned him to appear before it. The minor, aged 11 years at the time of his deposition before the High Court affirmed that he resides with his maternal grandmother and mother in harmonious cohabitation, receiving sufficient care and attention. He further stated that he is enrolled in a private school and is being properly maintained by his maternal grandmother and mother. In prudent consideration of the minor’s statement, wherein he clearly expressed satisfaction with his current custodial arrangement under his maternal grandmother and mother, this Court holds the view that in current scenario, there is no apparent threat to the welfare of the minor if he continues to reside with his grandmother. Notably, the cohabitation of the minor’s mother and maternal grandmother within the same household further ensures his well-being and familial stability. Consequently, this Court accords significant importance to the minor’s expressed preference and deems it imperative to maintain the present custodial arrangement in the best interest of the minor’s welfare and happiness. We cannot disregard the opinion of the minor, particularly considering his age (11 years) and capacity to form an intelligent preference.

It is also evident from the record that the petitioner has entered into a second marriage and in presence of stepmother it may not be appropriate to grant

custody of the minor to the petitioner as it is believed that the stepmother may not be able to provide adequate attention to the minor.”

Natural and Constructive Guardianship

14. The father, by virtue of his status as the **natural guardian**, always retains the natural and constructive guardianship of the minor. Therefore, excluding the father from the custodial arena while determining the welfare of the minor especially when the minors have clearly demonstrated their intelligent preference to remain with the father, and their educational and financial welfare demonstrably lies with him, is fundamentally misplaced and legally untenable.

15. Be that as it may, minors possess a separate legal entity, thus, keeping in view the paramount aim of the law when deciding custody of the minor, **choice and tendency of the minor** should be given **preferential edge** coupled with the other aspects. It is not interest of the parent which is required to be taken into consideration but the **primary consideration** is the **interest and welfare of the minor**; therefore, when the matter of custody is before the Guardian Judge, he assumes the role of controller of the minor’s welfare to determine the guardian’s suitability from the record. In this sense, it can safely be held that no specific yardstick can be applied. The factor of welfare must be judged from record/evidence and the overall circumstances, and it may vary from case to case.

16. Case laws referred to and relied upon by the learned counsel for the respondent are not applicable to the case in hand as the

facts and circumstances are entirely distinguishable. Accordingly, detailed discussion of those precedents is unnecessary.

17. To put the matter in definitive terms, the instant appeal is **accepted**. Consequently, the impugned judgment/decreed dated 16.11.2023 passed by the learned Guardian Judge, Samahni, is hereby **set aside**. The custody of the minors is immediately entrusted to the appellant. The appellant is, however, **bound by law** to arrange the meeting of the minors with the respondent/mother **thrice in a month**, thereby ensuring the continuation of familial bond in the minors' paramount welfare.

Muzaffarabad.
10.10.2025.*

JUDGE

Note: Judgment is written and duly signed. The office is directed to transmit this file to Deputy Registrar, Circuit Mirpur, who shall announce the judgment as per law.

JUDGE

Approved for reporting

JUDGE