
**CHILD PARTICIPATION IN CUSTODY DECISIONS: LEGAL
PERSPECTIVES AND ETHICAL CONSIDERATIONS**

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ABSTRACT

This paper explores the rights granted to children in custody matters in Pakistan as per the law. Its aim is to examine the provisions of the Guardian and Wards Act of 1890 (hereinafter referred to as Act 1890) and Islamic law, analyzing judicial precedents to identify any loopholes and deficiencies. Additionally, the research paper focuses on highlighting the gaps and deficiencies present in the provisions concerning child custody in Pakistan. It argues that the Act 1890 grants domestic courts broad discretionary powers when dealing with custody disputes, leading to inconsistent judgments. Given the importance of custody in determining a child's welfare after parental divorce, it is concerning that Pakistan lacks comprehensive laws regarding the rights of children to be heard and give consent in such disputes. The Act of 1890 provides limited guidance on the rights of children to be heard and give consent in custody disputes, leaving it largely up to the court's discretion, which often leads to conflicting rulings. Due to the lack of clear legal provisions in the Act, parties involved in custody issues have to rely on case laws to find guidelines. The paper will propose specific measures to reconcile the existing fragmented practices. It will also suggest laws and remedies implemented by other developed countries worldwide to address the gaps and loopholes in the provisions of the Act of 1890, ultimately aiming to improve the well-being of children involved in custody disputes.

Keywords: Custody, Children rights, Guardianship, Consent, Judicial Precedent

INTRODUCTION

This research paper depends especially on both parliamentary provisions and the judiciary's precedents and also the basic guidelines set in the Muhammad Law and in the Western laws to underscore the methodology adopted towards hearing children in Family Cases. The loopholes, existing in the laws of Pakistan related to the rights of hearing and the consent of child in family cases after the parental divorce, are the main causes that require intervention of parliament or

law-making body and judiciary. Family cases related to children's custody after parental divorce are resolved under the Guardian and Wards Act 1890. But the Act is set apart by a few deficiencies. These incorporate the Act's inability to recognize fundamental rights of hearing and the consent of children and also its failure to demarcate the custody with guardianship. Rights of hearing and consent can be described as the fundamental rights of children. The rights of hearing and the consent of children are important in decisions that influence them both as individuals and collectively, especially in custody issues, where these rights arise after parental separation. Furthermore, Custody and guardianship are determined using the formula: custody seems to be the regular nurturing, nursing, or training of a child, as well as handling their psychological and private concerns. On the other hand, guardianship implies the ability to impact lawful exchanges and agreements with liability for the legal impacts. Custody is regarded as a sort of guardianship by the courts. According to section 4 of the Act 1890, "a guardian is an individual looking after a minor or of the two his person of a minor and property". As an outcome, guardianship is thought to include the conception of custody, even inside the Act. Generally, in any case, custody has a place with the mother through guardianship of property and marriage has a place with the father. In Pakistan, there have been situations, where the child's best interests necessitate, that the mother has been given guardianship of the wedding as well as property. Custody, as indicated in the Act, is a civil right that can be safeguarded by a ruling by the court. It is not the child but the court which decides what is good for him. The Act lacks provisions that may bind the court to give importance to children's views and consent. In most of the judicial proceedings consent of a child doesn't matter. As a result, the child is not heard. The rights of hearing and consent, in family cases after the parental separation are fundamental substantive rights of a child and are vital for effectual involvement of a child in hearings of the cases, mainly in the disputes of their custody.

RESEARCH DESIGN

This research will be qualitative and a case study of Pakistan. This study will comprise both primary and secondary sources of research. As primary research, the opinions of the legal experts,

subject experts, and legal practitioners will be considered. This study will also include collecting archival data on court judgments. Besides, secondary data will also be collected from the existing literature on the subject, including books, research papers, legal papers, and conference reports. Finally, this study will be the content analysis of the primary and secondary sources of research.

LITERATURE REVIEW

In Pakistan, there seems to be very little literature available that deals with the rights of children their right to be heard, and the custody matters following parental divorce. The existing literature focuses entirely on parents' rights - rather than children's rights - and the wide discretion of judges who may deem fit the welfare of children and grants either father or mother to have children's custody (Sabrin; Goldstein, 2015; Rafiq, March 2014). This article explains how in line with Islamic teachings and present Muslim customs, uniform rules on custody of children can indeed be devised for the entire Islamic community. The research paper of (Abro, 2014) has examined the welfare of children by comparing British Law and Pakistani Law. In British common law and existing Pakistani laws, the concept is similar in both countries, to examine the welfare of children; nevertheless, there are differences in how it is understood. The report discusses why the concepts of custody and guardianship link to a child's well-being and tracks the emergence of an Islamic child welfare concept that is similar to a Euro-American notion of the children's best interests established in the United Nation Convention on the Rights of the Child, 1989 (herein after referred to as UNCRC) (Fekry, 2018).

The literature, in which the case study is not particularly for Pakistan, however, focuses mainly on the children's rights to hearing and consent and that they have the right to speak freely on all issues concerning them, as well as their opinions must be carefully considered in strict compliance with their age and maturity. Such a right applies to the participation of children in the litigations impacting them (UNCRC, 1989; Daly, 2011; Raitt, December 2011; Mol, 2019; Janočková, Ulehlová, & Vavříčková, 2017; Bessner, 2002; Fernando, 2014; Lansdown, 2011). It is considered that if children's voices are to be taken for decision-making, it might turn out bad decision and it will be damaging and we do not need to hold children responsible for their

choices. According to (Henaghan, 2008) children's voices and their choices are very important.

The "best interests of the child" concept is typically used as the foundation for the judges' decisions on custody issues; however, the concept is abstract and too frequently interpreted by the judges' personal opinions (Nurlaelawati, E., 2016).

A study done by (Khan, M. M. A., 2020) when divorcing couples have kids, there is a lot of litigation. Both parents wish to have custody of the child. However, given Pakistan's legal system and societal structure, after following a divorce, the kids can't live with both parents. Because one parent is more suited to raising the children, courts must grant custody to that parent. The courts take into consideration specific criteria and circumstances when deciding which parent will get custody of the child, which ultimately determines the welfare and best interests of the child. It's interesting to note that the father is always expected to take care of the family's financial needs because, according to Islam, he is the one who is responsible for maintaining the children. The jurisprudence of custody, however, varies depending on several conditions, even though any deviations are always justified by the best interests of the kid premise.

EXPLORING GAPS IN PAKISTANI LAWS REGARDING CHILD CUSTODY

Several laws impact the custody of minors, such as the C.P.C., 1908, the Majority Act of 1875, High Court Rules and Orders, and the Punjab Court of Wards Act 1903. However, the most significant of these laws is the Guardians and Wards Act of 1890. According to the Guardians and Wards Act, of 1890, "guardianship" refers to custody, and a "guardian" is someone who acts as a custodian. Due to the absence of clear legislation defining custody norms, judicial precedents are relied upon. Custody was described as "actual or virtual possession for protection" by the Khyber Pakhtunkhwa Apex Court in *Juma Khan Versus Gul Faroasha* (1972). The "upbringing of a minor child by the mother or by someone legally entitled to it" is another definition of custody given in *Sultana Begum V/s Meer Afzal* (1988). When a kid is small, custody is typically given to the mother; subsequently, it may be transferred to the father. The mother should be given preference over other family members, including the father, in order to spend the child's formative years with them. This presumption

is questionable, though, because the custodian's right to custody can be removed because of moral failings.

The mother's right to custody may also be withdrawn in specific situations. In the case of *Imtiaz Bagum v Tariq Mahmud* (1995), the court determined, for instance, that the mother has a preferred right to custody throughout the breastfeeding period and will forfeit that right if she chooses not to breastfeed the child. This interpretation, however, goes against the fundamental principles of Islamic law. The father must pay a lady to breastfeed the child if the mother refuses to do so after parental separation, and the mother cannot lose custody merely because she chooses not to nurse.

In most cases, a mother has custody of her baby boy until he is seven years old, and she has custody of her daughter until she reaches puberty. The custody of a minor is granted to the mother until the child reaches the age of formal schooling (*Imtiaz Bagum versus Tariq Mahmud*, 1995). The court ruled that the specific age for ending custody should be determined by the customs of the area where the parents live. The case mentioned above illustrates a judge deviating from Sharia laws, and such decisions also impact custodial rights. However, judges would not have been able to apply their judgment if laws governing the duration of custody had been enacted.

According to the court, Islamic law does not require a fixed age of 7 or 9. If a minor reaches the age of attending school, that becomes the criterion for terminating custody. Consequently, a mother could have custody of a minor until he or she reaches the age of three and a half years, as most children in urban areas of Pakistan start school at this age. In rural areas, this age is likely to be around five years, which is lower than the age set by legal experts. However, most courts do not follow this model and believe that a mother has the right to custody of a male minor until he is seven years old and a female until she reaches puberty.

WELFARE OF A CHILD

The best interests, welfare, or well-being of a minor are accorded important priority in our national law. This is established by considering the child's age, gender, and religion, as well as the actions and abilities of the guardian and their closeness to the child. If the minor is capable of formulating such a choice, it is taken into

consideration as well. In any case involving a child, the judge prioritizes the child's upbringing and the parents' rights over the child's welfare. The welfare of minors is declared as the most significant determinant. The well-being and welfare of minors are defined as "the child's health, schooling, physical, cognitive, and psychological development" (Feroza Begum Vs. M. Hussain, 1978), (Christine Brass versus Javed Iqbal, 1981), (Mariam Zuhra versus Younus Jmaal, 1986), (Mahtaab Merzaa versus Mst. Shaaziya Mensur, 2005), (Mst. Nazli versus M. Ilyas, 2010).

Additionally, the child's comforts, moral and spiritual well-being, as well as their faith, are also taken into account. Courts, when adopting the welfare concept, often deviate from the established beliefs of most Islamic jurists. When the well-being of a minor conflicts with Islamic law, the child's interests are prioritized. For instance, a newlywed mother was given custody of her child from her first marriage (M. Bashir versus G. Fatima, 1953). The judges explained their departure from Islamic laws by asserting that in Islam, the well-being of a child takes precedence, and all Islamic law regulations are applied with that in mind. When there is a dispute between the best interests and Islamic law regulations, the best interests take precedence.

CUSTODIAN'S REQUIREMENTS

The custodian of a minor must meet specific criteria according to case law. When examining the credentials of the custodian, it was ruled that the custodian ought not to be *fsiq*, i.e., a sinner, and *Khain*, i.e., dishonest (Imtiaz Begum V/s Tariq Mehmud, 1995). The judges defined *fsiq* as the opposite of *aadil* (just) and *Khain* as the opposite of *ameen* (truthful). If the judges find grounds for saying that a person is *fsiq* or *Khain*, they will be disqualified. There seems to be no requirement for a judicial conviction. The conduct of the custodian influences custody matters. Another requirement for a custodian is that he or she must be *Mehram* to the minor. It was settled in the case law that a mother must not marry someone unrelated to the minor if she is the custodian, particularly when she has custody of a girl child (Rukaya Yasmeen V/s M. Raiz, 1991) (Mst. Yasmeen BB versus Mahmud Akhter, 2004). Additionally, once the marriage between the new husband and the mother is consummated, it cannot be claimed

that he falls within the prohibited degrees of affinity, and the new husband should be consanguineously related to the minor within the forbidden degree (*Muhammad Bashir v Ghulam Fatima*, 1953). The rationale for the mother's disqualification upon remarriage is that her focus may be distracted by the new family and children from the second marriage. However, in some situations, the courts have taken the position that the minor must not be kept away from his/her mother if it is in the child's best interests to remain with his/her mother, even if she has newly married someone unrelated to the minor within the prohibited degrees.

The educational and financial conditions of the parties are taken into account, and the courts grant custody to the parent who is better educated and self-sufficient. The emotional bond between the minor and each parent is also considered by the judges. Moreover, the custodian must be of the same faith as the minor, according to domestic courts. A child adopts their father's faith and social standing. Recantation and conversion are grounds for the mother to be denied custody of the child. However, a Christian, Jewish, or Kitaabiyah woman is allowed to enjoy custody of her child. The custodian must be physically and mentally healthy, as well as have high personal integrity and standing. A person who does not meet any of the aforementioned requirements cannot become a custodian. The courts in Pakistan take the position that mere accusations of unchastely or poor character are insufficient to disqualify the custodian. In one case, a mother of a minor prayed for custody, but her husband accused her of having a poor character and contended that the mother was not qualified for custody of her children. The court refused to grant custody of the children to the woman because of her poor character (*Munwar BB V/s Muhammad Ameen*, 1995). However, the court of appeals acknowledged the mother's argument and granted her custody. The apex court upheld the lower court's decision, awarding custody to the father due to the mother's poor character and incapacity to raise the children. The Supreme Court concluded the case by acquitting the woman and ruled that her acquittal established her innocence, and the mere fact that she filed an appeal cannot be grounds to remove the assumption of her innocence.

Regarding the mother's financial situation, the courts are inconsistent in their assessment of her claim to custody based on her

financial stability. Although maintenance is the father's responsibility, the Lahore High Court considered the mother's budget when awarding custody to the dad (Imtiaz Begum V/s Tariq Mahmud, 1995). However, this decision was overturned by the appellate court, stating that a woman cannot be denied custody even if she is unable to provide for her child since child maintenance is the father's responsibility (Mst. Feroz Bagum V/s Lt. Colonel M. Hussain, 1983). The mother's custody could not be taken away solely because of her low financial situation, even though she worked (Mst. Abida v A. Latif, 2002). The mother was granted custody because the court believed she could provide the child with a proper education and other basic needs.

Furthermore, visitation privileges are granted to the parent who does not have custody. The Act of 1890, on the other hand, does not specifically address this subject. The non-custodial parent can seek visiting rights under the Family Courts Act 1964. This law does not impose restrictions on the length or frequency of visits. If the woman has custody of her child, her husband can initiate a lawsuit to request regular visitation with the child, and vice versa. The examination of the preceding provisions of the Guardian and Wards Act and case laws reveals how courts exercise discretion in determining custody issues due to legal loopholes in the Act. This wide discretion sometimes leads to conflicting judgments. Legislation that outlines specific custody standards can limit the courts' discretion and provide clarity and consistency to Pakistan's judicial system.

THE PROSPECTS AND POSSIBILITIES OF HEARING CHILDREN'S CONSENT

The right for children to be heard and obtain consent in family cases continues to be an important issue for legal scholars. Studies have shown that involving children in decision-making processes can empower them and help them cope with the effects of parental separation or divorce. However, there are difficulties in implementing this provision due to the complexities of the law and the need to balance the child's autonomy with their protection.

Pakistan must modify its legal system. This modification is necessary so that this notion does not remain hypothetical, but rather the minor is provided with a genuine chance to exercise their rights. The main premise, stemming from the Guardian and Wards Act, of

1890, judicial precedents, and the basic guidelines in Sharia and Western Jurisprudence, is that a child has the right to express their consent and viewpoints in all court hearings that affect their best interests. This right includes the right to acquire every necessary detail regarding the hearings in a manner suitable to the minor's age and maturity level. Additionally, children have the right to be notified about the potential implications of court rulings, and their consent must be taken into account by the court.

Each fundamental human right includes a claim to subjective protection, a responsibility on the part of others, and a consideration of how the right should be exercised, safeguarded, maintained, and protected against infringement. Western countries have committed to helping minor children openly voice their consent on all topics affecting them and paying close attention to their viewpoints. However, these rights are contingent on each child's maturity, not just physically but also mentally and ethically, as well as their capacity to communicate their point of view. Domestic laws are responsible for determining the standards for measuring a child's development and active involvement in court hearings. As a result, there are variations in how different countries treat the rights of hearing and the consent of children in family cases after parental divorce. These variations in interpretation and implementation can pose significant challenges, as comparable cases can be handled very differently in different countries.

The Convention on the Rights of the Child, 1989 grants rights to minors without regard to their differences, although some rights are reserved for older minors with sufficient maturity and awareness. The rights of hearing and the consent of children in family cases cannot be exercised by a minor who is unable to comprehend the subject at hand. However, no child should be prejudiced against because of their race, color, gender, ethnicity, religion, cultural or socioeconomic background, nationality, disability, ancestry, or status, among other things (UNCRC, 1989). In terms of custody regulations, Sharia and Pakistani laws do not align for girls and boys, leading to a breach of the provisions of the Convention and an inequality between parents (Hashemi, 2007).

The disparity in custody regulations concerning minor children is due to social standards and expectations. The father is considered the

caretaker of the child. Custody laws based on a child's age are not absolute and are contingent on the child's best interests. If a custody regulation conflicts with the child's welfare, the latter takes precedence.

Moreover, the child's consent and viewpoints should be given appropriate consideration, considering their age and maturity. Listening to children is not enough; their consent and viewpoints must be considered when making important judgments that influence their lives. However, the weight given to the child's consent and views must be qualified. Courts must consider the child's understanding of the situation's consequences. It's important to remember that age alone cannot always indicate a child's level of understanding. Different children may exhibit a significant level of maturity at various ages.

The impact of an issue on a child should also be considered. The greater the impact on a child's life, the more critical it is to evaluate their maturity and age properly. If a young child expresses an interest in playing outdoors in the winter, the repercussions are minimal: they can come inside if they feel uncomfortable, and the risk is minimal. However, if a young combatant desires to return to their village after being stationed in a camp, a judgment must be made based on the level of danger they are likely to face and their understanding of that danger. If it is not possible to comply with the child's consent and preferences, they should be informed of the decision as well as the justifications for it. Fathers, mothers, legal guardians, older relatives, and people in the community must provide guidance that takes into consideration the child's growing ability to exercise their rights (UNCRC, 1989). The more capable children are the more independence and responsibility they should be allowed in making decisions for them.

Minors have the right to know about their rights of hearing, how they can be heard before a court of law, how judges make judgments, and the Pakistani government is urged to enact legislation requiring all decision-makers in administrative or judicial hearings to inform children about the hearing process. This legislation should also outline how their consents and viewpoints will be considered, how much weight will be given to their consent, and the methods that will facilitate the exercise of this right.

LEGAL CHALLENGES WHILE ADJUDICATING CUSTODY AND GUARDIANSHIP CASES

In guardianship matters, courts have to exercise quasi-parental jurisdiction and the supreme consideration in such context is the welfare of the minor. To achieve such a purpose, courts have unfettered powers. (Fahad Ahmed, 2017) Adjudicating custody and guardianship cases is complex and challenging for judges. Several research studies have shown that judges face numerous challenges, including managing hostile relationships and allegations of abuse or neglect. There is a need for clear guidelines on how judges can balance the competing interests of the parents and the child while ensuring that the child's best interests are met.

CHALLENGES TO CHILD CUSTODY

The study has shown different trends and challenges to custody of a child. It is noteworthy to mention that while deciding the custody matters, psychology parenthood is to be considered as well as other criteria. One of the studies examines the critically growing problem of divorce-related child custody. The lack of clear and uniform custody guidelines underpin custodian selection. The concept of psychological parenthood is offered as one criterion to assist in this crucial selection process; a concept which responds to the best interest of the child as well as to the practical demands inherent in the legal system (Wissö et. al., 2019).

In Pakistan, only the Judges have the authority to make decisions as to the custody of a child but in some Western countries mental health professionals are also considered along with the judges who are involved in making decisions about child custody.

A child's best interest has to be given priority, Judges over time have been facing this challenge as to what should they consider when there's a contradiction between a child's best interest or to strictly follow the precedents. The researchers in a study provide a brief historical review of judicial trends in child custody placement. In contrast to the start of the 19th century, by its end, courts took into consideration children's best interests, maternal rights, and prevailing sex role ideologies. Statutory changes began to reflect similar concerns by the end of that century. Modern practices, relying on the best interests of the child standard, also include consistent consideration of

children's preferences in making custody determinations (Kanairara & Corrin, 2019).

AGE TO DETERMINE THE MATURITY OF A CHILD

In most cases, there is inconsistency in judges' views regarding the minor's right to a hearing and expressing consent. However, the judiciary has requested the child's preference if the child is mature enough to make a decision. The court stated that Islamic law does not require a fixed age of 7 or 9 for termination of custody. Instead, if a minor attends school at a certain age, it becomes the criterion for determining custody termination (Imtiaz Bagum V/s Tariq Mahmud, 1995). However, the court ruled that the age would be decided based on the customs of the area where the parents live. In urban areas of Pakistan, the majority of children start school at around three and a half years old. In rural areas, this age is likely to be around 5 years, which is lower than the age set by legal experts.

Moreover, according to the Hanafi School of thought, a child cannot enjoy the right to express their consent. However, in rare circumstances, judges depart from this concept and consider the child's consent and decision. While some argue that a girl child is not given the right to express her consent in this context, Sharia law have established no difference and have questioned female children for their consent (Nazeer A. V/s ADJ III Sahiwal, 1988); (Court L. H., Fehmeeda Bagum vs Habeeb Ahmad, 1968). In some other instances, judges chose not to ask the child's consent because they felt it was unnecessary to do so. Children should enjoy the right of hearing and expressing their consent and their consent should be a major consideration. However, it cannot be the deciding factor in custody disputes. Moreover, if a child's decision conflicts with their well-being, the latter takes precedence. Judges have also noted that older individuals can influence minors to make certain decisions. The Supreme Court ruled that a child may not be the sole decision-maker regarding their welfare (Ayesha vs Munzoor Hussain, 1985). Therefore, their consent may be considered when it doesn't conflict with their well-being. In one case, the mother was granted custody of her seven-year-old son, as the laws regarding custody are not found in the Holy Quran or Sunnah, allowing judges to deviate from the standards of Sharia law (Zuhera Bagum vs Latif A. Munawar, 1965).

Additionally, Ijtehaad allows judges to reach their findings. Due to inconsistencies in the textbooks, judges might deviate from them if implementation is detrimental to the child's best interests.

The judge's methodology has been questioned, with some claiming that judges are incapable of conducting Ijtehaad. When deciding on custody, judges consider the majority of judgments by Sharia Law jurists, which state that custody of a son passes to the father at the age of seven. Additionally, after reaching puberty, a girl's custody is given to her father. However, in such circumstances, the well-being of the minor is of utmost importance. If the judges determine that staying with the mother is in the best interests of the child, the father will not be granted custody even when the child reaches the aforementioned years. If the court determines that staying with the mother during the child's formative years may not be in the child's best interests, the mother may lose custody (*Hameeda Bagum V/s Abdullah*, 1989). When the rights of the father and mother and the welfare of the minor clash, the latter takes precedence.

Furthermore, if the father and mother of the minor agree on custody arrangements, the judges have the authority to overturn it if circumstances warrant it (*Taj BiBi versus Khuda Buksh*, 1988) (*Tahira V/s ADJ Rawalpindi*, 1990). Additionally, in the case if father sought custody of a minor between the ages of 10 and 12 who were under the custody of the mother? The judge ruled that the father would be granted custody provided he reimbursed the mother for all expenses related to the minor's maintenance. However, the Karachi High Court ruled that imposing such a restriction was unconstitutional. It was ruled that the welfare of the minor, not the well-being of the father and mother, should be the key determinant in custody issues. Custody is a right that belongs to the minor, not either of the father or mother.

The claim to do *ijtihad* is based on the judiciary's broad discretion in the area of children's law, leading to a shortage of comprehensive legislation. Judges must rely on judicial precedents or exercise personal judgment. Even though the Act of 1890 is grounded in Western British law, courts interpret its provisions in line with Sharia law. In the area of custody, there have been numerous contradictory court rulings. When interpreting domestic laws, the judiciary mostly applies Sharia doctrines. However, in cases of conflict with Sharia Law, the best interests of the minor take

precedence. Due to the absence of unified legislation, courts may issue conflicting judgments. There are no guidelines to assist the judiciary in resolving contradictions between laws related to a minor's general welfare and independence. As a result, courts adopt different approaches to these issues. To address these challenges, our country needs comprehensive legislation regarding the rights of children.

CONCLUSION

The primary objective has been to come up with solutions that would address the gaps in the Guardian and Wards Act of 1890, which primarily states that the best interests and welfare of the child must be the chief concern in all matters involving children. During British colonization, the Guardian and Wards Act of 1890 were enacted, today's Pakistani courts also follow the guidelines of Muhammadan Law. Therefore, it is crucial to consolidate the various laws about children's rights and ensure that the child's welfare always takes precedence over Muhammadan Law. In Pakistan, steps have been taken to amend laws regarding child custody, but comprehensive legislation specifying the details of child custody has not yet been enacted. Such legislation would limit the broad discretionary powers of judges and promote consistent decision-making, which is a fundamental goal for every legal system.

RECOMMENDATIONS

Based on research observations, children are still frequently perceived as objects of choice rather than as individuals involved in the decision-making process. A youngster should be given equal opportunity to participate in case hearings and a child's right to take part in procedures should be acknowledged, not viewed as a burden or an obligation.

The child should be represented by a third party, such as a lawyer or welfare official. The use of the participation principle should concentrate on specific situations and be thoroughly examined for accessibility.

The Guardian and Wards Act of 1890 should be updated to include new sections requiring judges to hear from minors who demonstrate an interest in giving consent and expressing their opinions. A judge is required to weigh the pros and cons of hearing a kid and to explain their reasoning. Particularly when declining to hear

from a minor or coming to a conclusion that goes against the child's will and permission.

Ensure that the legal processes and terminology used in custody hearings are child-friendly and simple to grasp. To assist children in navigating the procedure, this may entail utilizing simplified language, and visual aids, or offering support in the form of child advocates or middlemen or a multidisciplinary joint body, such as a justice and psychology group, to listen to children.

To reduce the risk of mental or emotional injury, the person delivering the information and counseling to the minor should have the requisite training in psychoanalysis or education.

Regularly assess the performance of the modified legislation and related practices to find any additional areas for improvement. To guarantee that the system is continually improved, this may entail asking children, parents, legal experts, and other stakeholders for feedback.

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