Hizanat (Custody of Minors) Under Pakistani Law

The Mother's Preferential Right, the Welfare Principle and Their Limits

A study of 99 reported judgments of the Supreme Court, the Federal Shariat Court, the Peshawar High Court and other High Courts (1954–2026)

Adv. Syed Zeshan Hashmi
Advocate High Court
The Arbitrator & Law Associates, Peshawar

Abstract

Custody of children is among the most painful disputes that reach the family courts of Khyber Pakhtunkhwa. Islamic law gives the mother a preferential right of custody, *hizanat*, over a son until seven and a daughter until puberty, while the father remains the natural guardian. The Guardians and Wards Act, 1890 makes the welfare of the minor the controlling test. This paper reads 99 reported judgments spanning seven decades — 55 of the Supreme Court, 1 of the Federal Shariat Court, 37 of the Peshawar High Court and 6 of other High Courts — to see how the two rules work together. It finds that, from the Supreme Court's earliest custody decisions to its judgments of 2026, the courts have treated hizanat as a strong presumption of where welfare lies, not as an absolute right of either parent. A mother does not lose custody merely because she is poor, disabled, working or remarried; she cannot be made to give up hizanat by agreement, khula or jirga; and the father's duty to maintain the child continues whoever has custody. Equally, the presumption gives way where the evidence shows the child would be harmed. The paper identifies five unsettled points, chiefly the burden of proof after the mother's remarriage and the reach of habeas corpus, and closes with a practical guide for both sides.

Keywords: hizanat; custody of minor; welfare of minor; Guardians and Wards Act 1890, sections 7, 12, 17, 25; remarriage of mother; habeas corpus section 491 Cr.P.C.; visitation; Peshawar High Court.

1. Introduction

When a marriage breaks down, the first question in most homes in Peshawar is not property but the children: who keeps them, who visits them and who pays for them. Parties often arrive in court believing the answer is fixed by age alone: the mother keeps a boy until seven and a girl until puberty, after which the father takes over. That belief is half right. The age rule is real and comes from Muslim personal law, but every court that decides custody is bound by sections 17 and 25 of the Guardians and Wards Act, 1890 to put the welfare of the minor first.

This paper asks four practical questions. What exactly is hizanat and who holds it? When does the mother lose it? How far does the court depart from it in the name of welfare? And which remedy should a parent use: a guardian petition, an application for interim custody, or habeas corpus?

2. Sources and Method

All research was done on the Pakistan Law Site only. Searches were run for the term "hizanat" in all courts and for "custody minor" in the Supreme Court (213 results), the Peshawar High Court (75 results) and the Federal Shariat Court, across all years, and every page of results was read. 99 judgments were selected: the Supreme Court, Federal Shariat Court and Peshawar High Court judgments that decide a point on custody of minors (orders that only grant leave, and repetitive orders, were left out), and six judgments of other High Courts that explain the concept of hizanat or settle a point not yet covered in Peshawar. Judgments that only mentioned custody in another sense (police custody, criminal appeals) were excluded.

Each proposition in this paper is taken from the reported head note of the judgment as published on the Pakistan Law Site; entries in Annexure A are therefore marked with a dagger (†). Full texts, benches and dates should be checked before any judgment is cited in court. Citations are given in the usual form (for example PLD 2024 SC 291; 2026 CLC 1052 (Peshawar)).

3. The Legal Framework in Brief

Personal law. Paragraph 352 of Mulla's *Principles of Mahomedan Law* gives the mother custody of a son until he completes seven years and of a daughter until puberty; the right survives divorce but, under paragraph 354, may be lost on marriage to a man not related to the child within the prohibited degrees, among other grounds. Under Shia law the periods are two years for a boy and seven for a girl; under Shafi'i law a daughter stays with the mother until her marriage (Sadia Aziz v. D.P.O., PLD 2025 Lahore 540). In the absence of the parents, the maternal grandmother has been held to have a preferential right (Mst. Anila v. Mst. Rafia, 2011 YLR 593 (Peshawar)).

Hizanat and wilayat are different. The father is the natural guardian (*wali*) of the person and property of the child; hizanat is physical custody and nurture. The word comes from *hizan*, the lap, and the courts describe it as a privilege assigned to the mother for the child's benefit (PLD 2025 Lahore 540). The two coexist: the father's guardianship does not end while the child is with the mother, which is why a father cannot be prosecuted for kidnapping his own child (Yasir Farooq v. SHO, 2022 PCrLJN 129 (Islamabad)).

Statute. Section 7 of the Guardians and Wards Act, 1890 allows the court to appoint a guardian where it is satisfied this is for the minor's welfare; section 12 allows interim custody; section 17 requires the court to be guided by the minor's personal law but always consistently with welfare; section 25 governs return of a ward to a guardian. Since 1964 custody and visitation are also matters for the Family Court under the Family Courts Act (Sidra Hameed v. Syed Abdul Mateen, PLD 2025 SC 310). The Federal Shariat Court has held that subordinating the parents' titles to welfare is consistent with Islamic jurisprudence (Hammad Hussain v. Federation of Pakistan, PLD 2021 FSC 50).

4. The Law in Four Phases

4.1 Phase one: the foundations (1954–2000)

The basic rules were settled early. As far back as 1954 the Peshawar court held that the mother keeps a girl until puberty and the father must maintain her even so (Umara Khan v. Mst. Sultana, PLD 1954 Peshawar 13). The Supreme Court then held that the Guardian Judge acts in loco parentis and is not bound by technicalities, and that the right to custody is a continuing one, so a fresh application on new grounds lies (Khizar Hayat Khan Tiwana v. Zainab Begum, PLD 1967 SC 402). Welfare is a question of fact to be decided on the material, not on presumption, and a mother may be deprived of children of tender age only when welfare demands it (Rahimullah Choudhury v. Helali Begum, 1974 SCMR 305). Poverty is no ground against the mother (Sakhawat Ali v. Mst. Shui Khelay, PLD 1981 SC 454; Feroze Begum v. Muhammad Hussain, 1983 SCMR 606), though her custody is subject to the father's control as natural guardian (1983 SCMR 606).

This period also fixed the father's side of the rule. After seven, a boy's welfare is presumed to lie with the father (Shamim v. Niamat Ali, 1981 SCMR 635); a remarried mother cannot keep a daughter where that would place her with a stepfather outside the prohibited degrees (Mst. Nazir v. Ghulam Mustafa, 1981 SCMR 200); and the minor is not the best judge of his own welfare (Aisha v. Manzoor Hussain, PLD 1985 SC 436). But the presumption was never absolute: a neglectful father lost a 15-year-old boy to the maternal aunt who had raised him (Nighat Firdous v. Khadim Hussain, 1998 SCMR 1593), and a father may disentitle himself by his conduct (Firdous Iqbal v. Shifaat Ali, 2000 SCMR 838). In Peshawar, an educated mother's remarriage was held not to disqualify her against an alcoholic father with criminal cases, because parental rights exist for the child's benefit (Gulnaz Bibi v. Rafaqat Ali Shah, PLD 2000 Peshawar 23).

4.2 Phase two: hizanat as the starting rule (2001–2013)

In the next decade the courts applied the age rule in the mother's favour while making clear that it served welfare. The Supreme Court held that on remarriage the mother loses her *preferential* right but may still be given custody if welfare requires (Mst. Shahista Naz v. Muhammad Naeem Ahmed, 2004 SCMR 990), and refused to move boys over seven from a remarried mother with whom they were settled (Sardar Hussain v. Mst. Parveen Umer, PLD 2004 SC 357, affirming 2003 YLR 3054 (Peshawar)). A private compromise to hand over a child at seven does not bind the court when circumstances change (Mst. Hameed Mai v. Irshad Hussain, PLD 2002 SC 267). The Peshawar High Court refused to let poverty or a father's long neglect decide the case (Mst. Jamila Bang v. Mirza Muhammad, 2003 YLR 1337 (Peshawar); Najma Yasmin v. Javed Akhtar, 2003 CLC 729 (Peshawar)).

The earlier Peshawar judgments apply the age rule firmly in the mother's favour and treat attempts to take very young children from her as against nature. A four-year-old belonged to the mother "as a matter of right" during hizanat (Zahoor Ahmad v. Mst. Fahima Hafeez, 2012 CLC 1932 (Peshawar)). The lap of the mother was described as "God's own cradle" and poverty was rejected as a ground (Mst. Fauzia Begum v. Amin Saddruddin, 2007 CLC 1403 (Peshawar)). Wealth was held to be no substitute for a mother's care (Rashid Iqbal v. Mst. Uzma Khan, 2010 YLR 3246 (Peshawar)). Even in this period, however, the court described its role as that of a wise parent and refused to apply personal law "blindly or in automatic fashion" after the age of hizanat (Mst. Nafeesa v. Mir Bahadur, 2013 CLC 1784 (Peshawar)).

4.3 Phase three: welfare takes the lead (2014–2021)

In 2014 the Supreme Court restated the strict rule: a mother who marries a man not related to the daughter within the prohibited degrees becomes disentitled, and custody belongs to the father unless there are exceptional circumstances (Mst. Shabana Naz v. Muhammad Saleem, 2014 SCMR 343). Alongside that, it built a series of protective rules around the mother and child. A mother cannot be made to surrender custody to obtain khula, and such a term is void under sections 23 and 25 of the Contract Act (Mst. Beena v. Raja Muhammad, PLD 2020 SC 508). A jirga has no power to decide custody, and a mother's dependence on her parents is no ground against her because the father must maintain the child (Mir Bat Khan v. Mst. Sherin Bibi, 2019 SCMR 520). Ex parte guardianship certificates obtained by concealing the mother were set aside (Shaukat Masih v. Mst. Farhat Parkash, 2015 SCMR 731; Mirjam Aberras Lehdeaho v. SHO, 2018 SCMR 427). At the same time the Court showed that the father is not displaced lightly: after the mother's death, children past the age of hizanat went to a devoted father rather than the maternal grandmother (Nasir Raza v. ADJ Jhelum, 2018 SCMR 590). The Federal Shariat Court confirmed that both the father's title and the mother's lap are subordinate to welfare (PLD 2021 FSC 50).

4.4 Phase four: the child's best interests and the child's voice (2022–2026)

The most recent judgments speak of the "best interests" of the child in the language of the UN Convention on the Rights of the Child. Welfare is "all encompassing" and has "no mathematical formula" (Raja Muhammad Owais v. Mst. Nazia Jabeen, 2022 SCMR 2123). A decision without a reasoned finding on welfare cannot stand (Shaista Habib v. Muhammad Arif Habib, PLD 2024 SC 629). Any agreement by which the mother waives hizanat is unenforceable (Mst. Haseena Bibi v. Abdul Haleem, PLD 2024 SC 291). A child must be heard, and a mother's professional work does not count against her (Dr. Muhammad Asif v. Dr. Sana Sattar, PLD 2026 SC 238). Mediation is encouraged (Khurrum Javed v. Ahmed Bilal, PLD 2026 SC 118), and the father's duty of maintenance is not lessened because the child is in the mother's hizanat (Muhammad Imran Baqir v. Mst. Zarnain Arzoo, PLD 2026 SC 170). The Peshawar High Court has followed: welfare must be proved by evidence, not presumed (Saeed Khan v. Mst. Rozina Bibi, 2026 CLC 1052 (Peshawar)), and a reluctant child is not a reason to cancel the father's visitation (Madad Khan v. Mst. Samiya Nisar, PLD 2025 Peshawar 201).

5. When the Mother Keeps Custody, and When She Loses It

5.1 Grounds that do not defeat the mother

- **Poverty or dependence on her parents** — the father must maintain the child (2019 SCMR 520; PLD 2025 SC 47; 2007 CLC 1403 (Peshawar)).
- **Disability or lack of income** — not determinative (PLD 2020 SC 508).
- **Working outside the home** — reflects resilience, not unsuitability (PLD 2026 SC 238).
- **An agreement, compromise, khula term or jirga decision** giving up custody — void and unenforceable (PLD 2024 SC 291; PLD 2020 SC 508; 2019 SCMR 520; PLD 2019 Lahore 281).
- **Unproved allegations** of insanity or disease (2017 CLCN 59 (Peshawar); 2012 CLC 1932 (Peshawar)).

5.2 Remarriage of the mother

This is the question most often litigated. The modern position of the Supreme Court is that remarriage "cannot become a stand alone reason" to disqualify the mother (2022 SCMR 2123), "does not ipso facto disentitle her" (Asjad Ullah v. Mst. Asia Bano, PLD 2025 SC 541) and, read with the CRC and CEDAW, gives no justification for separating mother and child (Mst. Qurat-ul-Ain v. SHO, 2024 SCMR 486). This softens the older line, under which a remarried mother lost a daughter to the father (1981 SCMR 200; 2014 SCMR 343) or lost the child when she moved abroad to join her new husband (Mst. Ammara Waseem v. Syed Khawar Hussain, 2011 SCMR 148). The Peshawar High Court puts it precisely: on remarriage the mother loses her *preferential* right, not her eligibility (2026 CLC 1052 (Peshawar)). But remarriage can tip the balance when it brings real harm: in Mst. Shama v. Said Amin Shah, 2026 MLD 908 (Peshawar), a remarriage that introduced strained relations and criminal allegations was treated as an exceptional circumstance, and custody went to the father.

5.3 Who else may hold custody

Grandparents may keep a child where the welfare evidence supports it. The Peshawar High Court left a girl with her maternal grandmother where the father had remarried, never maintained her and was unknown to her (Mst. Anwari Bibi v. Hidayat Ullah Khan, 2020 MLD 302 (Peshawar)), and recognised the maternal grandmother's preferential right after the parents (Mst. Anila v. Mst. Rafia, 2011 YLR 593 (Peshawar)). The Supreme Court left children with a maternal grandfather where the father had neglected them (Rashid Hussain v. ADJ, PLD 2022 SC 32). But a widowed mother is preferred to the paternal grandfather (Mst. Neelofar v. Muhammad Khan, 2025 CLC 145 (Peshawar)). The Supreme Court has repeatedly left children with maternal grandparents or a maternal aunt who raised them where both parents had remarried or the father had neglected the child (Zafar Iqbal v. Rehmat Jan, 1994 SCMR 339; Zahoor Ahmed v. Rukhsana Kausar, 2000 SCMR 707; Mst. Naseem Akhtar v. District Judge, Multan, 2009 SCMR 1052; 1998 SCMR 1593), and custody is not given to a stranger (2013 CLC 1784 (Peshawar)).

5.4 When the father succeeds

The father succeeds where the evidence shows the child is better off with him: after the age of hizanat with a devoted home (2018 SCMR 590); where the mother's remarriage harms the child (2026 MLD 908 (Peshawar)); or where the child's stated wishes were shown to be the product of tutoring by the other side (Abdul Ghaffar v. Shoukat, 2022 YLR 2482 (Peshawar)). He fails where he lives abroad and litigates through an attorney (PLD 2025 SC 47; PLD 2025 SC 541), has remarried and is away for work (2026 CLC 1052 (Peshawar); 2012 CLC 759 (Peshawar)), or has no income and a criminal record (Malik Khursheed v. Mst. Tehseen Bibi, 2023 CLC 916 (Peshawar)).

6. Remedies and Procedure

- **Guardian petition (sections 7 and 25)** — the proper forum for final custody; the Family Court decides on evidence. Territorial jurisdiction follows the Family Courts Act and Rules, so a mother may sue where she ordinarily resides (Muhammad Ashar Malik v. Sana Ashar, 2018 MLD 2001 (Peshawar)). Cases may be transferred between provinces (PLD 2025 SC 310).
- **Interim custody (section 12)** — available without proving urgency (Mujeeb-ur-Rehman v. Mst. Mehroon Nisa, 2019 CLC 1352 (Peshawar)). Interim orders are rarely disturbed in appeal (Khawaja Adnan Zafar v. Hina Bashir, 2024 SCMR 1295).
- **Appeal from the Guardian Judge** — lies to the District Judge under section 14 of the Family Courts Act (Akbar Jan v. Bibi Nasim, 2000 YLR 2652 (Peshawar)); interim custody needs no full

evidence (Nazar Gul v. Sessions Judge, PLD 1999 Peshawar 59).

- **Habeas corpus (section 491 Cr.P.C. / Article 199)** — maintainable even while a guardian case is pending, mainly to restore a child of tender age recently removed from the mother (Mst. Basri Irshad v. Tauqir Hayat, 2021 YLR 1267 (Peshawar); 2018 SCMR 427). It is summary and exceptional (Rashid Khan v. Mst. Momna Jadoon, 2021 MLD 725 (Peshawar)), not a substitute for the guardian case (2009 MLD 258 (Peshawar); 2011 PCrLJ 594 (Peshawar)), and is not issued as a matter of course against a parent (2024 SCMR 486).
- **Challenge to the appellate judgment** — a constitutional petition, not a revision, and only for misreading, non-reading or error of law (Mst. Ulfat Shaheen v. Akram Khan, 2006 CLC 51 (Peshawar)).
- **Visitation** — an inherent right of the non-custodial parent; courts can order supervised meetings or sureties (PLD 2025 Peshawar 201; 2018 YLR 20 (Peshawar)).

7. Conflicts and Gaps in the Case Law

- **(i) Remarriage and the burden of proof.** One line of Supreme Court authority treats remarriage to a stranger as disentitling the mother unless she shows exceptional circumstances (1981 SCMR 200; 2014 SCMR 343), and the Sindh High Court follows it (Yasir Kalwar v. Mst. Farzeen, PLD 2025 Sindh 134); another line (2004 SCMR 990; 2022 SCMR 2123; 2024 SCMR 486; PLD 2025 SC 541) and the Peshawar High Court (2026 CLC 1052) treat remarriage as one factor and require evidence of detriment. The later Supreme Court view should prevail, but no larger bench has reconciled the two lines.
- **(ii) The child's voice.** PLD 2026 SC 238 requires that the child be heard and seriously considered; 2022 YLR 2482 (Peshawar) warns that a preference may be tutored. No judgment sets a procedure or minimum age for hearing the child.
- **(iii) Reach of habeas corpus.** Section 491 is not barred by the Guardians and Wards Act (PLD 1995 SC 633) and is used to restore infants to mothers (1987 SCMR 174; 2021 YLR 1267 (Peshawar)), but it cannot decide custody for all time (1988 SCMR 1891) and fails after unexplained delay (2001 SCMR 1782), while the Supreme Court has deprecated the readiness to issue such writs (2024 SCMR 486). Practitioners must show recent removal, tender age and urgency.
- **(iv) Grandparents' rank.** The maternal grandmother is said to have a preferential right (2011 YLR 593 (Peshawar); 2020 MLD 302 (Peshawar)), yet a father past the age of hizanat displaced her (2018 SCMR 590). Preference depends on whether the child is still within hizanat.
- **(v) Sects.** Shia and Shafi'i periods differ from the Hanafi rule (PLD 2025 Lahore 540), but no Peshawar judgment in this sample applies them.

8. Practical Guide

8.1 For the mother

- File for interim custody under section 12 at once; urgency need not be shown.
- If a young child has just been taken, move habeas corpus promptly and say so in an affidavit; delay weakens the case.
- Prove the welfare facts: school record, health, who has cared for the child, the father's absence or remarriage.

- Do not rely on any compromise or khula deed you signed giving up custody: it is void, but say so expressly.
- If you have remarried, bring evidence that the new home is safe and that the child is settled.

8.2 For the father

- Appear in person; litigating only through an attorney from abroad counts against you.
- Keep paying maintenance; the duty continues whoever has custody and non-payment is used against you.
- Prove concrete detriment in the mother's home; a bare plea of remarriage or poverty will fail.
- Ask for visitation and enforce it; a child's reluctance does not end the right.
- Consider mediation; the Supreme Court has endorsed co-parenting settlements.

9. Conclusion

Hizanat remains part of the law of Pakistan, and in Khyber Pakhtunkhwa it still decides most cases involving very young children. But it now operates as the first and strongest evidence of where a child's welfare lies, not as a property right of the mother or a countdown for the father. Courts protect the mother against the usual pressures — poverty, khula bargains, jirga decisions and remarriage — and protect the father's bond through visitation, while holding him to maintenance whoever has custody. Read across seven decades, the case law shows a steady movement: from a rule of age and personal law applied with an eye to welfare, to a welfare inquiry in which the age rule is the first piece of evidence. The open questions are about proof and procedure: who must prove what after remarriage, how a child should be heard, and how far habeas corpus may run alongside the guardian case. Until the Supreme Court settles them, the safest course for either side is the same: bring evidence about the child, not arguments about the parents.

Annexure A: The Judgments in Question-and-Answer Form

† Taken from the reported head note on the Pakistan Law Site. Check the full judgment, bench and date before citing.

Supreme Court of Pakistan

1. Muhammad Imran Baqir v. Mst. Zarnain Arzoo, PLD 2026 SC 170 — SC — Maintenance enforced †

Q: Does a father's duty to maintain his child lapse when the child is in the mother's hizanat?

A: No. The duty rests on nasab (lineage), continues until a son reaches puberty and a daughter marries, and is not reduced because the child lives with the mother. Treating maintenance as conditional on cohabitation or custody is legally flawed.

2. Dr. Muhammad Asif v. Dr. Sana Sattar, PLD 2026 SC 238 — SC — Review dismissed; custody with mother †

Q: Does a mother's full-time profession count against her, and how far must the child be heard?

A: A working mother is not less suitable; her work reflects resilience. Custody stayed with her because of the children's age, schooling, special needs and stable home, while the father had remarried and was largely away. A child must be heard in custody proceedings; listening is not obeying, but the child's view must be seriously considered.

3. Khurrum Javed v. Ahmed Bilal, PLD 2026 SC 118 — SC — Disposed of on mediated settlement †

Q: Can a custody dispute between a father and a maternal grandmother be resolved through mediation?

A: Yes. The Supreme Court referred the matter to mediation under the ADR Act, 2017; the parties signed a co-parenting settlement on custody, visitation and schooling. The Court said a minor's emotional well-being cannot be preserved through litigation alone.

4. Gul Sadem Khan v. Mst. Halima, PLD 2025 SC 47 — SC — Leave refused; custody with mother †

Q: Can a father living abroad, litigating through an attorney, displace a mother who has not remarried?

A: No. Litigating only through a special attorney showed lack of care; the mother had not remarried for the children's sake; poverty is not a ground to deprive her. The father is natural guardian, but the court must be satisfied that welfare lies with him.

5. Asjad Ullah v. Mst. Asia Bano, PLD 2025 SC 541 — SC — Leave refused (majority) †

Q: Does a mother's remarriage by itself disentitle her to custody?

A: No; remarriage does not ipso facto disentitle her. A 13-year-old girl who had never seen her father, was settled in school and attached to her mother stayed with the mother; the father's claim was found to be retaliation for the dower and maintenance suit. (A minority view would have issued notice.)

6. Mst. Sidra Hameed v. Syed Abdul Mateen, PLD 2025 SC 310 — SC — Transfer allowed †

Q: Can custody proceedings be transferred from one province to another?

A: Yes. Custody and guardianship cases filed in the Family Court are Family Courts Act proceedings and may be transferred under section 25A(2b); the minors' welfare follows the mother's residence.

7. Khawaja Adnan Zafar v. Hina Bashir, 2024 SCMR 1295 — SC — Leave refused †

Q: Will the Supreme Court interfere with interim custody orders?

A: Ordinarily not. Interim custody orders are interfered with only for flagrant illegality, wrongful exercise of jurisdiction or grave injustice; the main section 25 application remains open before the Guardian Judge.

8. Mst. Qurat-ul-Ain v. SHO, P.S. Saddar Jalalpur Jattan, 2024 SCMR 486 — SC — Appeal allowed; custody restored to mother †

Q: When may a High Court issue habeas corpus for a child, and can a grandmother use it against a parent?

A: Habeas corpus is not issued as a matter of course against a parent; the Court must be satisfied the Guardians and Wards Act remedy is inadequate and that production and handing over serve the child's best interests. A grandmother is not a parent and must show she sues as the minor's friend. A mother's remarriage does not automatically bar custody; read with the CRC and CEDAW there is no justification for separating mother and child on remarriage.

9. Shaista Habib v. Muhammad Arif Habib, PLD 2024 SC 629 — SC — Principles laid down †

Q: Can a custody order stand without a finding on welfare?

A: No. Welfare and best interest are the foundational principle; a custody decision without assessing them is not sustainable and the discretion is not lawfully exercised.

10. Mst. Haseena Bibi v. Abdul Haleem, PLD 2024 SC 291 — SC — Mother's right upheld †

Q: Is an iqrarnama or compromise by which the mother gives up hizanat enforceable?

A: No. The mother is entitled to hizanat of a son until seven and of a daughter until puberty; any agreement waiving it violates the law and cannot be enforced by a court.

11. Rashid Hussain v. Additional District Judge, Islamabad (East), PLD 2022 SC 32 — SC — Leave refused; custody with maternal grandfather †

Q: When can the order of preference based on blood relationship be departed from?

A: Only for very strong and exceptional reasons tied to welfare. Children who refused to go to a father who had neglected them, after their mother's suspicious death, stayed with the maternal grandfather; the visitation schedule was extended to the father.

12. Raja Muhammad Owais v. Mst. Nazia Jabeen, 2022 SCMR 2123 — SC — Custody with remarried mother †

Q: What does 'welfare' mean, and does the mother's second marriage forfeit custody?

A: Welfare is all-encompassing: physical, emotional, mental, medical and the quality of each parent's relationship; there is no mathematical formula. Paras 352 and 354 of Mulla are not absolute; a second marriage cannot be a stand-alone reason to disqualify the mother.

13. Zainab v. The State, 2021 SCMR 799 — SC — Adjourned for DNA test †

Q: Is hizanat relevant when a mother with a suckling child seeks bail?

A: Yes. In a narcotics case the Court held the question of hizanat would be considered for bail and first ordered DNA testing of the two-year-old to confirm age and relationship.

14. Mst. Beena v. Raja Muhammad, PLD 2020 SC 508 — SC — Custody with disabled mother †

Q: Can a wife be made to surrender custody as consideration for khula?

A: No. The mother cannot be compelled to surrender hizanat, and surrender cannot be consideration for khula; such a term is against law, public policy and the Injunctions of Islam and void under sections 23 and 25 of the Contract Act. Neither her disability nor her lack of income decided custody.

15. Mir Bat Khan v. Mst. Sherin Bibi, 2019 SCMR 520 — SC — Leave refused; girl handed to mother †

Q: Can a jirga decide custody, and is a mother's poverty a disqualification?

A: A jirga has no authority to decide custody; a mother cannot be made to barter her child for a divorce. Poverty is no ground since the father must maintain the child. The Social Welfare Department was directed to enforce the hand-over if the father did not comply.

16. Ms. Shazia Akbar Ghalzai v. Khurram Mehboob, 2019 SCMR 116 — SC — Custody with mother †

Q: What is the position of a suckling baby forcibly taken by the father?

A: A one-year-old taken from the mother and moved between cities obviously needed his mother; custody stayed with her, subject to the Guardian Court, and she was not to take him abroad without permission.

17. Mst. Madiha Younus v. Imran Ahmed, 2018 SCMR 1991 — SC — Custody with mother; plan issued †

Q: Can the Supreme Court lay down a full custody, visitation and maintenance plan?

A: Yes. On the parents' agreement it issued a comprehensive plan for custody with the mother, the father's visitation and maintenance, and both parents' obligations.

18. Nasir Raza v. Additional District Judge, Jhelum, 2018 SCMR 590 — SC — Custody to father †

Q: After the mother's death, does the maternal grandmother keep custody against a willing father?

A: No, where the children had passed the age of hizanat. A father who had not remarried, had given up work abroad and had his mother at home was entitled; weekends with the maternal grandmother were ordered.

19. Mirjam Aberras Lehdeaho v. SHO, P.S. Chung, Lahore, 2018 SCMR 427 — SC — Appeal allowed; interim custody to mother †

Q: Can habeas corpus be used while a guardian case is pending, and what of an ex parte guardianship obtained by deceit?

A: Yes, in exceptional cases the High Court can restore interim custody under sections 491 and 561-A Cr.P.C. Tender age is material but not the only factor. An ex parte guardianship obtained by concealing the mother's address was set aside, and mature children's wishes to return abroad were weighed.

20. Mst. Laiba Sultan v. Muhammad Nawaz, PLD 2018 SC 79 — SC — Disposed of; mother to approach Guardian Court †

Q: Is the risk of removal from Pakistan relevant to interim custody?

A: Yes. Where the mother, an Afghan refugee, gave no assurance against taking the minors across the border and the children were averse to her, interim custody was not restored; visitation continued.

21. Mst. Tanveer Bibi v. SHO, P.S. Mandi Bahauddin, 2016 SCMR 1287 — SC — Custody to mother †

Q: Can in-laws keep minors after turning out the mother while the father is abroad?

A: No. Minors of tender age, in the father's absence, were delivered to the mother living with her father and brother.

22. Shaukat Masih v. Mst. Farhat Parkash, 2015 SCMR 731 — SC — Guardianship certificate cancelled †

Q: What happens to an ex parte guardianship certificate obtained by a grandfather who concealed the living mother?

A: Using Article 187, the Court cancelled it, sent the application back for fresh decision with the mother heard, and left custody with her meanwhile; a minor must not be made a 'ball of ping pong'.

23. Mst. Shabana Naz v. Muhammad Saleem, 2014 SCMR 343 — SC — Custody of daughter to father †

Q: Does the mother keep a daughter after marrying a man not related to the child within the prohibited degrees?

A: No, absent exceptional circumstances. Under Islamic law she becomes disentitled and custody belongs to the father; the father's own second marriage did not disentitle him. Leave had been granted to examine whether hizanat is an absolute right.

24. Muhammad Nadeem Qadir v. Additional District Judge, Lahore, 2012 SCMR 609 — SC — Appeal allowed; remanded †

Q: Can a father be denied custody and visitation because the mother took the children abroad?

A: No. The estrangement was caused by the mother; the High Court's finding of a 'better atmosphere' abroad had no evidence behind it; the father had paid maintenance yet been denied visits. The case went back to the Guardian Judge.

25. Major Muhammad Khalid Karim v. Mst. Saadia Yaqub, PLD 2012 SC 66 — SC — Appeal allowed †

Q: Which law decides territorial jurisdiction in a custody case?

A: The Family Courts Act, 1964 and its Rules, not section 25 of the Guardians and Wards Act. A mother who could not show the children were taken from her at place L could not sue there.

26. Mst. Ammara Waseem v. Syed Khawar Hussain, 2011 SCMR 148 — SC — Custody to father †

Q: Does a mother who remarries and moves abroad, leaving the child behind, keep custody?

A: No. She had left the child with her parents to join her new husband in the USA and tried to obtain a visa to take him far from the father, who had not remarried; welfare lay with the father.

27. Mst. Naseem Akhtar v. District Judge, Multan, 2009 SCMR 1052 — SC — Custody with maternal grandmother †

Q: Who keeps an 8-year-old girl when there is no woman in the father's house?

A: The healthy maternal grandmother with her own income, who waived maintenance; the father may apply again at about 13, with meetings twice a month in court.

28. Altaf Akhter Alvi v. Mst. Sadaf Ara, 2008 SCMR 527 — SC — Petition dismissed †

Q: Does a mother who remarries a stranger lose even visitation?

A: No. She cannot be denied minimum access to her children or treated like an alien enemy; monthly meetings were upheld.

29. Riaz Ahmad v. Zahid Hussain Khan, 2004 SCMR 821 — SC — Custody to mother †

Q: Can better facilities in the city outweigh an illiterate village mother who has raised the child?

A: No. Poverty is no ground to deprive the mother; she had cared for the child since birth, and the father had never paid maintenance.

30. Sardar Hussain v. Mst. Parveen Umer, PLD 2004 SC 357 — SC — Leave refused; custody with remarried mother †

Q: Do sons over seven go to the father when the mother has remarried and has children by her new husband?

A: Not automatically. The boys, settled in a good school and attached to their mother, called the father an 'alien' after staying with him; welfare is paramount. (Affirming 2003 YLR 3054 (Peshawar).)

31. Mst. Shahista Naz v. Muhammad Naeem Ahmed, 2004 SCMR 990 — SC — Remarriage not decisive †

Q: Can habeas corpus be used to take a child from a mother merely because she remarried?

A: On remarriage she loses her preferential right, but she can still be entrusted with custody if welfare requires; the High Court's order resting only on loss of hizanat was faulted.

32. Mst. Khalida Perveen v. Muhammad Sultan Mehmood, PLD 2004 SC 1 — SC — Appeal allowed; girl to mother †

Q: Can a two-year-old girl be kept from her divorced mother because of attachment to the father?

A: No. Custody courts do not go into technicalities; the welfare of a two-year-old girl lay with her mother, leaving the parties to the Guardian Judge.

33. Mst. Hameed Mai v. Irshad Hussain, PLD 2002 SC 267 — SC — Appeal allowed; girl stays with maternal grandmother †

Q: Is a compromise to hand a girl to her father at seven binding when circumstances change?

A: No. Custody cannot always be settled by private compromise; the court acts as a wise parent. The father had remarried and misused the child's inheritance, so the girl stayed with the grandmother who raised her.

34. Badruddin Roshan v. Mst. Razia Sultana, 2002 SCMR 371 — SC — Leave refused †

Q: What if a father takes the child by force while the guardian case is pending?

A: The custody position at filing is to be restored and the Guardian Court decides on welfare; the father's fear that the mother would kidnap the child was unfounded.

35. Naziha Ghazali v. The State, 2001 SCMR 1782 — SC — Leave refused †

Q: Does a mother get habeas corpus after waiting 5–6 months without complaint?

A: No. Unexplained delay showed the child was not forcibly removed; section 491 is not a forum for deciding guardianship.

36. Anne Zahra v. Tahir Ali Khilji, 2001 SCMR 2000 — SC — Leave refused †

Q: Which forum hears custody, and what procedure applies?

A: The Family Court, under the Family Courts Act which overrides; but in a section 25 application it follows the procedure of the Guardians and Wards Act. Territorial jurisdiction is decided on evidence under Rule 6.

37. Firdous Iqbal v. Shifaat Ali, 2000 SCMR 838 — SC — Principle stated †

Q: Is the father's right to custody of a son absolute?

A: No. Welfare is paramount, and a father may disentitle himself by his conduct.

38. Zahoor Ahmed v. Rukhsana Kausar, 2000 SCMR 707 — SC — Leave refused; custody with maternal grandparents †

Q: Can a father working abroad claim a boy living happily with his maternal grandparents?

A: No. He did not appear for cross-examination, filed as a counterblast to the maintenance claim, and could only keep the boy through his own parents; the maternal grandparents had the stronger tie.

39. Rubia Jilani v. Zahoor Akhtar Raja, 1999 SCMR 1834 — SC — Principle stated †

Q: Does the mother's hizanat over a son end at seven, and how strict is procedure?

A: Yes, it ends at seven, but welfare remains paramount; the Guardian Court exercises parental jurisdiction and technicalities may be ignored.

40. Nighat Firdous v. Khadim Hussain, 1998 SCMR 1593 — SC — Appeal allowed; custody to maternal aunt †

Q: Does a boy's reaching seven entitle the father as of right?

A: No. A father who neglected the boy and applied only after the aunt claimed maintenance lost to the maternal aunt who had raised him from birth; he may visit.

41. Nisar Muhammad v. Sultan Zari, PLD 1997 SC 852 — SC — Principle stated †

Q: Is the mother's hizanat enforceable in habeas corpus proceedings?

A: Yes. Read with sections 361 and 363 PPC and section 491 Cr.P.C., the mother is entitled to hizanat of a son below seven and, failing her, her relations.

42. Muhammad Khalil-ur-Rehman v. Shabana Rehman, PLD 1995 SC 633 — SC — Principle stated †

Q: Does the Guardians and Wards Act bar section 491 Cr.P.C.?

A: No. The criminal court may still order custody of a minor illegally removed from a person's custody.

43. Zafar Iqbal v. Rehmat Jan, 1994 SCMR 339 — SC — Custody with maternal grandmother †

Q: Who keeps a child when both parents have remarried and live abroad?

A: The maternal grandmother in Pakistan who had been looking after him.

44. Tahira v. Additional District Judge, Rawalpindi, 1990 SCMR 852 — SC — Section 25 attracted †

Q: Can an aunt keep a girl under an agreement taken from the mother just before her divorce?

A: No. Nothing disentitled the unmarried mother from hizanat; the disputed agreement could not deny her custody.

45. Muhammad Javed Umrao v. Miss Uzma Vahid, 1988 SCMR 1891 — SC — Direction set aside †

Q: Can a habeas court order the children to stay with the mother until puberty?

A: No. Section 491 cannot declare a guardian or decide custody for all time; that belongs to the Guardian Court.

46. Muhammad Naseer Humayon v. Syeda Ummatul Khabir, 1987 SCMR 174 — SC — Leave refused; girl to mother †

Q: Can the High Court use habeas corpus between spouses for a girl under four?

A: Yes; it would be unfair to snatch a child of such tender age from her mother while the Guardian Court is approached.

47. Aisha v. Manzoor Hussain, PLD 1985 SC 436 — SC — Custody to father †

Q: When does the father's preferential right prevail?

A: Where the mother quickly remarried, the maternal grandmother did not send the child to school, and the unmarried father lived with his mother and sister. The minor is not the best judge of his own welfare.

48. Feroze Begum v. Muhammad Hussain, 1983 SCMR 606 — SC — Custody with mother †

Q: What are the limits of the mother's hizanat and does poverty defeat it?

A: She has a son until seven and a daughter until puberty, even after divorce; her custody is subject to the father's control as natural guardian; mere inability to maintain is no ground.

49. Ghulam Ullah Memon v. Rashid Begum, 1983 SCMR 793 — SC — Custody with maternal grandmother †

Q: After the mother's death, who keeps girls whose father mistreated their mother?

A: The maternal grandmother; the eldest girl's choice was explained by his conduct, he paid no maintenance and the girls would face a stepmother.

50. Shamim v. Niamat Ali, 1981 SCMR 635 — SC — Custody to father †

Q: After seven, where is a boy's welfare presumed to lie?

A: With the father under Muhammadan law; here the boy was ailing and illiterate at 11–12 with the mother, while the father had means.

51. Mst. Nazir v. Ghulam Mustafa, 1981 SCMR 200 — SC — Custody to father †

Q: Can a remarried mother keep a daughter whom she had agreed to surrender?

A: No. It would place the girl in the custody of a stepfather outside the prohibited degrees.

52. Sakhawat Ali v. Mst. Shui Khelay, PLD 1981 SC 454 — SC — Principle stated †

Q: Is a mother's poverty a ground to deny her custody?

A: No.

53. Feroze Begum v. Muhammad Hussain, 1978 SCMR 299 — SC — Principle stated †

Q: Does the father's duty of maintenance continue while the mother has custody?

A: Yes; welfare is paramount and inability to maintain does not deprive the mother.

54. Rahimullah Choudhury v. Helali Begum, 1974 SCMR 305 — SC — Principle stated †

Q: Is welfare decided by presumption?

A: No. It is a question of fact on the material before the judge; a mother may be deprived of children of tender age only when welfare demands it.

55. Khizar Hayat Khan Tiwana v. Zainab Begum, PLD 1967 SC 402 — SC — Second application competent †

Q: Is a second custody application barred after the first is dismissed in default?

A: No. The Guardian Judge acts in loco parentis without undue technicality; the right to custody is continuing, and fresh applications on new grounds lie.

Federal Shariat Court

56. Hammad Hussain v. Federation of Pakistan, PLD 2021 FSC 50 — FSC — Shariat petition dismissed †

Q: Are sections 7 and 25 of the Guardians and Wards Act repugnant to Islam because they can deprive the natural guardian?

A: No. Guardianship alone does not entitle return of custody; the father's natural guardianship and the mother's lap as 'cradle of God' are both subordinate to welfare, which accords with Islamic jurisprudence.

Peshawar High Court

57. Mst. Shama v. Said Amin Shah, 2026 MLD 908 (Peshawar) — PHC — Petition dismissed; custody with father †

Q: When does a mother's remarriage become an exceptional circumstance against her?

A: Where the remarriage brought strained relations and criminal allegations (here, to the father's own brother), welfare favoured the father, an army employee able to provide a stable home; in the absence of disqualification the natural guardian has a superior claim.

58. Saeed Khan v. Mst. Rozina Bibi, 2026 CLC 1052 (Peshawar) — PHC — Petition dismissed; custody with remarried mother †

Q: How is welfare proved, and how is remarriage weighed?

A: Welfare is a question of fact to be proved by cogent evidence, not presumption; it covers moral, spiritual, physical, psychological, educational and material well-being and the child's happiness and attachment. Mere remarriage without tangible detriment is not a disqualification; the mother loses only her preferential right. The girl's clear preference and the father's army postings were weighed.

59. Madad Khan v. Mst. Samiya Nisar, PLD 2025 Peshawar 201 — PHC — Visitation restored †

Q: Can visitation be refused because the child is reluctant to meet the father?

A: No. The non-custodial parent's right of visitation is inherent and vital to the child's development; refusal risks parental alienation. Where there are concerns, courts may supervise visits, involve a mental-health professional or take surety for return.

60. Mst. Neelofar v. Muhammad Khan, 2025 CLC 145 (Peshawar) — PHC — Petition allowed; widow appointed guardian †

Q: Does a paternal grandfather have a better claim than the widowed mother?

A: No. In the presence of the mother welfare does not lie elsewhere; there is no better institution than the lap of a living mother. An educated widow of good character with long custody was entitled; the remand was unwarranted.

61. Mst. Zaib-un-Nisa v. Qasim Azeem, 2023 YLR 34 (Peshawar) — PHC — Habeas corpus accepted †

Q: Can children kept by an uncle or grandmother without a court order be recovered for the mother?

A: Yes. Custody without lawful authority in the mother's presence is improper; the children were handed to her pending the guardian case.

62. Malik Khursheed v. Mst. Tehseen Bibi, 2023 CLC 916 (Peshawar) — PHC — Petition dismissed; custody with mother †

Q: Does a father with no income, criminal cases and long absconsion get custody?

A: No. The loyal mother who educated and provided for the children was the best choice.

63. Abdul Ghaffar v. Shoukat, 2022 YLR 2482 (Peshawar) — PHC — Petition allowed; custody to father †

Q: Is the minor's stated choice decisive?

A: No; it is relevant but not decisive. A boy taught to accuse his acquitted father of his mother's murder was not able to form an intelligent preference; welfare lay with the father. Each custody case turns on its own facts.

64. Mst. Basri Irshad v. Tauqir Hayat, 2021 YLR 1267 (Peshawar) — PHC — Petition allowed; interim custody to mother †

Q: Is section 491 Cr.P.C. available during a pending guardian case, and what does the High Court decide in it?

A: Yes, it is maintainable. The High Court does not decide final custody; it considers age and welfare, and where a child of tender age is recently removed from the mother she is entitled to interim custody. A 3½-year-old was returned to her.

65. Rashid Khan v. Mst. Momna Jadoon, 2021 MLD 725 (Peshawar) — PHC — Petition dismissed †

Q: How sparingly is habeas corpus for minors to be used?

A: Only in exceptional cases of real urgency, since the Guardian Judge can also recover minors and regulate interim custody. Section 491 proceedings are summary and do not try the parties' status.

66. Mst. Anwari Bibi v. Hidayat Ullah Khan, 2020 MLD 302 (Peshawar) — PHC — Petition allowed; custody to maternal grandmother †

Q: Can a maternal grandmother keep a girl against the father?

A: Yes, on the facts. The girl had lived with her since birth and did not know her father, who had remarried and never maintained her; the maternal grandmother had the preferential right, and the father remained liable for maintenance.

67. Mujeeb-ur-Rehman v. Mst. Mehroon Nisa, 2019 CLC 1352 (Peshawar) — PHC — Petition dismissed; interim custody with mother †

Q: Does interim custody under section 12 require urgency?

A: No. The Guardian Judge's parental jurisdiction is not fettered by a precondition of urgency. A father working abroad, leaving the child to his grandfather and cousin, could not resist the mother's interim custody.

68. Haseeb Ahmad v. Mst. Wajiha Wakeel, 2018 YLR 20 (Peshawar) — PHC — Custody with mother; visitation fixed †

Q: Does a grandmother in the father's house offset his second marriage?

A: Not where she is elderly and herself needs care. Custody stayed with the mother, with monthly meetings and Eid custody for the father.

69. Muhammad Ashar Malik v. Sana Ashar, 2018 MLD 2001 (Peshawar) — PHC — Petition dismissed †

Q: Which court has territorial jurisdiction over a mother's custody suit?

A: It is governed by the Family Courts Act and Rules, not section 25 of the Guardians and Wards Act; the Family Court where the parties permanently reside, or where the wife ordinarily resides, can hear it.

70. Mst. Hameeda Bibi v. Public-at-Large, 2017 CLCN 59 (Peshawar) — PHC — Petition dismissed; interim custody to mother †

Q: Can a paternal grandmother defeat the mother's interim custody of an infant by unproved allegations?

A: No. Unsupported allegations of insanity failed; hizanat of the 1½-year-old boy belonged to the mother.

71. Farid Khan v. Mst. Saeeda Bibi, 2014 MLD 351 (Peshawar) — PHC — Petition dismissed †

Q: Can the father avoid interim maintenance by claiming the mother waived it?

A: No. The father must meet the child's expenses whether the child lives with him or the mother.

72. Mst. Nafeesa v. Mir Bahadur, 2013 CLC 1784 (Peshawar) — PHC — Petition accepted; custody with mother †

Q: Does the father's personal-law right after hizanat apply automatically?

A: No. The Guardian Court acts as a wise parent; the father's preferential right after hizanat yields to welfare and personal law is not applied blindly. The minor's intelligent preference matters, and custody cannot go to a stranger.

73. Zahoor Ahmad v. Mst. Fahima Hafeez, 2012 CLC 1932 (Peshawar) — PHC — Petition dismissed †

Q: Will the High Court disturb concurrent findings giving a four-year-old to the mother?

A: No. The mother was entitled as of right during hizanat; an unproved claim of contagious disease did not justify interference.

74. Arif Saeed v. Humaira Qazi, 2012 CLC 759 (Peshawar) — PHC — Father's application dismissed †

Q: Mother unmarried and working versus father remarried with a second family?

A: The mother was preferred: the risk of a stepmother's preference, the mother's devotion and her sound finances outweighed the father's status as natural guardian.

75. Mst. Anila v. Mst. Rafia, 2011 YLR 593 (Peshawar) — PHC — Remanded †

Q: Where the mother remarried a stranger and the father died, who must be heard?

A: The maternal grandmother has a preferential right after the parents and must be heard with the paternal grandmother and the mother; the case was remanded for a welfare finding.

76. Mrs. Rania Ibrahim Qureshi v. District & Sessions Judge, Abbottabad, 2011 PCrLJ 594 (Peshawar) — PHC — Petition dismissed †

Q: Is habeas corpus the remedy for a husband–wife custody dispute?

A: Ordinarily no; snatching and custody are to be decided by the Guardian Court after evidence.

77. Rashid Iqbal v. Mst. Uzma Khan, 2010 YLR 3246 (Peshawar) — PHC — Petition dismissed; custody with mother †

Q: Can the father's wealth substitute for the mother's lap for a five-year-old?

A: No. Denying a child his mother's lap under the garb of love is egocentric; financial status is no substitute.

78. Mst. Zohra Hilal v. Noor Sakht Shah, 2009 MLD 258 (Peshawar) — PHC — Petition dismissed †

Q: Where a seven-year-old chose the father, was habeas corpus proper?

A: No. The father's custody was not unlawful; the matter belonged to the Guardian or Family Court.

79. Mst. Fauzia Begum v. Amin Saddruddin Jamal Gonji, 2007 CLC 1403 (Peshawar) — PHC — Father's application dismissed †

Q: Can a foreign-national father take a 2-year-old from a mother in a village?

A: No. The lap of the mother is God's own cradle; poverty is no ground; the father who never visited or maintained the child had monthly visits and must pay maintenance and education.

80. Mst. Ulfat Shaheen v. Akram Khan, 2006 CLC 51 (Peshawar) — PHC — Remanded †

Q: What lies against an appellate custody judgment, and can unproved medical papers be relied on?

A: A constitutional petition, not a revision, lies after the Family Courts Act appeal. Psychiatrist's prescriptions not proved in evidence could not be used; the case was remanded.

81. Sardar Hussain v. Mst. Parveen Umar, 2003 YLR 3054 (Peshawar) — PHC — Petition dismissed; custody with remarried mother †

Q: Do boys over seven go to the father because the mother remarried a stranger?

A: No. The father's right after seven is neither absolute nor indefeasible; the deserted mother was justified in remarrying, and her husband maintained the children when the father paid nothing. (Upheld in PLD 2004 SC 357.)

82. Mst. Jamila Bang v. Mirza Muhammad, 2003 YLR 1337 (Peshawar) — PHC — Petition allowed; custody to mother †

Q: Can poverty alone take children from a mother?

A: No. The courts below misread evidence; the father, a crane operator with two other wives, could not offer a safer home, and the children chose their mother.

83. Najma Yasmin v. Javed Akhtar, 2003 CLC 729 (Peshawar) — PHC — Petition allowed; custody to mother †

Q: Can a father who ignored his son for 12 years take him at 12?

A: No. His neglect disentitled him; the boy, refused a chance to state his preference below, firmly chose his teacher-mother.

84. Mst. Abida Bibi v. Abdul Latif, 2002 CLC 1416 (Peshawar) — PHC — Custody to mother †

Q: Is a working-class mother entitled against a neglectful father?

A: Yes. Her love is incomparable, poverty is no ground, and the father must maintain the child wherever he lives.

85. Gulnaz Bibi v. Rafaqat Ali Shah, PLD 2000 Peshawar 23 — PHC — Guardian Judge's order restored †

Q: Does remarriage disqualify a graduate teacher-mother against an alcoholic father with criminal cases?

A: No. Parental rights exist for the child's benefit; the natural guardian's right is subordinate to welfare; remarriage is not made a disqualification by the Guardians and Wards Act.

86. Akbar Jan v. Bibi Nasim, 2000 YLR 2652 (Peshawar) — PHC — Appeal restored †

Q: Does an appeal lie against a Civil Judge's custody order?

A: Yes, to the District Judge under section 14(1)(b) of the Family Courts Act.

87. Nazar Gul v. Sessions Judge, PLD 1999 Peshawar 59 — PHC — Petition dismissed in limine †

Q: Is evidence needed before interim custody?

A: No. The Guardian Judge need only probe the facts; a 3½-year-old was rightly given to the unmarried mother.

88. Sultan Zari v. Nisar Muhammad, 1998 MLD 1173 (Peshawar) — PHC — Children handed to mother †

Q: When can the High Court restore custody under section 491?

A: In exceptional cases, as interim relief, to a person forcibly deprived; five children aged 2–8 were returned to their mother pending the Guardian Judge.

89. Gulzar Bibi v. Public-in-General, 1995 CLC 1550 (Peshawar) — PHC — Application returned †

Q: Where does a girl 'ordinarily reside' after her mother remarries in another province?

A: With her mother; the guardian court in the old district loses jurisdiction under section 9.

90. Mst. Shaheen v. Zia Muhammad, PLD 1994 Peshawar 143 — PHC — Petition dismissed in limine †

Q: Can disputed allegations about a mother be tried in habeas corpus?

A: No. They need evidence before the Guardian Court; no extraordinary circumstances were shown.

91. Gul Sahib Khalil v. District Judge, Peshawar, 1994 MLD 2322 (Peshawar) — PHC — Custody with maternal grandmother upheld †

Q: Will the High Court re-weigh custody evidence in writ jurisdiction?

A: No, unless there is no evidence or shocking misreading.

92. Miss Christine Brass v. Dr. Javed Iqbal, PLD 1981 Peshawar 110 — PHC — Welfare paramount †

Q: Is a foreign court's custody decree binding in Pakistan?

A: It is considered but remains subject to the paramount consideration of the children's welfare, including comfort, health and moral and spiritual welfare.

93. Umara Khan v. Mst. Sultana, PLD 1954 Peshawar 13 — PHC — Maintenance ordered †

Q: Can a father withhold maintenance because the mother left and keeps the girl?

A: No. A mother keeps a girl until puberty; the father cannot demand her and must maintain her.

Other High Courts

94. Sayed Arshad Shah v. Additional District Judge, PLD 2026 Lahore 332 — LHC — Guidelines stated †

Q: What factors decide welfare?

A: Age, sex and religion of the minor; character and capacity of the proposed guardian; nearness of kin; wishes of deceased parents; the existing relationship; and the intelligent preference of an older child. Natural guardianship and hizanat may be ignored where welfare requires.

95. Sadia Aziz v. D.P.O., PLD 2025 Lahore 540 — LHC — Interim custody to mother †

Q: What is hizanat, and how does it differ from wilayat?

A: Wilayat is guardianship (of the father); hizanat, from 'hizan' (lap), is custody, and vests first in the mother: a son to seven, a daughter to puberty, surviving divorce but not marriage to a stranger (Mulla paras 352, 354). Under Shia law the periods are two and seven years; under Shafi'i law a daughter stays until marriage.

96. Yasir Kalwar v. Mst. Farzeen, PLD 2025 Sindh 134 — SHC — Custody to father †

Q: Who must prove exceptional circumstances when the mother remarries a stranger?

A: The mother. Absent tangible evidence of exceptional circumstances, daughters living with a stranger could not be perpetuated; custody went to the father living in a joint family.

97. Yasir Farooq v. SHO, P.S. Golra, 2022 PCrLJN 129 (Islamabad) — IHC — FIR quashed †

Q: Can a father be prosecuted for kidnapping his child from the mother?

A: No. The father is lawful guardian; guardianship coexists with the mother's custody, and parents cannot prosecute each other for kidnapping their own children.

98. Mst. Rabyia Ilyyas v. Additional Sessions Judge, PLD 2019 Lahore 281 — LHC — Custody to mother †

Q: Is a compromise by which the mother handed the child to the father's family binding?

A: No. It has no binding force; a 3-year-old living with paternal grandparents was returned to the mother.

99. Imdad Ali v. Mst. Sakina, 2018 MLD 1361 (Sindh) — SHC — Petition disposed of; custody with mother †

Q: How do kifalat and hizanat divide between father and mother?

A: Maintenance (kifalat) is the father's duty and brooding (hizanat) the mother's; sisters should not be separated.

Disclaimer

This paper is legal research for general education. It is not legal advice on any particular case. Readers should consult the full reported judgments and a qualified advocate before acting.