

CHILD CUSTODY DISPUTES IN THE MALDIVES AND PAKISTANI FAMILY LEGAL SYSTEMS: CHALLENGES AND WAY FORWARD

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ABSTRACT

This article examines the effectiveness of child custody laws in the Maldives as well as Pakistan. Unfortunately, within the family courts, custody of the child is among the many unresolved issues parents choose litigation for, and it often takes months to reach a conclusion. In the family justice system of the Maldives as well as in Pakistan, parents only have the option of sole custody. In cases where the father has sole custody of the child, he may deny the mother visitation rights, and vice versa if the mother has custody. Against this backdrop, this article examines the present approach to child custody matters in the contexts of the Maldives and Pakistan post-family separation. The study aims to ascertain how family courts interpret the concepts of 'welfare of the minor' and 'best interests of the child' within the framework of existing laws. Additionally, it examines whether these courts implement arrangements for shared parenting or joint custody, as observed in various jurisdictions, and evaluates the judges' comprehension of the modern concepts of joint custody or shared parental responsibility in the Maldives and Pakistan. Employing surveys, interviews, and library research methods, this study examines the modern approach to child custody. Specifically, it investigates the concept of "joint custody" or

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"shared parenting" across different jurisdictions and advocates for its integration into the family justice systems of the Maldives and Pakistan.

Keywords: Custody of Minor, Family Law, Joint Custody, Shared Parental Responsibilities, Maldives, Pakistan.

PERTIKAIAN PENJAGAAN KANAK-KANAK DALAM SISTEM UNDANG-UNDANG KELUARGA MALDIVES DAN PAKISTAN: CABARAN DAN HALA TUJU

ABSTRAK

Artikel ini mengkaji keberkesanan undang-undang hak penjagaan kanak-kanak di Maldives dan juga Pakistan. Malangnya, dalam mahkamah keluarga, hak penjagaan kanak-kanak adalah antara banyak isu yang tidak dapat diselesaikan oleh ibu bapa yang memilih litigasi, dan selalunya mengambil masa berbulan-bulan untuk mencapai keputusan. Dalam sistem keadilan keluarga di Maldives dan juga Pakistan, ibu bapa hanya mempunyai pilihan hak penjagaan tunggal. Dalam kes di mana bapa mempunyai hak penjagaan anak tunggal, dia boleh menafikan hak lawatan ibu, dan sebaliknya jika ibu mempunyai hak penjagaan. Berlatarbelakangkan keadaan ini, artikel ini mengkaji pendekatan semasa terhadap hal penjagaan kanak-kanak dalam konteks pemisahan-selepas-keluarga Maldives dan Pakistan. Kajian ini bertujuan untuk memastikan bagaimana mahkamah keluarga mentafsir konsep 'kebajikan kanak-kanak di bawah umur' dan 'kepentingan terbaik kanak-kanak' dalam rangka undang-undang sedia ada. Selain itu, ia mengkaji sama ada mahkamah ini melaksanakan pengaturan untuk perkongsian keibubapaan atau jagaan bersama, seperti yang diperhatikan dalam pelbagai bidang kuasa, dan menilai kefahaman hakim tentang konsep moden jagaan bersama atau tanggungjawab ibu bapa bersama di Maldives dan Pakistan. Menggunakan tinjauan, temu bual, dan kaedah penyelidikan perpustakaan, kajian ini mengkaji pendekatan moden terhadap penjagaan kanak-kanak. Secara khusus, ia menyiasat konsep "jagaan bersama" atau "ibubapa bersama" merentasi bidang kuasa yang berbeza dan menyokong penyepaduannya ke dalam sistem keadilan keluarga di Maldives dan Pakistan.

Kata Kunci: Penjagaan Kanak-Kanak di Bawah Umur, Undang-Undang Keluarga, Penjagaan Bersama, Tanggungjawab Ibu Bapa Bersama, Maldives, Pakistan.

INTRODUCTION

With the advancement of history, humanity learned parental responsibilities and self-determination, as well as what future generations deserve for better living. As the natural and fundamental unit of society, the family is entitled to special protection from society and the state. Besides, parents are expected to contribute as much as possible to the child's upbringing and to refrain from any behaviour that would endanger their children. Within a family, there may be misunderstandings, confusions, resultantly fighting among spouses common in families. As a result, in the event of a contract breach, the ground for recourse is divorce.¹ This would have a negative impact on the children's development.² When children are involved in a divorce or separation, both parents must strive to maintain a strong positive parenting role in their children's lives. Henceforth, children must be afforded special protection under the law in the event of the parents' marital breakdown.³ As a result, the concept and theories of child custody become part of a legal battle between opposing sides in family courts and custody of a minor is a very emotional experience.

In the Maldives' sole custody regime, if a parent disagrees with the court's decision and loses the case, that parent still has the option to appeal in pursuit of justice. When the issue is filed in court, the couple is summoned for a first hearing within a week, and if the judge determines that both parents are eligible for custody, the couple is summoned for a second hearing. The child is brought to the hearing this time and is asked to choose which parent he or she wants to live with. This court hearing is not open to everyone except the parents, the child, and the judge. The judge upholds the child's decision about who he or she wants to live with.⁴ The purpose of child custody is to provide care and maintenance. The practice reflects criticism of how the law is applied in custody disputes in the Maldives. The Family Law Act of 2000 and the Family Regulation 2022, which dictate the mode of

¹Essof Ismail, "Divorce in Australia: From an Islamic Law Perspective", *Alternative Law Journal*, vol. 36, no. 3 (2011): 182–186.

²Ado, Parental Guidance in the Quran and Sunna, 15–17, (accessed 23 December 2023).

³The Constitution of the Republic of Maldives, 2008, Art 34.

⁴Emma Fulu, "Gender Based Violence in the Maldives: What we know so far", *Ministry of Gender, Family Development and Social Security, Maldives*, (2004): 35–37.

custody as sole custody, have been contested. In this system, custody is typically awarded to either the mother or father in the event of divorce or a broken marriage bond. However, this practice occurs in the absence of a provision in the custody law addressing modern concepts such as shared parental responsibility and joint custody. This is also the case in Pakistan where sole custody mode prevails and no concept of shared parenting or parental responsibility is found.⁵

The UN Committee on the Rights of the Child (UNCRC) affirmed that there is a gap in the interpretation of best interests of the child by the Maldivian state and stressed that the state party shall adopt regulations on the principle of best interests of the child that is in compliance with Article 3 of the Convention as a primary consideration. Similarly, family judges issue judgments that contradict the High Court's guidelines or the family law regulations under the guise of "the best interests of the child," which gives the judges broad discretion.⁶ As per findings of the committee, the problem arises when judge lacks expertise in interpreting the law regarding the meaning of the best interests of the child. The Committee also stated that existing customary and religious norms surrounding the phrase "best interests of the child" are not in accordance with the Convention on the Rights of the Child, resulting in serious violations of children's rights.⁷

Besides, some other jurisdictions where significant reforms in custody disputes have been implemented, the International Convention on the Rights of the Child (CRC) and other instruments were studied in order to compare the current situation. Moreover, in terms of Islamic

⁵Siddiqi, Fahad, *Shared parenting, A sociological Study*, (Muneeb Book House: Lahore, 2022) P, 35, 117.; see also, Khan, Muhammad Mumtaz Ali. "Child Custody, the Best Interest of the Child and the Socio-legal and religious Construction of Pakistan, France, and United Kingdom: A comparative Analysis." *Al-Qamar* (2019): 65-84. <https://www.alqamarjournal.com/index.php/alqamar/article/view/386>.

⁶Committee on the Rights of the Children, CRC/C/MDV/4-5, 28 January 2015, Consideration of reports submitted by States parties under article 44 of the Convention Third and fourth periodic reports of States parties due in 2011, Maldives* page 21. Accessed from <<https://www.refworld.org/reference/statepartiesrep/crc/2015/en/108659>> retrieved on 23 November, 2023.

⁷Committee on the Rights of the Children, CRC/C/MDV/4-5, 28 January 2015, Ibid

law, the research, in addition to relying on the Qur'an and Hadith, referred to classical works written by Islamic scholars from various schools and laws, which are important because the Maldives laws are based on Shari'ah. Authors conducted surveys, interviews and library research in the Maldives and Pakistan from more than hundred percipients. However, due to time constraints, semi-structured interviews were conducted from a small group of people and institutions, including the Ministry of Gender, Family, and Social Services, Family Court Judges in the Maldives, and lawyers from selected jurisdictions.

To ensure the reliability and validity of the findings, authors have chosen qualitative method of data collection and conducted research survey, interviews, and library research. Authors find appropriate to choose qualitative method that is aligned with the research objectives. A thorough review of existing literature related to the research were conducted to identify gaps in research area, to understand theoretical frameworks, and to formulate research questions so that they will guide the research study. A survey questionnaire was prepared that is aligned with the research questions and the objectives of the research.

Afterwards, to understand the phenomenon in-depth, and to provide precise analysis, a semi-structured questionnaire was prepared, and interviews were conducted with selected experts in the area, i.e., lawyers, judges, and relevant government departments to elicit detailed and informative responses. Later, thematic analysis was adopted to identify relevant patterns and themes. For the purpose of triangulations, the primary data was contextualised to identify converging or diverging patterns for providing additional insights. Through this process we can enhance credibility and validity of the research findings. Finally, the authors made note for practical applications of the research. In essence, it is a well-established fact that frequent, meaningful, and ongoing contact with each parent is in the child's best interest. However, the finding of this research suggested that such guidelines would reduce conflict in divorced families and ensure the child's ability to maintain contact and form bonds with both parents.

ISLAMIC AND INTERNATIONAL STATUTORY LAWS ON CHILD CUSTODY

HadhÉnah (custody) is about parental obligation to care for their children. *HadhÉnah* is defined as providing protection to a person who cannot care for or act for themselves, such as a child, who needs to be cared for and looked after by others in providing basic needs such as food or anything else that gives them advantages and benefits.⁸ According to Islamic perspectives, the role of parents in raising their children encompasses all aspects of protection, maintenance, and care for future generations that are enshrined in the family system.⁹ Consequently, “parental duty is at the heart of Muslim life.” Every parent must transmit the spirit and broad message of Islam to their offspring in order to ensure the civilisational legacy's sound and healthy continuation.”¹⁰ Within the Islamic parameters, parents are held responsible not only for their children's upbringing according to the Islamic moral code, they are also responsible for their education, moral training, welfare, and protection.¹¹

Islamic law provides parents with guidance and directions to protect all parties' rights in a custody dispute involving a child. When explaining, it is undeniable that, as a Muslim, one seeks guidance from the ultimate source of Divine Wisdom, the Holy Quran. The Quran clearly directs in verse No. 233 of Surah Al-Baqarah, which states... “No mother shall be treated unfairly on account of her child, or father on account of his child”. “The mothers shall breastfeed their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis.”¹² Moreover, in Malaysia, the Sha'riah court employs the principle of *Maslahah* (interest) of the child as the paramount consideration in determining

⁸Najibah Mohd Zin, et al, *Islamic Family Law in Malaysia*, (Malaysia; Thomson Reuters, 2021), 333-363.

⁹Helmut Reifeld, *Marriage, Family and Society—a Dialogue with Islam*, (Sankt Augustin:Germany: Konrad-Adenauer Stiftung, 2006), 17.

¹⁰ Helmut Reifeld, Marriage, Family: see also, Gambo Ado, "Parental Guidance in the Quran and Sunna", *Department of Islamic Studies, Sa`adatu Rimi College of Education Kumbotso, Kano*, vol. 3, no. 2 (2012): 15–17., (accessed 15 July 2023)..

¹¹Helmut Reifeld, Marriage, Family supra note 10.

¹²Siddiqi, Shared parenting at note 5, page, 89.

custody rights. This principle is supported by authorities in the Holy Qur'an and the Hadith of Prophet Muhammad (s.a.w). In Surah al-Anbiya' verse 107, wherein Allah SWT says to the effect that "We have not sent but a mercy for all creatures." There is Hadith of the Prophet Muhammad (s.a.w) which means "harm is neither inflicted nor tolerated". Hence, the paramount consideration in determining custody rights is the principle of *Maslahah* (interest) of the child.¹³ Scholars have lengthy discussions about who is entitled to *HadÉnah*, and the discussions lead to a conclusion, which is in the best interests of the child.¹⁴

The UNCRC is an important framework for family law, not only for child rights but also in the context of parent-child relationships. The ultimate mandate of the UNCRC is the protection and best interests of the child, while monitoring parental responsibility.¹⁵ The UNCRC recognises child as both a person with the right to care and a right holder. A child has the right of state protection.¹⁶ The most important concept in Article 3 of the Convention is the "best interest of the child." On the subject of the child's best interests, it states:

"The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers."¹⁷

¹³Soh, Roslina Che, and Nora Abdul Hak. "Application of Maslahah (interest) in Deciding the Right of Hadanah (Custody) of A Child: The Practice in the Syariah Court of Malaysia." *Journal of Applied Sciences Research* 7 (2011): 13.

¹⁴Najibah Mohd Zin, Hak, Mohd, Malek, Ibrahim, Yousoff, and Hashim, *Islamic Family Law in Malaysia*, second edition, 2021: 270.

¹⁵Arta Selmani Bakiu and Emine Zendeli, "The Parenting Responsibility in the Context of the Convention on the Rights of the Child and Protection before the European Court of Human Rights", *Balkan Social Science Review*, vol. 8, no. 8 (2016): 65–79.

¹⁶Scherrer, The United Nations Convention on the Rights of the Child as Policy and Strategy for Social Work Action in Child Welfare in the United States.; 11 - 22.

¹⁷UN General Assembly, "Convention on the Rights of the Child", The United Nations High Commissioner for Human Rights, Art 3, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> (accessed 10 December, 2023).

The terms "best interests of the child" and "welfare of the child" are interchangeable. However, the CRC Committee has expressed its concern that the Maldives has yet to develop a comprehensive child policy.¹⁸ While highlighting gaps in the state party's interpretation of the best interests of the child, the committee emphasised that the Maldivian legislation should prioritise the best interests of the child in accordance with Article 3 of the Convention. The findings of the committee also indicate that the state party has not adequately considered the possibility of establishing traditional foster care systems, such as family and community-based alternative care.¹⁹

Whenever the issue of custody is raised, the best interests of the child are always prioritised. Custody of the child cannot be granted to any parent who is unable to uphold the principle of looking out for the best interests of the child. This is critical for the child's well-being.²⁰ Commenting on Article 3, Nilsson²¹ stated that all actions involving children must be in the best interests of the child and should be prioritised. The author was also concerned about the child's health and development.²² As a result, according to Article 3 of the UNCRC, the best interests of the child must be a primary consideration in all actions involving children undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative

¹⁸Committee on the Rights of the Child, , CRC/C/MDV/4-5, at note 6.

¹⁹CRC Committee, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Maldives*, (2016), 4–5, (accessed 12 December 2023).

²⁰Ayesha Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World : (An Analysis)", *International Journal of Humanities and Social Science*, vol. 4, no. 5 (2014): 267–277.

²¹Journal of Ethnic and Migration Studies, "Eastmond, Marita, and Henry Ascher. "In the Best Interest of the Child? The Politics of Vulnerability and Negotiations for Asylum in Sweden", vol. 37, no. 8 (2011): 1185–1200.; the defining and understanding of children as well as law and legal research, using theories on intersectionality, interdisciplinarity and intertextuality as analytical tools. They conclude that there will always be problems related to the "particularities" of children and child law.

²²Marita Eastmond and Henry Ascher, " in the Best Interest of the Child? The Politics of Vulnerability and Negotiations for Asylum in Sweden", *Journal of Ethnic and Migration Studies*, vol. 37, no. 8 (2011): 1185–1200.

bodies.²³ Similarly, the second paragraph of Article 3 of the Convention requires parents to protect their children and act in their best interests. Furthermore, paragraph 3 of Article 3 of the Convention states that the best interests of the children should be respected and protected by public or private institutions and services tasked with caring for and protecting children.²⁴

The concept of shared parenting can be found in the UNCRC which clearly states that both parents should be equally responsible for their children's upbringing. Resultantly, joint custody should be granted only when the parties have a reasonable chance of cooperating. Some jurisdictions have adopted shared parenting in a way that appears to be joint legal or physical custody and is framed in a way that is closer to shared parental responsibility.²⁵ "Shared parental responsibility" refers to a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents consult with each other so that major decisions affecting the child's welfare are made jointly.²⁶ The simplest philosophy behind shared parenting is that parental responsibility can continue after separation because if it existed prior to the relationship breakdown, it can continue in the future by imposing some obligations and restrictions on parents through court orders.²⁷ According to Fabricius and Go,²⁸ informed decisions and wisdom in imposing shared parenting time on families in which both parents initially agreed to share parenting time and thus volunteered for it, and in which the

²³Selmani-Bakiu, Arta, and Emine Zendeli. "The Parenting Responsibility in the Context of the Convention on the Rights of the Child and Protection before the European Court of Human Rights." *Balkan Soc. Sci. Rev.* 8 (2016): 65.

²⁴*Ibid.*

²⁵Soh, Roslina Che. "Shared Parenting As An Interpretation Of The Best Interest Of The Child In Custody Disputes: An Overview Of The Practice In Malaysia." *Journal of Applied Sciences Research* 7, no. 13 (2011): 2405-2410.

²⁶*Ibid.*

²⁷Parkinson, Patrick. "Family laws and access to justice." *Contemporary readings in law and social justice* 8, no. 1 (2016): 37-69.

²⁸William V. Fabricius and Go Woon Suh, "Should Infants and Toddlers Have Frequent Overnight Parenting Time with Fathers? The Policy Debate and New Data", *Psychology, Public Policy, and Law*, vol. 23, no. 1 (2017): 68.

parents disagreed, the shared parenting was imposed on them in some way. They discovered that after mediation, custody evaluation, trial, or judicial imposition, the vast majority of parents with shared parenting had to accept it. Those who had shared parenting time had the best-adjusted children years later.²⁹

The Family Law System in the Maldives is governed by 'Maldives Family Law Act 2000', 'Family Regulation 2022', 'Family Procedure Regulation of the Family Court 2022' and 'Family Procedure Regulation of the Magistrate Courts 2022'. Other than that, regarding the child rights, the relevant law is the Child Rights Protection Act 2019. The Family Act, 4/2000, outlines the Family Regulation. After sixteen years, the Family Regulation was amended in 2022, and custody issues have been identified. Sections 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of this Regulation explain the concept of custody and guardianship. Section 59 of the Family Regulation explains the custody priority list, and Section 60 clarifies that if the member at the top of the custodial rights list³⁰ is found to be neglecting the child in their care, custody of the child must be given to the next in line to protect the child's rights. The provisions emphasise sole custody arrangement, so even though Family Regulation is intended to enlighten the Court on custody proceedings, the main emphasis remains on sole custody arrangement.

JUDICIAL APPROACH TO CHILD CUSTODY

Child custody issues are one of the most pressing issues confronting the Maldives society. The Maldives has the highest divorce rate in the world as per United Nations and other sources i.e., 5.52 percent per 1000 people.³¹ Statistics revealed 16153 divorce cases between 2017 and 2021, ranking Maldives as the country

²⁹Soh, Roslina Che. "Shared parenting as an interpretation of the best interest of the child in custody disputes: What Malaysian may learn from the Australian experience." In *Seminar Undang-Undang Dan Kanak-Kanak UNISZA & Institut Social Malaysia*. Kuala Lumpur. 2010.

³⁰The Family Regulation, 2006, s 71.

³¹World Population Review, Divorce Rates by Country 2024, [Online] via URL: <<https://worldpopulationreview.com/country-rankings/divorce-rates-by-country>> retrieved on 12 December 2023.

with the most divorces cases in the world, including 733 custody encounters through court proceedings.³² In the presence of such huge cases, the determination of physical custody of children is one of the most difficult decisions made during any marital dissolution process. The risk of removing the child from a familiar environment and placing him or her in an unfamiliar environment would have detrimental effects on the child's development and was therefore unacceptable³³.

The problem with sole custody arrangements in the family justice system is that when the father has sole custody of the child, the mother is denied visitation rights, and vice versa when the mother has sole custody of the child. It appears that family courts are overly reliant on the traditional approach of granting sole custody to the mother without considering circumstantial evidence, whereby child custody issues involve the mother acting in the best interests of the child.³⁴ It has been observed that litigants are dissatisfied with the decisions of the family courts on custody issues, while the family courts, as quasi-judicial forums, have clearly failed to follow the procedure set out by the country's highest courts and the principles of fair trial. An ideal situation would be that all cases shall be decided in favour of the minor's best interests.³⁵

³²Department of Judicial Administration, *Statistics Books of the Judiciary of Maldives*, (Male: Maldives), Accessed 12 December 2023.

³³Judith S. Wallerstien & Janet R. Johnston, Children of Divorce: Recent Findings Regarding Long-Term Effects and Recent Studies of Joint and Sole Custody, 11 *Pediatrics in Rev.* (1990) at 203, in Soh, Roslina Che. "Shared parenting as an interpretation of the best interest of the child in custody disputes: What Malaysian may learn from the Australian experience." In *Seminar Undang-Undang Dan Kanak-Kanak UNISZA & Institut Social Malaysia*. Kuala Lumpur. 2010.

³⁴Maldives Family Court Case No: 156/Fm-C/2010 (1298/AC/2010), (2010).; overruled by Maldives High Court Case No: 2011/HC-A/26, (2011)

³⁵Maldives Family Court Case No: 1054/Fm-C/2013, (2013).; 1298/AC/2010.; overruled by High Court Case No: 2014/HC-A/75, (2014); see Child Custody Law Services in Pakistan, Fair Play, Natural Justice And Due Process In Child Custody Proceedings, (December 23, 2022) accessed through <https://www.linkedin.com/pulse/fair-play-natural-justice-due-process--1f/> retrieved on 30 November, 2023.

Ibrahim Ahmed³⁶ analysed that the lengthy litigation process exacerbated the respondents' miseries and anguish, and as a result, their children's hardships and sufferings, and that the custody of the children is a right of the children, especially by protecting them physically, socially, and spiritually so that they receive an appropriate education in all aspects. Although Section 40 of the Maldivian Family Law Act, 2000 clearly states that custody of the minor should be given to the mother because she is the natural guardian of the child, and this position is also consistent with Shari'ah,³⁷ custody of the minor could also be given to the father in certain circumstances. For example, if the mother remarries or the minor reaches the age of (7 years), the child is allowed to choose which parent to live with.³⁸ The authors are of the view that guardian and ward courts should be conscious while allowing custody in that case because it is critical to prioritise the safety of the child. The individual must be capable of providing love, care, and a good upbringing. It is always necessary to make decisions in the best interests of the child rather than to please the parents.

Child Custody in Pakistan

Custody matters require a high level of sensitivity and careful consideration, as the guardian and ward court must evaluate various factors to ensure the well-being of the minor involved. Annually, approximately 40,000 Pakistani couples undergo dissociation and separation, with many of these couples having dependent children. In Pakistan, the determination of child custody in divorce cases is governed by two laws: the Guardians and Wards Act 1890 and the Family Courts Act 1964. According to the Pakistani law, mothers are frequently granted primary custody and given preference for custody of minor of tender age, as it is presumed that she is better able to provide care and nurture to them; however, the court may opt to award sole custody to the father if it deems him better equipped to ensure the welfare of the

³⁶Ibrahim Ahmed, "The Child Custody Law in the Maldives by Doing an Analytical Evaluative Study of Islamic Jurisprudence", (Master th dissertation esis, International Islamic University Malaysia, 2014), 10–25.

³⁷Abdul Haye Abro, "The Custody of Children (A Comparative Study of the Shari'ah, English and Pakistani Law)", *Pakistan Journal of Islamic Research*, vol. 14 (2014): 1–17.

³⁸The Family Law Act, (2000), s. 44 (b).

children.³⁹ Statistics reveal that around 90% of children reside with their mothers in case of post-divorce or separation, while only about 2% live with their fathers.⁴⁰

In the case of *Mirza Waqar Ahmad v. Ayesha Zeeshan*,⁴¹ it was emphasised that when appointing a guardian under Section 17 of the Guardian and Wards Act 1890, the court must prioritise the welfare of the minor, taking into consideration such factors as age, gender, and religion. Additionally, the Supreme Court of Pakistan in the case of *Mst Shaista Naz v. Muhammad Nadeem Ahmed*,⁴² asserted that the right of *HadhÉnah* holds the force of an injunction in Islam, representing an acknowledged principle of Islamic Law. It was clarified that the responsibility to provide for the minor is not only a religious and moral duty but also a legal obligation. While the Guardians and Wards Act of 1890 outlines some rules regarding custody, the discretion of the courts plays a significant role, leading to occasional conflicting judgments.⁴³ For example, under the Mohammadan Law, Para 352 and 354, a mother is entitled to a child's custody, and forfeits this right if she marries someone not related to the child within the restricted degrees as outlined in paras 260-261 of the Mohammadan Law.⁴⁴ Nevertheless, the stipulations in Paras 352 and 354 of Mullah's Mohammadan Law are not unconditional, and the custody rights of a minor are secondary to the overarching principle of ensuring the minor's welfare.⁴⁵

³⁹For details, please see *Raja Muhammad Owais v. Mst. Nazia Jabeen and others* in the Supreme Court of Pakistan in civil petition No.240 of 2021.

⁴⁰Fahad Ahmad Siddiqi, Backlog Of Child Custody Cases In Pakistan: Decreasing Delays, *Courting the Law*, (August 25, 2020) [Online] retrieved from <https://courtingthelaw.com/2018/08/09/commentary/backlog-of-child-custody-cases-in-pakistan-decreasing-delays/> retrieved on 13 December 2023; see also *Nisar Muhammad v. Sultan Zari* (PLD 1997 Supreme Court 852).

⁴¹*Mirza Waqar Ahmad Versus Ayesha Zeeshan* W.P. No.23024 of 2022 Lahore High Court.

⁴²*Mst Shaista Naz v. Muhammad Nadeem Ahmed*, 2004 SCMR 990.

⁴³Sabreen, Mudasra. "Law on the Custody of Children in Pakistan: Past, Present and Future." *LUMS LJ* 4 (2017): 72.

⁴⁴*Raja Muhammad Owais v. Mst. Nazia Jabeen and others* ...Respondent(s) (Civil Petition NO.240 of 2021)

⁴⁵Sir Dinshah Fardunji Mulla's famous book titled "*Principles of Mahomedan Law*" was an illustration of the enabling environment orchestrated by the

While appreciating the decisions of the Hon'ble apex courts of Pakistan about custody matters, it was held in *Mst. Atia Waris vs. Sultan Ahmed Khan* that there is contention between actual custody and constructive custody when defined custody.⁴⁶ However, as per superior courts custody of minor was defined as actual or constructive possession of minor for the purposes of protection.⁴⁷ In another case reported in the Pakistan Law Digest, i.e., *Jumna Khan vs. Mst. Gull Ferosha*,⁴⁸ the custody of a minor was referred to as the right to upbringing of a child (minor) by the mother or someone legally entitled to it. The custody definition provided in the family laws of Pakistan is much different from guardianship. Guardianship necessitates the concept of taking care of the minor (child) even in situations when the guardian does not have realm over the child, but an obligation to maintaining a minor and affecting legal transactions, and retaining constructive custody over his/her person or property.⁴⁹ To elaborate, custody of a minor refers to bringing up and nurturing a minor child and taking care of her/his personal and emotional necessities on a day-to-day basis. Besides, on one hand if maintenance of the child was the duty of the father, however, the mother could not be deprived of custody due to her inability to maintain her child. Contrarily, if the

colonial enterprise. His legal domain was supposedly left untouched by the colonial government in British India, and hence, till date it applied as Muslim personal law. The courts generally turn towards Mulla's book for ascertaining the point of view of Muslim personal law as it is the most concise, handy, and easy to use reference material on the subject sanctified by chain of precedents dating back to British India. (see generally, Cheema, Shahbaz Ahmad. "Mulla's Principles of Mahomedan Law in Pakistani Courts: Undoing/Unraveling the Colonial Enterprise?." LUMS Law 4 (2018)' For details, please see *Raja Muhammad Owais v. Mst. Nazia Jabeen and others* in the Supreme Court of Pakistan in Civil Petition No.240 of 2021.

⁴⁶Siddiqi, Fahad, Concept & Law of Joint Guardianship in Child Custody Litigation in Pakistan (October 5, 2022). Available at SSRN: <https://ssrn.com/abstract=4238404> or <http://dx.doi.org/10.2139/ssrn.4238404>

⁴⁷*Mst. Atia Waris v. Sultan Ahmed Khan*, PLD 1959 Lahore 205.

⁴⁸*Jumna Khan v. Mst. Gull Ferosha*, PLD 1972 Peshawar 1; See also PLD 1988 Karachi 252.

⁴⁹Please see *Bushra Asghar v. Dr. Rehmat Ali*, 2012 MLD 1755; see also, *Ms. Shazia Akbar Ghalzai, etc. v. Additional District Judge*, HCJD/C-121 Islamabad High Court in WRIT PETITION No. 156 of 2020.

father of the minor has failed to maintain his minor, he may lose both the right to custody as well as the guardianship.⁵⁰

More importantly, the parent who does not have custody is entitled to visitation rights, although the Guardians and Wards Act 1890 does not address this matter. Section 7 of the Family Courts Act 1964 grants the non-custodial parent the right to initiate legal proceedings for visitation rights. However, this law lacks specific guidelines regarding the frequency and duration of visits.⁵¹ The procedural complexities and the restricted visitation schedule, such as a monthly or fortnightly meeting lasting two hours within the court premises, can be disadvantageous to the non-custodial parent. Furthermore, the non-custodial parent may be unfairly affected, as visitation meetings can potentially be circumvented by providing a false medical certificate for the child.⁵²

The duration of cases under the Guardian and Wards Act typically spans three to five years. Throughout this period, the parent-child relationship tends to weaken due to the influence of the custodial parent. Moreover, the visitation rights of noncustodial parents are often marred by irregularities and unreasonable restrictions, leading to disappointment and the potential loss of one parent.⁵³ This unequal allocation of time between the two living parents blatantly ignores Article 35 of the Constitution of the Islamic Republic of Pakistan, which states that '*The State shall protect the marriage, the family, the mother, and the child.*' The legislature, in its wisdom, specifically underscores the term 'family,' encompassing both the father and the mother along with the child.⁵⁴

⁵⁰*Ms. Shazia Akbar Ghalzai, etc. v. Additional District Judge*, HCJD/C-121 Islamabad High Court in Writ Petition No. 156 of 2020.

⁵¹Sabreen, *supra* note 37.

⁵²Cheema, Z. I., J. Riaz, and A. N. Khan. "Determining the Custody of a Child in Pakistan." *Global Regional Review* 4 (2020): 158-164. [https://doi.org/10.31703/grr.2020\(V-IV\).16](https://doi.org/10.31703/grr.2020(V-IV).16). see also. Javed, Kaleem, and Umbreen Javaid. "Role of judicial system of Pakistan in social maladjustment among the children under child custody litigation." *South Asian Studies* 34, no. 2 (2019): 421.

⁵³Javed, Kaleem, and Umbreen Javaid. "Role of judicial system of Pakistan in social maladjustment among the children under child custody litigation." *South Asian Studies* 34, no. 2 (2019): 421.

⁵⁴Fahad, *Shared parenting*, at *supra* note 46.

Additionally, the Guardian and Wards Act of 1890 and the Family Courts Act of 1964 do not address the concept of joint custody or shared parenting for children of divorced parents.⁵⁵ Besides, there is a lack of mandatory process for disputing couples to undergo mediation, arbitration, or dispute resolution before resorting to litigation. Given that litigation inherently heightens animosity and tension between the parties involved, it fails to contribute to the preservation of the overall well-being of a fractured family.⁵⁶ The superior courts of Pakistan found promising when acknowledging the sociological studies which suggest that splitting up of parents is a source of severe anguish for a child.⁵⁷ It is in the child's best interest to grow up when both parents are involved in her/his upbringing and the minor has a chance to develop a healthy relationship with her/him both parents, whether it is possible with a case of shared custody or having equal visitation rights.⁵⁸ Another important fact is that Islam disciplined a father with so many responsibilities towards his child(ren). If this responsibility has been ignored, his claim for guardianship can be revoked.⁵⁹

Attempts have been undertaken to amend the legislation concerning child custody in Pakistan, yet there is no comprehensive statute outlining specific regulations on child custody.⁶⁰ It is advisable to establish a joint custody 'parenting plan' at the outset of legal proceedings, ensuring equitable access to the child for both parents. Shared custody arrangements can help reduce any additional emotional

⁵⁵Fahad, *Shared parenting*, supra note 46.

⁵⁶Fahad, *Shared parenting*, supra note 46.

⁵⁷*Ms. Shazia Akbar Ghalzai, etc. v. Additional District Judge etc.* The Islamabad High Court, Writ Petition No. 156 of 2020.

⁵⁸*Ms. Shazia Akbar Ghalzai, etc. v. Additional District Judge*, HCJD/C-121 Islamabad High Court in WRIT PETITION No. 156 of 2020.

⁵⁹The Family Courts Act 1964 and the Muslim Family Laws Ordinance 1961 ("MFLO") deal with the issue of maintenance of minors in Pakistan. For details please see, Sabreen, Mudrasa. "Law on the Custody at note 43; Please see *Rashid Hussain ...Petitioner(s) v. Additional District Judge*, Civil Petition No.1665 OF 2020 (Against the judgment dated 27.02.2020 of the Islamabad High Court, Islamabad passed in Writ Petition No.3950 of 2019).

⁶⁰Sabreen, supra note 37.

distress for the child, who is already grappling with the repercussions of their parents' separation.

FINDINGS FROM DATA

This research study investigates the effectiveness of child custody laws in the Maldives and Pakistan, focusing on the challenges within their family justice systems. In these jurisdictions, the resolution of child custody disputes often remained for months, with disputants limited to sole custody options. Consequently, aggravated parental conflicts post-separation and visitation rights often denied. From this perspective, this research examines how family courts interpret the best interests and the welfare of the child, and whether they embrace modern concepts like joint custody or shared parenting.

Adopting a multi-method approach including surveys, interviews, and library research, the study proposed the adoption of shared parenting/ joint custody models to enhance the family justice systems in both jurisdictions. As per demographic information, 51 respondents participated into this research study, among them 46.9% were females and 53.1% were males. The available data informed that 53.1% of the participants were Maldives whereas 42.9% were Pakistanis. The rest of participants were from Malaysia (one person) and Bangladesh (one person). It is pertinent to mention here that all participants were Muslim.

Regarding the education level of the participants, 39.6% held master's degrees, while an equal percentage held bachelor's degrees. Additionally, 14.6% held PhDs. Furthermore, 45.8% were legal professionals, 10.4% were students, and 27.1% were employed by state-owned institutions. The participants were queried about the prevailing practices in family and guardian and ward courts. Among them, 50% reported that in cases of child custody disputes, minors were handed over to mothers as sole custodians, while 14.6% indicated that minors were handed over to fathers. The participants were of the view that no custody was handover as shared parenting or joint custody.

The research findings indicate that the Maldives' family justice system provides a remedy for custody issues, but it lacks joint custody, shared parenting, or shared parental responsibility, which is a modern method of resolving custody issues. An important question was posed

to participants whether custody issues may be resolved without the intervention of courts. In this regard, 87.6% of participants expressed support for mediation and preferred resolving custody issues out of court, with very few in disagreement. Participants viewed court-mediated mediation as an effective tool for resolving custody disputes involving minors, noting that custody decisions, whether agreed upon by both parents or not, could be enforced through judicial authority. Concerning the family court's adherence to the best interests of the child policy, 81.3% of participants affirmed this approach, while only 8.3% opposed it, and 10.4% remained neutral on the matter.

The current provisions of the legislations show that the Maldives retains the traditional approach in awarding custody, i.e., imposing the responsibility of childcare on one parent, i.e., sole custody, and only granting the visitation right and right of access to the other. Regarding guidelines for resolving custody issues, only 18.8% favoured sole custody, while 65.4% supported shared parenting. However, 15% preferred time-sharing custody. In terms of preference for resolving custody issues, 40.8% favoured sole custody, while 39% opposed it. Additionally, 20.4% remained neutral. When asked about time-sharing formulas in shared parenting, 62.5% preferred a 50/50 split, 18.8% preferred a 60/40 split, and an equal number favoured a 70/30 split.

An important question posed to participants of the research was whether they are proponents of joint custody or shared parenting, among them 67.4% from the Maldives and Pakistan were proponents of shared parenting or joint custody. 10.2% say no and 32.7% were found neutral. 85.7% were of the view that shared parental responsibility is good for parents as well as children. Another crucial aspect concerns the age at which children should be allowed to choose their custodial parent. Approximately 47.9% suggested that the age should not be less than 10 years, while 33.3% believed it should be between 8 to 10 years. Additionally, 10.4% favoured an age range of 5 to 7 years. Only 8.3% supported the idea that children younger than 5 years should have the choice to select their custodial parents. The majority of participants were of the view that shared parenting will not work in situations where such parents neglect or abuse their children, as well as those from whom the children require protection and distance. 73.5% of the participants also strongly contended that in case of neglect, the custodial parent should be punished. Finally, when

asked if the mother and father have to say about custody before courts, 77.4% were in favour, and very few percent disagreed. Furthermore, all respondents agreed that the concept of joint custody should be introduced and implemented in the Maldives.

DATA ANALYSIS AND DISCUSSIONS ON MAJOR FINDINGS

It is pertinent to mention here that both the Maldives and Pakistani family law adhere to Muslim family law principles, particularly regarding custody issues and the stipulated requirements for Muslim parents. Based on above findings, it could be argued that for Muslims it is their prime responsibility of positively raising their children. Muslim parents should not be forgiven if they have not properly cared for their marriage's children because they have special rights in Islam. The important thing is that both parents maintain close contact for the sake of their children's well-being. More importantly, children who participate in shared parenting may be less affected by their parents' divorces and thus have better parent-child relationships.⁶¹ It can be concluded through this research that for the Maldivian legal system, the incorporation of the concepts of shared parenting, joint custody, and family responsibility through joint custody or shared parenting could be a solution to problems between disputing parties.

Development of joint custody arrangements has revealed mixed benefits for joint legal and physical custody. However, some studies found that joint legal custody encourages fathers to be more involved in their children's lives, while others did not.⁶² Furthermore, many academics argue that "children's well-being may be jeopardised if joint custody is granted in a hostile family arrangement." Nonetheless,

⁶¹Siddiqi, Fahad, Application of Therapeutic Concept of Shared Parenting, in Child Custody Litigation (January 31, 2018). Available at SSRN: <https://ssrn.com/abstract=3114697> or <http://dx.doi.org/10.2139/ssrn.3114697>; see also, Zartler, Ulrike. "Children and parents after separation." In *Research handbook on the sociology of the family*, pp. 300-313. Edward Elgar Publishing, 2021.

⁶²Moore, E. Divorce, families, and emotion work: Only death will make us part. Basingstoke: Palgrave Macmillan (2017. <http://www.palgrave.com/de/book/9781137438218>. In Kreyenfeld, Michaela, and Heike Trappe. *Parental life courses after separation and divorce in Europe*. Springer Nature, 2020.P, 134.

feminist scholars contend that "the rise in joint custody when noting the loss of bargaining power for mothers."⁶³ In relation to Malaysia, despite the fact that there is no specific provision in the Malaysian family law for shared parenting, joint custody, and family responsibility, Malaysia continues to practice this modern concept of joint custody. The joint legal custody awards could help children by encouraging close relationships and maintaining better contact with both the mother and father.⁶⁴

⁶³Artis, J.A. and Krebs, Family Law and Social Change: Judicial views of Joint Custody 1997 – 2011, 723–745.: See, Augustijn, Lara. "The relation between joint physical custody, interparental conflict, and children's mental health." *Journal of Family Research* 33, no. 3 (2021): 613-636. See also, Pires, Mónica, and Mariana Martins. "Parenting styles, co-parenting, and early child adjustment in separated families with child physical custody processes ongoing in family court." *Children* 8, no. 8 (2021): 629. See also, Thomson, Elizabeth, and Jani Turunen. "Alternating homes—A new family form—The family sociology perspective." *Shared Physical Custody: Interdisciplinary Insights in Child Custody Arrangements* (2021): 21-35.

⁶⁴Kamarudin, Akbar, and Abdul Shukor. "Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective." *Journal of Contemporary Islamic Studies* 8, no. 2 (2022): 13-40.; see also, Kamarudin, Akbar, and Abdul Shukor. "Shari'ah Court's Decision and Respondent's View on Child Custody After Divorce in Kuala Lumpur and Selangor." (2022).; see also, Fadhil Adzim, F. A., Muhammad Saifullah, 'Ainan H., & Mohd, A. (2021). Shared Parenting vs Sole Custody In Malaysian Sha'riah Courts: Lessons From Covid-19. *INSLA E-Proceedings*, 4(1), 11-23. Retrieved from <https://insla.usim.edu.my/index.php/eproceeding/article/view/84>.; see also, The parties practise more sole custody because the laws in Malaysia advocate it as the main practice. (Kamarudin, Akbar, and Abdul Shukor. "Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective." *Journal of Contemporary Islamic Studies* 8, no. 2 (2022): 13-40.).; see also, Suzana, A., Roslina, C. S., and Najibah, M. Z., 2017. Application of Shared Parenting in Malaysia: Appraising the Australian Experience, *Pertanika Journal Social Sciences & Humanities* 25 (S): 293 – 300. [http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20\(S\)%20Mar.%202017/26%20JSSH\(S\)-0416-2016-2ndProof.pdf](http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20(S)%20Mar.%202017/26%20JSSH(S)-0416-2016-2ndProof.pdf)

While reviewing the studies from Malaysia and the Singapore, it is found that both countries do not use the language of shared parenting or joint custody. Both Malaysia and Singapore generally incorporate the concept of shared parental responsibility, which states that parental responsibilities towards children are to be shared by both parents even after separation or divorce.⁶⁵ The Maldivian laws require a major rethinking of these ideas in order to balance the concept of marriage, prevent divorce, and achieve the "best interests of the child." Besides, the Pakistani Family Law Ordinance 1961 and the Family Court Act 1964 necessitates a reconsideration of notions concerning marriage, divorce, custody of minor and shared parenting while acknowledging the best interests of the child. In a broad International and Islamic sense, shared parenting may be the best way to protect the child's welfare. It is a type of parenting that can be set up with the assistance and cooperation of parents.

As for Malaysia, both the civil and Shari'ah Courts prefer sole-custody arrangements over joint-custody arrangements.⁶⁶ In some cases, for example, unless both parents have requested shared parenting or joint custody, the court has simply decided on sole custody. However, it has been observed that in a number of cases, both civil and Shari'ah courts in Malaysia have used their discretion to order shared

⁶⁵Hak, Nora Abdul, Ahmad Mukhlis Mansor, and Roslina Che Soh. "Resolution of Child Custody Dispute: Legislative Foundation and Contemporary Application of Sulh in the Sha'riah Court of Malaysia (Mediasi dalam Menyelesaikan Isu Penjagaan Kanak-Kanak: Asas Perundangan dan Aplikasi Sulh oleh Mahkamah Syariah di Malaysia)." *Journal of Islam in Asia (E-ISSN 2289-8077)* 17, no. 3 (2020): 150-169.

⁶⁶Fadhil Adzim, F. A., Muhammad Saifullah, 'Ainan H., & Mohd, A. (2021). Shared Parenting vs Sole Custody In Malaysian Sha'riah COURTS: LESSONS FROM COVID-19. *INSLA E-Proceedings*, 4(1), 11-23. Retrieved from <https://insla.usim.edu.my/index.php/e proceeding/article/view/84;>; see also, Kamarudin, Akbar, and Abdul Shukor. "Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective." *Journal of Contemporary Islamic Studies* 8, no. 2 (2022): 13-40.; see also, Kamarudin, Akbar, and Abdul Shukor. "Shari'ah Court's Decision and Respondent's View on Child Custody After Divorce in Kuala Lumpur and Selangor." (2022).

parenting or joint custody if it is in the best interests of the minor.⁶⁷ Nora and Roslina⁶⁸ discussed the concept of *maslahah* in Islam via the Qur'an and the hadith of the Prophet Muhammad s.a.w. in relation to the application and principle of *maslahah* in custody matters. On the other hand, Najibah⁶⁹ discussed joint custody and the best interests of the child. Her article looked at Malaysian child custody law, with a focus on sole custody orders.

Sole custody will result in problems such as reduced contact between the child and the non-custodial parent, non-fulfilment of child support obligations, and denial of contact between the child and the non-custodial parent. According to the author, the best interests of the child or the welfare principle shall have been placed as the central thematic arrangements in custody matters. however, the concept of shared parenting or shared parental responsibility is non-existent in the Enactments; therefore, this article suggests that joint custody orders be permitted due to the significant impact of divorce on children when both parents are not involved.⁷⁰

Akbarinvestigated the fathers' visitation rights following divorce in Malaysia. According to his findings, the father lost contact with his child due to the sole custody. It also determines whether access leads to problems such as lack of contact between the father and the child and non-fulfilment of child maintenance by the father.⁷¹ His findings also suggested that joint custody to be granted based on the case's suitability. A court-ordered relationship in which both parents retain full parental rights and responsibilities for their child and in which both parents consult with each other so that major decisions affecting the

⁶⁷Soh, Roslina Che. "Shared parenting at note 29.

⁶⁸Roslina Che Soh and Nora Abdul Hak, "Application of Maslahah (Interest) in Deciding the Right of Hadanah (Custody) of a Child. The Practice in the Syariah Court in Malaysia", *Journal of Applied Sciences Research*, vol. 7, no. 13 (2011): 2182–2188.

⁶⁹Najibah Mohd Zin, "For the Best Interest of the Child: The Impact of the New Approach of Custody Order in Malaysian Legislation", *IIUM Law Journal*, vol. 63 (2003): 1–15.

⁷⁰ Soh, Roslina Che. "Shared parenting at note 29.

⁷¹Akbar Kamarudin, and Abdul Shukor. "Child Custody after Divorce Laws in Malaysia: Muslim Parents and Children Perspective." *Journal of Contemporary Islamic Studies* 8, no. 2 (2022): 13-40.

child's welfare are made jointly.⁷²

As far as India is concerned, the shared parenting or joint custody phenomenon was appreciated by the apex courts of the Country and particularly through Law Commission Report No.257 On "Reforms in Guardianship and Custody Laws in India" were highly appreciative. In case of *Aman Lohia vs Kiran Lohia*,⁷³ the Hon'ble Court found appropriate the shared parenting plan, in which a minor may interact with both the parents equally, and that could be the paramount interest and welfare of the child. Besides, the other family members from both sides can play effective role for the wellbeing and holistic growth of a minor. In the apex court's view, it is vital in the context of the minor's social psychology and upbringing. Besides, the Law Commission Report No. 257 has argued on the fact that different jurisdictions worldwide have adopted shared parenting systems or joint custody arrangements over sole custody on account of post-divorce with respect to children.⁷⁴ However, this report carefully acknowledges a presumption of shared parenting or joint custody where cases of domestic violence, and battered women phenomenon exist due to which a mother may agree to joint custody out of fear of further violence and in that case. It is contrary to the "best interests of the child" standards. It is an undeniable fact that India is still considered a patriarchal society where women and children are often harassed without any fear and not held responsible for such crimes, and ensuring the child's safety could be a problem. With the suggestion that lawyers may make the situation worst, a good suggestion presented by the Report, that it recognised that family courts are not well suited to adjudicate custody disputes instead, mediation centres should be set up all over the country, where trained staff available in advising both parties on issues pertaining to custody of children and family relationships.⁷⁵

⁷²Antony Barone Kolenc, "Homeschooling and the Perils of Shared Parental Responsibility", *Florida Bar Journal*, vol. 90, no. 9 (2016): 44.

⁷³*Aman Lohia vs Kiran Lohia*, AIR 2021 Supreme Court 1748.

⁷⁴The Law Commission Report No.257 On "Reforms In Guardianship And Custody Laws In India" by Government of India, available at <http://lawcommissionofindia.nic.in/Consultation%20Paper%20on%20Shared%20Parentage.p df>. Retrieved on 19th August 2023.

⁷⁵The Law Commission Report supra note 75.

Besides, McIntosh, Smyth, and Kelaher⁷⁶ discovered that Australian family law continues to support shared parenting and places no age restrictions on it. According to them, there are no negative consequences in Australia for shared parenting legislation that does not include any special considerations for early childhood. To summarise, many countries have included shared parenting provisions in their custody laws, and many other countries have considered changing the custody laws to emphasise shared parenting or joint custody, which would be more beneficial for both the parents and the children's development.⁷⁷ As of Bangladesh, the Law of *hidhanat* or custody has been framed keeping in view the roles of both parents. If the mother has the physical custody of her children on one hand, the father continues to be the guardian of the child on the other. However, in some cases, the mother is being deprived of her right to custody due to her economic condition, welfare, or if she is financially sound enough to support her child. Besides, this jurisdiction also lacks shared parenting phenomenon.⁷⁸

One must not forget that The Guardian and Wards Act, (GWA, 1890) currently applicable in India, Pakistan as well as in Bangladesh, was passed in 1890, almost 132 years ago, since then the South Asian society has been evolving at a fast pace. However, these jurisdictions have shown a very slow progress on modernising the prime regulation that is responsible for standardised matters pertaining to children.⁷⁹

⁷⁶ Jennifer E McIntosh, Bruce M Smyth, and Margaret Kelaher, "Responding to Concerns about a Study of Infant Overnight Care Postseparation, With Comments on Consensus: Reply to Warshak", *Psychology, Public Policy, and Law*, vol. 21, no. 1 (2015): 111–119.

⁷⁷ Linda Nielsen, "Shared Physical Custody: Summary of 40 Studies on Outcomes for Children", *Journal of Divorce & Remarriage*, vol. 55, no. 8 (2014): 613–635.

⁷⁸ Jahan, Asma. "Legal Status of Guardianship of Minor: Bangladesh Perspective." *Journal of Asian and African Social Science and Humanities* 1, no. 3 (2015): 75-95.

⁷⁹ Siddiqi, Fahad, Concept & Law of Joint Guardianship in Child Custody Litigation in Pakistan (October 5, 2022). Available at SSRN: <https://ssrn.com/abstract=4238404> or <http://dx.doi.org/10.2139/ssrn.4238404>.

CONCLUSION AND RECOMMENDATIONS

This evidence has led to the conclusion that shared parenting is the best custodial standard, especially for the child's psychological and emotional well-being and for reviving interest in the position of a non-resident parent. Joint custody is beneficial to the Maldivians. It is a novel idea for the Maldives, and it will benefit both the child and the parents. Because the Maldivian community is a small unit in comparison to other jurisdictions, it must be given special consideration for the sake of family unity and societal harmony. Similarly, this fresh approach can bring promising advantages for the Pakistani nation as well, particularly for children and parents. Prioritising family unity and societal harmony through the induction of shared parenting or joint custody into its family law jurisdictions shall be crucial. However, the child's safety and wellbeing must not be overlooked. In the modern Western societies, the phenomenon of joint custody has been adopted in resolving problems arising from a sole custody of the child. Researchers now believe that joint custody could be awarded on a case-by-case basis based on the facts of the case while keeping the child's best interests in mind. It would be a practicable solution. Joint custody is a good practice if done correctly, but as previously stated, it is not the only option. Along with the previously mentioned guidelines, joint custody would be an excellent way to resolve the current situation.

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