

Interim Injunctions as Instruments of Injustice in Visitation Matters

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Abstract: Visitation disputes in Pakistan often leave minor children caught between custodial and non-custodial parents, while courts rely heavily on interim injunctions. These injunctions are frequently issued mechanically, often based solely on an affidavit, and usually *ex parte*. In practice, appellate courts routinely grant or extend such orders without fully considering the welfare of the child, causing long-term delays and depriving minors of meaningful contact with one parent. This study explores the misuse of interim injunctions in family law, arguing that they often violate constitutional protections under Articles 4, 9, 10-A, and 15. Family courts operate in *loco parentis*, with a quasi-parental responsibility toward minors. Suspension of visitation without thorough inquiry undermines not only statutory mandates under the Guardians and Wards Act, 1890 and the Family Courts Act, 1964 but also the emotional and psychological well-being of children, potentially leading to parental alienation, insecurity, and long-term behavioral issues.

Keywords: interim injunctions; family law; visitation rights; guardians and wards Act 1890; family courts Act 1964; *Loco parentis*

1. Introduction

In many post-divorce family disputes, parents particularly within adversarial custody litigation treat children as strategic instruments rather than autonomous rights-bearing individuals. The children are emotionally damaged during the most formative years of their lives due to this manipulative behavior, which constitutes very irresponsible parenting. A large number of appeals are pending before Appellate Courts in Punjab due to visitation orders of the Guardian Courts. Several of such appeals have been pending up to two or three years. This backlog is largely attributable to *ex parte* interim injunctions or stay orders granted solely on the basis of affidavits, without substantive judicial scrutiny provided by the appellant without much thought as to whether this would be in the best interests of the minors, which is the overriding principle under the Act¹.

As a result, custodial and non-custodial parents don't have clarity about status and these orders sometimes deny the minors their right to have meaningful and frequent contact with both parents. In fact, interim relief ought to remain extraordinary and necessity-driven, rather than being granted as a matter of routine and based on need, as opposed to being awarded as a matter of course. In many instances, even after the issuance of several hearing dates and the applications to stay or interim injunctions were made by the aggrieved party, the appeal proceedings continued. It is not only a violation of the fast custody proceedings envisaged by Article 25 of the Act, 1890, it is also a constructive denial of justice in contravention with Article 10-A², which guarantees due process and fair trial.

Family Courts, whether in trial or appellate stage, are not just ordinary civil courts. They by their very nature have a quasi-parental jurisdiction, and act in *loco parentis* to minor children. The issues of custody and visitation are not only about the private rights of parents but directly involve the basic rights and psychological well-being of children as they represent a vulnerable group that should be given protection as per domestic and international laws.

Systemic failure to act has led to a massive miscarriage of justice by the Appellate Courts not ensuring that their own orders are complied with in good time. Non-custodial parents are denied the little relief that they get under the visitation orders of the Guardian Courts. Conversely, the actual beneficiaries of the principle of welfare as enforced on the Guardians and Wards Act, 1890 are the minors themselves, with whom the burnt sacrifice is forced to rest judicial laxity and judicial

Citation: Fahad Ahmad. 2025. Revisiting Interim Injunctions as Instruments of Injustice in Visitation Matters. *Legal Research & Analysis* 3(2), 57-60.

<https://doi.org/10.69971/lra.3.2.2025.149>.



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¹ Guardians and Wards Act, 1890 (Act VIII of 1890)

² Constitution of the Islamic Republic of Pakistan, 1973

inertia. Instead of streamlining the process and safeguarding the interests of the children, the long delay in action actually cancels the visitation rights.

This study explores law and practice of grant of interim injunctions in the family law specifically in custody and visitation cases. Superior courts or the appellate courts with proper jurisdiction have failed to adequately tackle this issue. Appellate Courts issue and reissue notices, and summons, without any substantial adjudication, or compliance with the interim orders made therein.

2. Constitutional Provisions of Visitation

The inadequacy of procedural protection and the urgency of judicial acceptance for interim injunctions in custody proceedings require an approach different than regular civil litigation. Delay in family cases affects the emotional, psychological, and developmental health of minors. The lack of proper supervisory measures to ensure the observance of interim orders, puts both the minors and the non-custodial parents at irreparable damages and vitiates the constitutional rights of fair trial, access to justice, and protection of the family provided in Articles 10-A, 9, 14 and 35 of the Constitution of the Islamic Republic of Pakistan, 1973.

Courts should be more sensitive when handling an application of stay of visitation orders as compared to any other civil disputes. The automatic revocation of visitation on mere affidavit without an inquiry into the welfare of the child violates the guiding principle of family jurisprudence. These orders deny the minors the opportunity to have meaningful contact with one of the parents who have to bear the long-term effects of parental alienation.

The Family Courts are supposed to take the *loco parentis* of children due to their very nature and the direct consideration of this in the law. Custody, visitation and access cases, which entail the personal rights of conflicting parents, directly affect the fundamental rights and mental health of children. It worsens the position of minors by not allowing them to have any substantial interaction with one of their parents and exposing them to the psychological trauma of alienation of their parents, insecurity, and emotional neglect. A system whereby visitation becomes an element of bargaining or is permanently suspended at the interlocutory level in the procedural laxity was not the law that was meant to be encouraged.

3. Interim injunctions and their conditions in custody cases

An injunction is a judicial directive that forces one party to either do a certain thing (mandatory injunction), or inhibits a party to do a certain course of action (prohibitory injunction). The injunction force itself is based on the court power. When an order is given like this, it is no longer at the discretion but at the law to be followed strictly. Violation or deliberate disobedience of an injunction order can result in the defaulting party facing coercive actions, e.g., fines, property seizure or even civil imprisonment due to contempt of court.

Injunctions are preventive in nature. These are supposed to maintain things unchanged, guard the rights and ensure that the ultimate judgment of the court does not turn out to be a mirage or useless as one of the sides takes unilateral actions during the proceedings of the case. In family cases the dispute is in most cases the personal right, children welfare and delicate relationships that once broken can never be repaired through monetary compensation.

Although injunctions are an effective component of the judicial system, their award should be done in a prudent manner based on established principles of equity, necessity, and proportionality and most importantly, the ultimate factor of justice. Injunctions vary depending on stage of the case and the types of relief that is being requested. Overall, there are three main types of injunctions namely, temporary restraining orders (TROs), preliminary and permanent injunctions.

The most immediate and short-term form of injunction is a temporary restraining order (TRO). It is usually *ex parte*, i.e. without hearing the other party, whereby the applicant proves that permanent damage is about to ensue and that the time lost in giving the notice would be fatal to the very purpose of justice. TROs are limited in scope, and are basically a temporary protection pending the court having the time to look into the issue in more detail. TRO does not intend to resolve rights, but only to maintain the status quo until there is time to conduct a preliminary hearing.

Preliminary injunction (also known as interim injunction), is awarded at an earlier stage before the final trial, after both parties are heard. A lot of caution is exercised by the court while making such orders. A court usually awards a preliminary injunction after the applicant has proved a strong *prima facie* case, the balance of convenience is in his favor and that they would suffer irreparable harm should the injunction be not awarded. The judicial restraint is based on the fact that extraordinary relief is not to be easily granted and that rights are to be decided upon, as a rule, after trial and evidence.

A permanent injunction is granted as part of the final judgment of the court after an exhaustive trial on the merits. A permanent injunction is irreversible and needs one party to do or to avoid doing some actions throughout their life. The courts have to balance the need, urgency and equity in grading these options. Permanent injunction is granted once the case has been decided in detail during the trial. A permanent injunction is final and is part of the final court decree. It could come after a TRO or preliminary injunction has been granted or may be granted separately at the end of the trial process. Based on the terms of the decree, the party that is being restrained must always comply either by not doing or by positively doing certain things.

The conditions to grant of an injunction (temporary or permanent) are almost similar in all jurisdictions but are enforced more stringently in the case of permanent injunctions. The party that requires such relief is usually required to prove the irreparable injury, absence of adequate alternative remedy and balance of convenience or equities. The applicant must prove that in case of denial of relief, he or she would suffer harm of such extent and character that compensatory damages or some other form of relief cannot be sufficiently sufficient. In irreparable injury, damage is not open to accurate measuring or money will not put the injured person in the position that they would have occupied were it not the wrongful act. The party must prove that no other legal or equitable remedy is available which could provide comparable relief. If damages or statutory remedies are sufficient to address the harm, the extraordinary remedy of injunction is not justified. Courts also weigh the comparative hardship or prejudice that may result from granting or refusing the injunction. Relief will only be granted if the balance of convenience tilts in favor of the applicant, i.e., if the harm caused to the applicant by refusing relief outweighs the inconvenience or injury likely to be caused to the respondent by granting it.

4. Discretion, Clean Hands, and Section 24-A

The relief of injunction is essentially a discretionary and equitable remedy, which cannot be claimed by any party to litigation as a matter of right. It is a settled principle of equity that "he who seeks equity must come with clean hands." Therefore, before exercising its discretion, the Court must satisfy its conscience that the party invoking this equitable jurisdiction has not acted inequitably, nor is attempting to misuse the process of law for collateral purposes. It is further a requirement of law that the party seeking an interim injunction must demonstrate, to the satisfaction of the Court, that such interference is necessary to protect it against an injury of the nature described in equity as an "irreparable loss", which may occur even before the applicant's legal rights are conclusively established at trial. For adjudicating the question whether preventive equitable relief ought to be granted or withheld, an injury is treated as irreparable where no legal remedy is capable of furnishing full and adequate compensation; or where no adequate redress is otherwise available; or where there exists an inherent ineffectiveness in the legal remedy in addressing the harm complained of. Sindh High Court³, reaffirmed the above-stated principles governing the grant of interim and preventive equitable relief.

The Courts are supposed to assume the jurisdiction of *loco parentis* in line with the principles of the existing family law. The Court is not to be ruled by the technicalities of procedure or the mere machinery of injunctions when making parental jurisdiction decisions. The welfare of the minor should be understood in a broad sense, that is, it does not refer only to the material comfort and physical safety of the child, but to all aspects of his/her psychological, educational, moral and emotional well-being (Kelly 2002). Any interim order that interferes with or suspends the visitation rights without a careful and sensible investigation into these predominant welfare factors is a perversion of the very endowment of the jurisdiction which the Family Courts are endowed with.

5. Supreme Court Jurisprudence and *Loco Parentis* Obligation

The Supreme Court of Pakistan in Mst. Hameed Mai v. Irshad Hussain⁴ authoritatively stated that for custody and visitation, the niceties of the law cannot be allowed to prevail at the expense of the minor. The Courts are bound to do so in the character of *loco Parentis*, and to exercise their powers as though they were in *loco parentis*, and in such a manner that the very decision they make would be founded on the supremacy of the best interest of the child.

The refusal or interference of proper and constructive communication between the non-custodial parent and the minor child, usually in the guise of procedure and rash judgments of visitation directives harms children a lot. The jurisprudence of custody and visitation does not work on the adversarial principle of superiority of claims but a superior principle of ensuring the best interests of the child. At least, the non-custodial parent should be granted a hearing chance before such a suspension is suspended to enable the Court to reasonably balance the harm that may be inflicted on the welfare of the child against any procedural or technical basis that may be presented in support of suspension.

Order to suspend the operation of the visitation rights, granted to the appellant by an appellate court is unreasonable restriction of the fundamental rights of access and movement of the minor child, guaranteed by the Article 15 of the Constitution of Islamic Republic of Pakistan. Any restriction on visitation must therefore satisfy the constitutional tests of legality, necessity, proportionality, and reasonableness. Interim suspension of visitation without recorded reasons fails all four limbs, In such scenarios, the Court should look at the nature and scope of the restriction, how it was imposed, the nature of the right that is sought to be violated and the purpose that the restriction was intended to fulfill. But in visitation issues, these parameters are not followed. The appellate courts curtail the access of the non-custodial parent, usually the father, without applying the constitutional test of "reasonableness." Meetings with the child are restricted to two hours, twice a month, within the court premises, thereby depriving both the child and the parent of meaningful interaction essential for the child's welfare and psychological well-being.

Such arbitrary suspension of visitation (Bala 2008), is procedurally defective and substantively unconstitutional. The Supreme Court⁵ recognized that restrictions on freedom of movement must withstand strict judicial scrutiny, and the present practice does not meet that threshold. Appellate Court, is under a legal obligation to state cogent reasons while suspending or staying the operation of visitation rights previously granted to a non-custodial parent. Such judicial discretion cannot be exercised in an arbitrary or mechanical manner.

Every public and judicial functionary is duty bound to decide the application of a citizen after application of mind and by recording reasons. This obligation flows from the insertion of Section 24-A of the General Clauses Act, 1897, which has been authoritatively interpreted by the Hon'ble Supreme Court of Pakistan in Messrs. Airport Support Services versus The Airport Manager, Quaid-e-Azam International Airport, Karachi and others⁶, holding that reasoned orders are the hallmark of fairness and transparency in judicial proceedings. The failure of appellate courts to articulate reasons for suspending visitation, especially in *ex parte* and merely on the basis of an affidavit, amount to a non-speaking restriction on fundamental rights of both the parent and the child under Articles 4, 9, 10-A, and 15 of the Constitution of the Islamic Republic of Pakistan.

A court of law, without assigning valid and cogent reasons, cannot take any action detrimental to the life, liberty, or rights of any person except strictly in accordance with law. Articles 4, 9, and 10-A, enshrine the principles of due process, fair trial, and protection of liberty. Equally, no individual can be prevented from, or hindered in, doing that which is not prohibited by law. The exercise of judicial discretion, therefore, must always be guided by the constitutional command that every person shall be treated in accordance with law and justice, free from arbitrariness and technical subterfuge.

The superior courts have consistently held that in matters concerning custody and visitation, the paramount consideration must always remain the welfare of the minor. This principle flows from the statutory scheme of the Guardians and Wards Act, 1890 and

³ 2019 YLR 815 (Karachi)

⁴ PLD 2002 SC 267

⁵ PLD 1958 SC 41

⁶ 1998 SCMR 2268

the West Pakistan Muslim Family Courts Act, 1964,⁷ and is deeply rooted in the personal laws governing Muslims as well as international obligations under the Convention on the Rights of the Child⁸ to which Pakistan is a signatory. The Supreme Court⁹ held that the court in the exercise of its parental jurisdiction should be a wise and loving parent not following technicalities to the letter but adopting the substantive justice and welfare.

Any public authority including courts is under the legal obligation as interpreted in *Messrs. Airport Support Services versus The Airport Manager, Quaid-e-Azam International Airport, Karachi and others*¹⁰ to give reasons as to why a decision has been made. PLD 1958 SC 41 states that the restriction of the freedom of movement has to be subject to the test of reasonableness, in its substance and in its procedure. Orders restricting the natural and constitutionally guaranteed access between a child and his/her non-custodial parent should, therefore, be strictly limited, grounded in real-life facts, and backed up by well-founded conclusions.

The court has to be moderate, when formulating or altering a visitation schedule. She should not be deprived altogether of the legal possession of the minor. This principle applies equally in reverse; both parents, irrespective of their discord, retain a natural and legal role in the child's upbringing. Reliance in this respect is placed upon the case of *Mst. Maryam Masood v. Mughisuddin Mirza and 2 others*¹¹.

It is an admitted proposition of law that visitation rights of a non-custodial parent are not only the rights of the parent, but also equally the rights of the minor towards his or her parent. The jurisprudence of the superior Courts has consistently recognized that the welfare of the child encompasses the child's right to maintain meaningful and regular contact with both parents. The visitation cannot be restricted or withheld in an automatic way without proper reference to the paramount factor of child welfare. It is respectfully referred.¹² The jurisprudential standpoint, which has been strengthened by Section 24-A¹³ and the established law as proclaimed by the Hon'ble Supreme Court, states that all courts or quasi courts must give reasons to justify their verdict.

6. Conclusions

The paper reviews the principles governing equitable remedies, such as injunctions, highlighting the necessity of irreparable harm, balance of convenience, and absence of alternative remedies before granting relief. Courts must exercise discretion with care, provide cogent reasons, and prioritize child welfare above procedural formalism or adversarial advantages. Appellate courts should adopt uniform minimum standards for interim at-home visitation, ensuring that children maintain regular, meaningful contact with both parents during ongoing litigation. Proper judicial training on child psychology, constitutional rights, and the principles of welfare is crucial to prevent procedural tools from becoming instruments of injustice. Guardian Judges should receive specialized training and continuous sensitization on child psychology, the long-term effects of visitation denial, and the constitutional obligations inherent in their quasi-parental jurisdiction. Family law proceedings must not be mechanical or perfunctory, as they directly impact the lives, emotions, and development of minor children. Courts, acting in *loco parentis*, must prioritize the best interests of the child above procedural expediency or adversarial claims, ensuring that both parents maintain meaningful, ongoing contact with their children.

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⁷ *West Pakistan Family Courts Act, 1964 (Act XXXV of 1964)*.

⁸ *United Nations Convention on the Rights of the Child (UNCRC), 1989*.

⁹ PLD 2002 SC 267

¹⁰ 1998 SCMR 2268

¹¹ 2009 CLC 1443 (Lahore).

¹² 2019 MLD 804 (Karachi)

¹³ *General Clauses Act, 1897 (Act X of 1897)*, § 24-A.