

## **Role of Judicial System of Pakistan in Social Maladjustment of the Children under Child Custody Litigation**

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### **ABSTRACT**

The present study is aimed to explore the role of judicial system of Pakistan in social maladjustment among the children under child custody litigation. In addition, the study is also intended to find out the gaps in child custody litigation for addressing the problems in child custody litigation. The presents study used qualitative research design and conducted 25 in-depth interviews lawyers, judges, parents and relatives of the children under child custody litigation. For the purpose of data collection, researchers selected eight guardian courts situated in Lahore. Interview guide was used to collect data from the respondents who were selected using purposive sampling techniques. Respondents were assured that their provided information will not be shared with anyone without their prior permission. For analyzing data, thematic analysis technique was used. The present study found that judicial system in general and child litigation particularly have an active role in enhancing social maladjustment among the children. There are many factors which are responsible for this increase which include both internal and external factors of court. However, court is responsible to make decision therefore; the majority of the respondents were of the views that court delay in decision making, unpleasant court environment and inefficiency of staff and judges is the main cause of social maladjustment in children. It is concluded that the role of judicial system and its impacts are very severe upon psychological health of the children, therefore, court should tackle the cases very seriously and on urgent bases for keeping children in good environment according to their needs.

**Key Words:**            **Judicial System, Child Custody Litigation, Maladjustment**

### **Introduction**

Child custody litigation is consequently rising in Pakistani society following a rapid increase of divorce cases (Kalanuri, 2015). The innocent children are being used as tool in this litigation and are being abused emotionally and psychologically, which is seriously causing their maladjustment in the society thereby affecting the child in his/ her development in the later part of life. It is a common practice among couples to use kids as pawns in this game of emotional chess and it amounts to absolutely irresponsible parenting to scar children emotionally post separation. In due course the parents move on with their lives and

onto other partners but the children carry the trauma of being manipulated and torn apart emotionally, throughout their lives. Resultantly, a large number of these kids suffering from personality disorders, substance abuse, criminal conduct and anti-social traits etc.

A parent may, leave or retain the child from the other parent, seeking to gain an advantage in the expected or pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. A parent may refuse to return a child at the end of an access visit or may even flee with the child to prevent an access visit. This very retention of the parent itself creates tangible effects on a child psychology which is often unaddressed (Kalanuri, 2015).

The worst possible thing that can happen in a child's life, apart from losing a parent, is to become a rolling ball in a parents' divorce and ensuing custody battles. Whilst the spouses and their families hurl accusations and try to get the better of each other, the trauma being suffered by the child may sometimes be overshadowed by the volley of hurt and anger of the parties. Cases pertaining to custody / visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil rights/ obligations , such as the property disputes etc. these cases have their own dimensions , repercussions and consequences , founded upon the human emotions and the sentiments. The resolution and adjudication of this special kind of matters, therefore should be conceived, considered and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time the natural feelings of the parents cannot be overlooked and ignored. If the parents means something great for a child, the child may also mean the whole world for the parents.

Keeping in mind the above discussion, the present study is aimed at;

1. To identify the role of judicial system of Pakistan in social maladjustment of children under child custody litigation.
2. To address the problems in procedure of child custody litigation.
3. To highlight the gaps in child custody litigation procedures.

## **Literature review**

A study "Relations between post-divorce custody arrangements, family contexts, and children's adjustment" was conducted. The goal of this study was to shed light on the relation between post-separation custody arrangements and family contexts in which school-age children (8–12 years old) live so as to better understand the processes underlying their adjustment. The sample was composed of 112 dyads (parents and children) from families in joint custody or maternal custody (Okpaku, 1975).

The dyads were met with twice at a 1-year interval. Compared with those in joint custody, the respondents with sole custody had a negative opinion of the transitions between homes and had the impression that the children were more involved in inter-parental conflicts (Bruch, 2001). This analysis showed that the

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difficult nature of transitions between homes was a crucial mediating variable in the relation between conflicts and the children's adjustment, but that other variables, such as the relational problems with the mother, played a role, particularly in joint custody situations (Drapeau et al., 2017).

A study "International Parental Child Abduction and the Fragmented Law in India; Time to Accede to the Hague Convention?" concluded that increased transnational movement of people, and consequentially, families, has resulted in complex conflict of laws questions in family-related disputes, especially concerning the custody of children. Such questions often arise from differential criteria within the law in different jurisdictions, and not unusually, the application of differential meaning to the same criteria, resulting in prolonged and protracted custody-related disputes (Swenson et al., 1984).

The Hague Convention on the Civil Aspects of International Child Abduction has been a significant attempt to solve the jurisdiction-related questions, by emphasizing the prompt return of the abducted child to the appropriate forum. However, with regard to non-signatories like India, concerns relevant to differential standards and interpretations remain (Drapeau et al., 2017). This article attempts to chronicle the existing law in India, both statutory law and judicial opinion, regarding international parental child abduction. It also reviews the recommendations of the Law Commission on India's accession to the Convention and the proposed draft legislation for such accession (Sai, 2017).

The study "Allegations of child sexual abuse in parenting disputes: An examination of judicial determinations in the Family Court of Australia" examined Family Court of Australia (FCA) judicial determinations in parenting disputes when allegations of child sexual abuse (CSA) are made by an interested party, usually the mother. For the study, 156 published judgments from 2013–2015 were examined to measure how often allegations of CSA are substantiated, suspected to be true, and disbelieved (Krauss & Sales, 2000).

The characteristics most common in substantiated versus unsubstantiated cases, evidence of abuse presented, and resulting parenting orders were assessed. Findings indicate that, against international comparisons, FCA judges substantiate cases very conservatively, with rates of substantiation much lower than in other studies. Allegations made by mothers against fathers were disproportionately unsubstantiated, as were those which did not fall under the Magellan case management system (Bow & Quinnell, 2001).

Cases where the only evidence of CSA was a child's disclosure and parent's allegation were common in both substantiated and unsubstantiated cases, meaning that a lack of other evidence does not preclude a positive finding of risk of CSA by the FCA. Those cases also involving a protection order against the accused were more likely to be substantiated. Confirmation biases and a judicial tendency to err on the side of false negatives are discussed (Ferguson et al., 2018).

In a study “Judicial Efficiencies in Child Custody Disputes Comparing Mediated and Litigated Outcomes”, it was examined that Family disputes are the bane of over-burdened court systems and child access issues consume a disproportionate share of court resources. Consequently, family mediation has become a viable method of resolving these disputes and mental health professionals are increasingly called upon to mediate child access and support disagreements (Swenson et al., 1984).

The growing utilization of mediation to resolve child access issues magnifies the need to examine the consistency and effectiveness of child custody mediation endeavors. This article reports findings from one exploration into the practices of four judicial districts. Outcomes within and between court districts favoring judge-imposed orders are compared with outcomes from districts which favor mediated settlements (Severson et al., 2004).

The study “Practice Trends in Divorce Related Child Custody” examines the critically growing problem of divorce related child custody. The lack of clear and uniform custody guidelines which should underpin custodian selection is also discussed. The concept of psychological parenthood is offered as one criterion to assist in this crucial selection process; a concept which responds to the best interest of the child as well as to the practical demands inherent in the legal system (Wissö et al., 2019).

The author describes an experimental study of interdisciplinary practice trends among judges and mental health professionals-the two major professions involved in child custody decision-making. Both disciplines were able to select a custodial psychological parent however; differences were evidenced in the criteria they used to make their selection as well as in their satisfaction with these criteria. Practice implications for both professions are discussed (Charnas, 1982).

The researchers in a study “Child Testimony in Custody Cases” provide a brief historical review of judicial trends in child custody placement. In contrast to the start of the 19th century, by its end, courts took into consideration children’s best interests, maternal rights, and prevailing sex role ideologies. Statutory changes began to reflect similar concerns by the end of that century. Modern practices, relying on the best interests of the child standard, also include consistent consideration of children’s preferences in making custody determinations (Kanairara & Corrin, 2019). An important factor in this context is the accuracy with which a child describes domestic relations, especially in contested cases with contradictory allegations by parents. Research dealing with children’s report accuracy and techniques to enhance it are reviewed, and a description of various practical considerations when questioning children is provided (Crossman et al., 2002).

It was examined in a study “Standards for deciding contested child custody” that trying to decide disputed child custody presents a dilemma of conflicting interests, confusing information, and an imprecise legal standard. This study attempts to refine the current standard, the best interests of the child, in order to render it a more usable guideline (Kanairara & Corrin, 2019). The present standard

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along with the least-detrimental-alternative-available criteria are examined. The merits of both are incorporated into a modified version that emphasizes the primacy of a child's interests, the family's responsibility for compromising, co-parenting, and the importance of focusing on minimizing harm rather than doing good (Musetto, 1981).

## **Methodology**

The researchers used qualitative research approach for achieving exploratory research objectives. Under qualitative researcher approach, researchers selected an exploratory research design for checking the subjective opinions of different stakeholders of the phenomenon under study. As the study involve many stakeholders i.e. parents, child, prosecutors and officers of judicial system of Pakistan. Subjective part of the study helps researcher to achieve the objectives about the role of judicial system of Pakistan in social maladjustment of the children under child custody litigation. The researchers ask open ended question from the relevant stakeholders to explore the phenomenon which is not very much explored in Pakistan. The exploratory qualitative research design is expected to generate rich and contextual findings about social maladjustment of the children under child custody litigation.

Parents, relatives who are involved in under custody child litigation in eight Guardian Courts of Lahore Pakistan constitute the population of the study. Moreover, all the lawyers and judges who are directly involved in under custody child litigation are included in the population of the study. The present study is conducted in eight Guardian Courts of Lahore Pakistan. Guardian courts in Lahore are selected because of the fact that these courts are handling most of the causes of child under custody litigation. In addition, it is easier for the researcher to access data sources in the Guardian Courts of Lahore.

Researchers conducted 25 in-depth interviews among the mothers, fathers, and relatives of children, lawyers of custody litigation and the Judges of the Guardian Courts for collecting data from the respondents who were selected purposely. For assuring the rights of respondents, researchers deiced to take both verbal and non-verbal consent. At first step, fieldwork team requested respondents to take part in the study. After their verbal consent, study participants were taken written consent at the time of interview.

Researchers analyzed qualitative data manually. However, thematic analysis technique was applied and all the steps were strictly followed. First of all, data were transcribed from local languages i.e. Urdu and Punjabi into English. After transcription of the data, researchers read and reread data to be familiar with initial codes in data. In third step of thematic analysis technique, researchers searched for themes from initial codes and also reviewed and defined each theme objectively.

## **Findings**

Following themes emerged from qualitative data collected through in-depth interviews with parents, relatives, lawyers and judges.

### **Judicial system of the Pakistan**

Respondents were asked to provide their opinion about the improvement in fair justice in Pakistan. The majority of the respondents (16) claimed that judicial system of Pakistan had not improved to provide fair justice. On the other hand, only three respondents reported that judicial system of Pakistan had improved to provide fair justice. One of the respondents reported that judicial system of Pakistan is “*tedious with sluggish processing, rehearing and backlog of cases.*” Another respondent reported that judicial system of Pakistan is not providing fair justice because of bribery.

Findings indicated that none of the stakeholder from parents, relatives and lawyers claimed that fair justice is not prevalent in Pakistan. However, all the judges reported that fair justice is being provided by the courts in Pakistan. When responding to the question of fair justice, one of the judges claimed that “fair justice is being provided to some extent.” Similarly, another judge reported mentioned that “although there is workload of cases still fair justice is being provided in majority of the cases.”

Respondents were also asked to provide their response about the role of judicial system to improve timely justice. The majority of the respondents (18) reported that judicial system of Pakistan is not providing timely justice. In addition, judicial system of Pakistan is not improving timely justice as well. Only one respondent from lawyers reported that timely justice in Pakistan is improving. One of the respondent mentioned that “*timely justice is not improving because procedure is hurdle in it.*” Another respondent reported that judicial system of Pakistan is not improving timely justice because of the lack of digital technologies and up to date skills. She also reported that some time one party brings very strong references which delay timely justice.

Researchers also asked from the respondents about social adjustment of the children and the role of judicial system to improve social adjustment of children. Findings indicated that the majority of respondents (13) were of the view that judicial system of Pakistan is not improving social adjustment of the children. One of the respondents from mothers reported that “children who belong to broken families face bossy attitude and they are surrounded by their families (both parties). They (children) are also not allowed to participate in group activities which create issues of social adjustment for the children.” Similarly, one of the respondents reported that social adjustment of the children is non-favorable in our country and reforms are needed to improve social adjustment of the children. In addition, one of the respondents from judges reported that social adjustment of the

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children is being affected by child custody litigation and judicial system of the country is not improving social adjustment.

Only three respondents out of nineteen reported that social adjustment of the children is being improved by judicial system of Pakistan. When talking about the intensity of social adjustment, one of the respondents reported that judicial system is improving social adjustment to some extent. Yet another respondent claimed that “judicial system is attempting to give social adjustment to children.” This implies that the majority of the respondents were of the views that judicial system is not improving social adjustment among children under child custody litigation.

### **Laws of judicial system**

Researchers asked both lawyers and judges either they think that child custody laws are realistic or not. The majority of the respondents reported that child custody laws are realistic. However, one of the respondents from lawyers reported that yes laws are realistic but to some extent. On the other hand, one of the respondents from judges reported that “laws are realistic. However, implementation is an issue.” Another respondents from judges reported that “laws are realistic because court have ample powers. Judges can order anything for the welfare of the children.” However, only two respondents reported that child custody laws are non-realistic. One of the lawyers reported that child custody laws are not up to the mark.

### **Child custody litigation**

When talking about the contributions of child custody laws to resolve the issues of child custody, respondents provided very diverse responses. Finding indicated that the laws of child custody are beneficent for the children but proper implementation is not there. One of the respondents from judges reported that “Laws have empowered the parents to get their disputes resolved.” It is found that laws are in detail description but parties use some delaying tactics. To avoid such delay in court proceedings, superficially new sub clauses needs to be incorporated in child custody laws. One of the lawyers reported that instead of resolving issues of child custody, child custody laws are creating hurdles in social adjustment of the children. About half of the respondents reported that laws are adversely affecting child and their social adjustment. Laws are reported complicated therefore, affecting child badly.

### **Shortcomings in child custody litigation**

Respondents while discussing the in child custody laws reported a number of shortcomings. However, one of the highest repeated responses in this regard was procedural deficiencies in child custody laws. However, existing laws are also not

being properly implemented as well. One of the respondents reported that “child custody litigation should be based upon inquiry process and should not be based on regular trials. Shifting the mode of litigation will improve speedy justice for both the parties.” It is also found that rules regarding litigation are not properly formulated which increase ambiguity in procedural laws. Below is the list of major shortcomings in child custody litigation;

1. Procedural deficiencies
2. Trials deficiencies
3. Delaying tactics
4. Difficulty in visitation
5. Non-pleasant court environment
6. Insufficient courts
7. Non-availability of regulation of laws
8. Outdated laws
9. Implementation issues
10. Mode of litigation

### **Quality of child custody litigation**

In their in-depth interviews, both lawyers and judges were asked how the quality of child custody laws can be assessed. The majority of the respondents reported that quality can be assessed by checking its effect upon parents and minors. One of the respondents from lawyers reported that if parents are satisfied from the child custody litigation than it is of good quality and if parents are not satisfied than the quality of child litigation is low. One of the judges reported that;

Look into the welfare of the minor whether he/she is getting good facilities i.e. good education etc. from a custodian parents. If he/she is getting good facilities than child custody laws are of good quality and if minor is not getting good facilities than the quality is low.

Only one respondent reported that it is not very easy to measure the quality of child custody litigation because of the complications in court proceedings. Court proceedings are very complicated which are not easy to understand. Therefore, it is difficult to measure quality of child custody litigation.

### **Role of parents in improving child custody litigation**

Researcher also included a question in interview guide about the role of parents in improving child custody litigation. The responses of respondents were diverse. It is reported that custodian parent prejudice the mind of children against non-custodian parent and they do not provide free atmosphere without any interference. On the other hand, the majority of the respondents were of the views that parents can improve child litigation by cooperating each other (both custodian and non-custodian parent) and by cooperating with the court. This implies that the role of



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parents is very important. Both lawyers and judges provided suggestions for the parents to improve child custody litigations that are mentioned below;

1. Parents should show compromising attitude towards each other.
2. Parents should show cooperation with each other.
3. Parents should be cooperating with the court
4. Custodian parents should be compromising and should not act to prove his/her ego.
5. Parents should understand and act accordingly for the betterment of their child and his/her future.

### **Hurdles in the proceedings of child custody litigation**

Respondents i.e. lawyers, judges, parents and relatives provided a detailed response about the hurdles which they face during the court proceedings of child custody litigation. The majority of the lawyers reported that they face hurdles because of parents, procedural laws and judges as well. Parents exhibit their differences and rivalries at the time of visitation which create hurdle in child custody litigation. Following are the major hurdles reported by the lawyers;

1. Differences between parents
2. Difficulties in visitation of minors
3. Delay in proceedings of cases
4. Proceedings deficiencies
5. Attitude of parents
6. Attitude of judges
7. Incompetent judges
8. Excessive burden of cases
9. Overburden courts

On the other hand, judges also reported that they face hurdles during case proceedings of child custody litigation both by parents (both mother and father and custodian and non-custodian), lawyers and deficiencies in procedural laws. Following hurdles are put forward by the judges;

1. Delaying tactics in case proceedings
2. Delaying tactics by custodian parent while arranging visitation
3. Prejudicial attitude by parents toward each other
4. Violation of court orders
5. Parents ignore the welfare of minor
6. Traditional jurisprudence
7. Wrong address of both the parties
8. Heavy pendency

Parents and relatives also provided their response regarding the hurdles they are facing during case proceedings of child custody litigation. Findings indicated that parents are disturbed by a number of factors which belonged to both opponent

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party and court. The majority of the respondents reported that justice is slow in child custody litigation. According to one of the respondents;

One of the major hurdles is time limitation. There is no value of time of both the parties. Sometimes, judges and their lower staff was absent which waste our time and delayed the case as well. Corruption is practiced even in court. I have to face emotional torture during case proceedings as well.

Following are the hurdles reported by the parents and relatives;

1. Time limitation
2. Absence of judges and staff
3. Corruption
4. Emotional torture
5. Slow process
6. Pressure of courts
7. Attitude of judges
8. Waste of time
9. Attitude of lawyers
10. Bribery

### **Number of cases**

Interviewers asked from both lawyers and judges about the number of cases which they deal in a day regarding child custody litigation. The majority of judges reported that they have to handle round 100 cases of child custody litigation in a day. This implies that excessive numbers of cases are being handled by one guardian judge in a day which might affect the quality of case proceedings and social adjustment of children as well. On the other hand, numbers of cases handled by lawyers are quite low as compared to the cases handled by judges. On average, lawyers are dealing 4 cases of child custody litigation.

### **Burdened of cases**

Both lawyers and judges were also asked about the burden of their cases regarding child custody litigation. Interestingly, the majority of the lawyers who were handling on average 4 cases were feeling overburdened because of the number of cases. On the other hand, judges were also feeling overburdened because of the number of cases regarding child custody litigation. One of the judges reported that “excessive numbers of cases overburden workload and they feel exhausted in the end of day.”

### **Child custody laws of Pakistan**

When respondents were asked either child custody laws are up to date or not, only one respondent from judges responded that child custody laws are up to date. However, the majority of both lawyers and judges replied that child custody laws

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are not up to date. One of the respondents reported that “child custody laws are out dated and amendments and improvement are required in child custody laws of Pakistan.” On the other hand, researcher also asked same question from parents and relatives as well. Only one respondent reported that child custody laws of Pakistan are up to date to some extent. However, the majority of the parents and relatives (12) were of the views that child custody laws of Pakistan are not up to date and improvements are required in the laws. One of the respondents reported that “child custody laws of Pakistan are not up to date and there is lack of digital transformation as well.”

### **Child custody laws and needs of society**

When conducting in-depth interview, it was asked from the respondents either child custody laws of Pakistan are fulfilling the need of society. Two respondents from lawyers and judges reported that child custody laws of Pakistan are partially/to some extent fulfilling the needs of society. On the other hand, the majority of the respondents (4) from lawyers and judges reported that current child custody laws are not fulfilling the needs of society. One of the respondents from judges reported that “child custody laws are not fulfilling the needs of society and improvement is needed in laws.” On the other hand, the majority of the respondents from parents and relatives reported that child custody laws are not fulfilling the needs of society. However, only one respondent from fathers reported that “child custody laws are fulfilling the needs of society to some extent.”

### **Space of court room**

The majority of the respondents (both lawyers and judges) when asked about the space of court room reported that space of court room is not enough for handling case proceedings. One of the respondents reported that “space of court is not at all sufficient because it is not possible to handle accused in handcuffs criminal in less spacious room.” On the other hand, majority of the respondents from parents and relatives reported that space of court room is not sufficient to handle court proceedings. One of the respondents from mother responded that “space of court room is miserably inadequate. Moreover, environment and surrounding of court room is also miserable.”

### **Visitation room at court premises**

Respondents were also asked about the facility of visiting room at court premises for visitation purposes. Judges reported that there is a facility of visitation room in court premises for meeting of non-custodian parents with their children. Similarly, lawyers also reported that facility of visitation room located in court premises. On the other hand, the majority of the parents and relatives claimed that there is

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visitation room in court premises. However, one respondent from relatives reported that he do not know about the availability of visitation room in court premises. One of the respondents from father reported;

Separate meet up room is available for visitation purposes. The room is equipped with proper security precautions. However, there are so many people in the room which make room overcrowded. Presence of a lot of people disturbs privacy in the room which is affected by the whole audience.

### **Equipment and maintenance of visitation room**

When asked about the presence of facilities and maintenance of visitation room, the majority of the judges reported that visitation rooms are not well equipped and well maintained. However, only one judge claimed that visitation rooms are normal but not up to mark. Likewise, lawyers claimed that visitation rooms are not well equipped and maintained and there is a need of improving visitation rooms. On the other hand, one respondents from relative reported that he does not know about the facilities in visitation room. The majority of the respondents from parents and relatives (10) reported that visitation rooms are not well equipped and maintained. On the contrary, three respondents reported that visitation rooms are well maintained and well equipped. One of the respondents reported that “visitation rooms are not well equipped. Once children were there they never want to visit again. Visitation rooms lack outdoor play zones and children have no freedom to explore. There is no facility of recreation in visitation room.”

### **Judicial system and social adjustment of children**

Respondents also provided their response about how judicial system can improve social adjustment among children under child custody litigation. Both lawyers and judges put forward many suggestions to improve social adjustment of children. It is the repeatedly mentioned that children when appearing in court face the issues of social adjustment because of court environment. It is the duty of custodian parent to teach children that both the parents (custodian and non-custodian) are equal. Only one respondent reported that “it is the duty of parents to improve social adjustment among children.” Rest of the respondents mentioned that reforms are required in child custody litigation and it is the duty of court to improve social adjustment in children by taking active steps. Respondents mentioned following suggestions about the role of judicial system in improving social adjustment in children;

1. Reforms are required in guardian laws.
2. Number of judges should be increased.
3. Reforms are required in procedural laws of visitation.
4. Quality visitation environment should be provided.
5. Child custody laws should be modified.

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6. Fair and timely justice should be provided.

### **Causes of social maladjustment of children**

Researcher also asked from the respondents (lawyers and judges) to provide their opinion about the causes of social maladjustment among the children. Respondents provided three types of causes i.e. social causes, judicial causes and psychological causes. However, the majority of the respondents were of the views that social factors are the primary cause of social maladjustment among the children under child custody litigation. However, it is also found that children are facing social maladjustment because of complicated laws of child custody litigation and procedural deficiencies in child litigation as well. The causes of social maladjustment among children are as under;

1. Outdated laws of child litigation.
2. Procedural laws are not deficient.
3. Non cooperating attitude and behavior of parents.
4. Non-compromising attitude of parents.
5. Non-cooperating and non-compromising attitude by relatives.
6. Joint family system.

### **Role of judicial system in creating issues of social adjustment**

Researchers asked from respondents i.e. lawyers, judges, parents and relatives to provide their opinion about the role of judicial system in creating issues of social adjustment among children under child custody litigation. Only two respondents from lawyers and judges reported that there is no role of judicial system in creating issues of social adjustment among children. However, the majority of the respondents claimed that the judicial system play very important role in creating issues of social adjustment. According to one of the respondents "it is the environment of the court which is one of the causes of issues of social adjustment. Non-pleasant court environment creates many problems among children."

The same question was also asked from the parents and relatives of the children under child custody litigation. Almost every respondent claimed that judicial system creates issues of social adjustment among children. Court premises create many problems which affects the future of the children. One of the respondents from mother reported;

It is the role of court which babbly affects social adjustment among the children. Courts cause delay in decision making. This delay of decision making creates trouble in shifting of physical custody which disturbs psychological health (mentality) of the child under child custody litigation.

## **Court environment issues of social adjustment of children**

While conducting in-depth interviews, interviewers also asked from the respondents either court environment create issue of social adjustment among children. The majority of the respondents responded that environment in court premises is a major cause of creating issues of social adjustment among the children. According to lawyers, “non-pleasant environment in court premises is a main reason of the issues of social adjustment of children”. Similarly, judges were also of the view that environment in court premises gives birth to the issues of social adjustment. One of the respondents from judges reported that “separate premise of guardian court shall be established to counter the non-pleasant environment in court premises.” Parents and relatives also provided similar response regarding the impact of environment of court premises on social adjustment among children. They claimed that court environment negatively affects social adjustment of the children. One of the respondents from mothers said that “there are so many negativities in the court premises such as emotional torture and non-healthy environment.”

## **Number of cases and issues of social adjustment**

Findings suggested that excessive numbers of cases of child custody litigation not only overburdened judges but also caused issues of social adjustment among children. The majority of the judges reported that excessive number of cases create issues of social adjustment because overburdening cases create unfriendly environment in court premises. On the other hand, the majority of the lawyer also supported the claims of judges and reported that each court have to deal more than 100 cases in a day which is very high number. One of the lawyer reported that “excessive numbers of cases are giving birth to the issues of social adjustment therefore; there should be less than ten cases in a day in single court”. Data collected from parents and relatives also indicated that excessing numbers of cases are causing issues of social adjustment among children. One of the respondents from mothers reported that “I had to wait for long time with children for their turn which is very bad for social adjustment of my children.” Another mother were more grieved by this situation and she put forward a way out to avoid issues of social adjustment. She said that “in my opinion, the case hearing should be in peaceful environment with full attention and consideration without interruption of loads of cases.”

## **Psychological problem due to environment of the court premises**

Data from in-depth interviews indicated that the majority of the respondents think that children who come to court for visitation face psychological problems. According to the data provided by judges, children face psychological problem like fear and anxiety during their visitation. Lawyers also said that visitation

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negatively affects psychological health of the children. On the other hand, data provided by parents and lawyers also strengthen above mentioned claims. According to one of the respondents from fathers, “visitation affects children negatively because there is a lack of colorful and alternative environment i.e. play zone in visitation room. Visitation room has no activity and no entertainment as well.”

### **Quarrel during court proceedings**

Respondents were also asked to report the cases of quarrels between both the parties during court proceedings. When talking about the incidents of quarrels, the lawyer claimed that incidents of quarrels are many which started during court proceedings. On the other hand, judges reported that they face such incidents on daily bases and in most of the cases. One of the respondents from judges reported that “he faced quarrels between both parties (mother and father) many times which is based on previous bad relations why the marriage was broken.” Findings also indicated that the majority of the parents and relatives (9) reported that they had not faced any type of quarrels in court. However, three respondents reported that they faced quarrels in court premises. One of the respondents from fathers reported that “quarrels started for child visitation.” Another respondent said that quarrel was started by his wife for nothing. According to one of the respondent from mothers “it is common in presence of opposite parties which is because of the obsessive attitude and threatening behavior in presence of custody, lawyers and family personal.”

### **Quarrel between parties and issues in social adjustment**

Respondents were asked to report either the incidents of quarrels affect social adjustment of the children. The majority of the judges reported that quarrels between parties (mother and father) affect social adjustment negatively. One of the judges reported that after experiencing such incidents children start crying and lost trust upon their parents. Similarly, lawyers also think that quarrels between mother and father in court premises affect social adjustment negatively. On the other hand, the majority of the parents and relatives also reported that quarrel between father and mother during court proceedings in court premises cause issues of social adjustment. One of the respondents from mothers reported that “quarrels surely cause maladjustment among the children. It is negative not only for children but for whole society as well. Those children who come from broken families experience the transfer of frustration towards each other by their parents.”

## **Procedure of custody litigation and issues in social adjustment**

Judges were asked to provide their responses whether the procedure of custody litigation is causing issues of social adjustment. The majority of the judges reported that procedure of child custody litigation is causing issues of social adjustment. According to one of the respondents “procedure of child custody litigation is causing social maladjustment of the children because procedure is lengthy and complicated.” Similarly, lawyers also think that procedure of child custody litigation is very complicated therefore; causing social maladjustment. On the contrary, both parents and relatives think that procedure of child custody litigation creates issues of social adjustment. One of the respondents from mothers reported;

Child confronts and goes through the entire process of child custody litigation. These experiences/hurdles leave long term impacts on child. Most of the time, these impacts are negative on child’s personality. Children will continue to have/experience psychological problem throughout their life.

## **Improvement in the procedure of child custody litigation**

In-depth interviews with respondents also asked them to provide suggestion to improve procedure of child custody litigation. Most of the judges were more concerned about procedural laws regarding child custody litigation and they were of the view that child custody litigation should be transformed and alternative should be applied. Following are the suggestions provided by the judges;

1. Child custody litigation must be based on inquiry system not on trial bases so that cases should be resolved within short period.
2. There must of no evidences base trials. Court should examine social and economic status of the parents and court should handle the case according to social and economic status of the parents. Parent who is socially and economically well-off should be declared custodian parent.
3. No technicalities should be followed like in civil or criminal cases.
4. Separate agency should handle visitation of the children.
5. Visitation rooms should be well equipped.

Similarly to judges, lawyers also provided some suggestions to improve child custody litigation. Following are the suggestions reported by the lawyers;

1. Laws should be reformed.
2. Reforms are needed in procedure of visitation.
3. Number of courts should be increased.
4. Visitation room should be improved.
5. Environment should be healthy and pleasant in court room.
6. Custodian should be declared by comparing socio-economic condition of the parent.
7. Parents should cooperate with each other.



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8. It (child custody litigation) should be based on enquiry.

Parents and relatives also provided suggestion to improve child custody litigation. Most of the respondents were more concerned about timely justice by the courts along with providing basic facilities. Below are the suggestion provided by parents and relatives;

1. Computerization of procedures on urgent bases.
2. Timely justice should be provided.
3. Transparency is vital.
4. Well qualified staff is required.
5. Speedy justice is the demand of the day.
6. New laws should be framed and implemented.
7. Procedural laws should be reformed.
8. Competent judges should be hired.
9. Procedure should not be based on trial.
10. Trained staff is required.
11. Vocations of judges should be managed by arranging alternatives.
12. Fair justice should be provided
13. Visitation should be once a month.
14. Monthly maintenance should be ensured.

## **Discussion**

This is one of its own kinds of first study in the country which explored the role of judicial system in causing the issues of social adjustment among the children under child custody litigation. This second objectives of the study was achieved by conducting qualitative in-depth interviews with the relevant stakeholders i.e. lawyers, judges, parents and relatives. The findings of the presents study indicated that the role of judicial system of guardian courts is very important for creating issues of social adjustment among the children (Bow & Quinnell, 2001). There are many factors which contribute to affect social adjustment among the children. However, the role of procedural laws, court premises and availability of facilities in court rooms and visitation rooms have very important role in creating issues of social adjustment (Wissö et al., 2019).

The findings of the present study indicated that judicial system had very import role in increasing issues of social adjustment. Judicial system of the country is not providing timely justice and present practical form of the proverb “delayed justice is no justice”. On the other hand, it is also not providing fair justice (Bruch, 2001). The system of justice is very slow and procedural law does not support timely and fair justice in the country. However, the laws of judicial system of Pakistan are realistic but laws are not properly practiced and implemented. The presents study found that reforms are required in the current laws to fulfil the needs of the people. Respondents also claimed that current judicial system of the

country is very slow and tedious which decrease social adjustment of the children (Crossman et al., 2002).

The present study replicated that finding of previous studies that lack of implementation of laws decrease the efficiency of laws. According to the findings of the present study, child custody litigation is facing many hurdles. These hurdles come from all stakeholders of litigation. Parents are non-cooperative with each other during visitation of the children (Garimella, 2017). On the other hand, parents are more concerned about their ego (honor) and less concerned about the welfare of their children. Custodian parents most of the time, spread negativity among the children against non-custodian parent. Parents also do not cooperate with court and provide wrong addresses and false information as well (Kanairara & Corrin, 2019).

Child litigation also faces hurdles from judicial system of the country. First of all, each guardian court is dealing with a very large number of cases which make it difficult for the judges to give proper times and attention. This implies that number of child custody courts is less as compared to the number of court. Mode of litigation is also fallacious; child custody litigation is being handled as traditional cases of civil courts and criminal courts i.e. trial base litigation. However, inquiry based litigation is more effective for dealing child custody litigation (Krauss & Sales, 2000).

The present study also found that environment of the court is also non-pleasant. In court premises children as well as parties of child litigation face different problems. In many cases, women felt insure even in court rooms. Judges also admit that space of court room is not enough to handle court proceedings. In addition, the environment of visitation room is also not up to the mark (Drapeau et al., 2017). Visitation rooms are not properly equipped and maintained. In addition, visitation rooms are found overcrowded with different families who came for visitation. Therefore, the majority of the respondents reported that court rooms should be properly equipped. It is also the need of the time to give proper attention towards the court environment which is repeatedly mentioned by the stakeholder non-pleasant and decrease social adjustment of the children (Musetto, 1981).

It is also found by the present study that child custody litigation is a very lengthy procedure. The trial system of litigation. In Pakistan, child custody litigation is based not on evidence bases but trial base as most of civil and criminal cases. This makes child custody litigation very lengthy. For decreasing the length of child custody litigation, procedural law should be changed and laws were suggested to reform. The role of parents is also very important in this regard to cooperate with both non-custodian parent and court as well (Garimella, 2017).

On the other hand, it is also found that space in court room as well as the visitation room also cause the issues of social adjustment for children. It is found that space of court room is not sufficient and there are several issues when a lot of people enter and stay in court (Kanairara & Corrin, 2019). Parents have to visit court room along with their children for litigation and the environment produce suffocation which in turn negatively affect both physical and psychological health

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of the children. There is also suffocation, lack of privacy, lack of attention gaining elements for children in visitation rooms and once children visit visitation room they don't want to visit again (Ferguson et al., 2018).

When mentioning the reasons of the issues of social adjustment among children every stakeholder was agreed that there are many factors both inside of court and outside of court premises. For example, outdated laws of child litigation, deficient procedural law were main causes which belong to court and lack of non-cooperative attitude by parents and relatives and joint family system were mentioned by the respondents that they belong to parents and relatives (Okpaku, 1975). This implies that causes of the issues of social adjustment are both internal and external to judicial system. It was also found that court cause delay in decision making which in turn make it impossible for the parent to visit court again and again and also bring children twice in a month for visitation purposes (Severson et al., 2004).

The study also found that many times both the parties (custodian and non-custodian) get involve into quarrels which also negatively influence physical and psychological health of the children. The judges reported that even in court room parents abuse each other verbally which is also negative for the future of the children who accompany their parents (Swenson et al., 1984). In these situations, the future of the children is put at stake and parents satisfy themselves by alighting and abusing each other. However, parents were of the views that the incidents of quarrels and abusing are because of the environment of the court rooms and visitation rooms as well (Wissö et al., 2019).

## **Conclusion**

The presents study was also aimed to explore the role of judicial system of Pakistan for increasing social maladjustment among children. Qualitative interviews with the parents, relatives, lawyers and judges indicated that judicial system of the country is not only creating issues of social adjustment among children but also enhancing conduct disorders among the children. The factors of the issues of social adjustment are both internal and external to judicial system and under custody child litigation.

It is claimed by the respondents that child custody litigation is a very lengthy procedure and child custody laws are very old. In addition, procedural law of child custody litigation is deficient and reforms are needed to improve the law. Every stakeholder was of the views that by resolving these issues which are internal to the court, workability of the judicial system might be enhanced. In addition, it was also noted that the roles of judges and lawyers in some cases also create the problems of social adjustment. The space of court room, non-pleasant environment of the court room and visitation room also disturb social adjustment among children.

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