

**Amendment to Rule 11, Chapter 2,  
Part A (General) of the High Court  
Rules and Order (Civil)**

**Report No. 124**

## **AMENDMENT TO RULE 11, CHAPTER 2, PART A (GENERAL) OF THE HIGH COURT RULES AND ORDER (CIVIL)**

This is with reference to a letter published in daily Dawn, Islamabad on 14<sup>th</sup> August, 2010 under the caption “**Guardianship: Appeal to Chief Justice**”. In the letter, the author Mr. Muhammad Waseem Elahi invited the attention of the Hon’ble Chief Justice of Pakistan and the Hon’ble Chief Justice of Lahore High Court towards cases of guardianship where courts after appointing guardian for a minor did not monitor the supervision of guardian to ensure proper physical, intellectual and moral upbringing of the ward/minor. The author contended that after appointing a guardian, it is obligatory and judicious to look after the rights and requirements of minors because in many cases guardians after receiving a full-fledged authority over the young and their finances, humiliate and hamper very basic rights of the wards.

It is further stated that the courts after appointing guardian put these files in dark and do not call upon the guardian, wards or witnesses to ensure proper maintenance and welfare of the minor. The wards are left on mercy of uncaring and cruel guardians and the courts are not aware of their terrible conditions. The letter concludes with a suggestion that the courts may call all the concerned (guardian/wards/witnesses) after a period of every two months to become aware of the welfare of ward, so that they may be brought up in a responsible manner.

The Guardian and Wards Act, 1890 was enacted to consolidate and amend the laws relating to guardian and wards. The Act has been divided into four chapters which contain provisions regarding appointment/declaration of guardian, duties, rights and liabilities of guardians and other supplementary provisions. Section 24 of the Act enumerates duties of guardian either appointed by the Court or otherwise, which reads as under:-

**“Duties of guardian of the person.** A guardian of the person of a ward is charged with custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.”

The aforesaid section safeguard interest of minor by making it obligatory upon guardian to look the welfare of minor and his property (if any). The guardian is required to ensure provisions of necessary education and health facilities for physical and mental up bringing/development of ward. Besides, where the guardian is appointed to manage/look after the property of a ward then he should have to maintain proper and regular accounts of the properties.

It is pertinent to mention here that section 39 states about the grounds/causes on which the Court may either on the application of any person interested or on its own motion, remove a guardian for ill treatment or negligence to take proper care of his ward. It is further to add here that Rule 11, Part A (General), High Court Rules and Order states that in absence of sufficient reason to the contrary, all male wards should be produced before the Court once a year, and the Court should, so far as possible examine their physical intellectual and moral conditions and ask them whether they have any remarks of the management of their estate. Moreover, in order to have a proper record of such cases, the Court should maintain a list of all such wards.

It is suffice to add here that as per Rule 8, Part A (General), High Court Rules and Order when the annual income of the ward's estate exceeds rupees five thousand and in other cases if the Court thinks fit to so order, the guardian should be directed to submit to the Court once a year and on a fixed date accounts of the income and expenditure of the estate together with a list of the property moveable or immovable sold or purchased, and of the amounts due to and from the ward. Such account shall be scrutinized by the Judge and a certificate should be issued with such remarks as may be considered necessary. It is stated that the period of one year prescribed for production of male wards before the Court to have knowledge about his physical and mental conditions is a longer period in the present age of advancement; therefore, this period is required to be cut short and the guardians may be compelled to produce the wards before courts on quarterly basis so that Court could be aware about the conditions in which the ward is brought up. This will enable the courts to take immediate corrective measures before much water is flowed under the bridges.

It is submitted that the subject Rules are decades old and at that time appearance of ladies in courts was resented by the society; therefore, while framing these rules the females were placed in a privileged position by exempting them to appear before the Court. However, now due to urbanization and awareness, even women folks of the rural area are not hesitating to appear before courts for protection of their rights. Therefore, it is suggested that the Rule 11 ibid may be gender neutralized by compelling the guardians to produce the wards either male or female before the Courts to make them aware about the conditions wherein the ward is brought up by the guardian. The proposal was placed before the Law and Justice Commission of Pakistan for deliberations.

#### COMPARATIVE TABLE

Existing Rule	Proposed Rule
<p><b>11. Annual Inspection of Wards by Courts.</b>—In the absence of sufficient reasons to the contrary, all male wards should be produced before the Court once a year, and the Court should, so far as is possible, examine their physical, intellectual and moral conditions, and ask them whether they have any remarks to make on the subject of the management of their estates. To facilitate this arrangement the Court should maintain a list of all such wards.</p>	<p><b>11. Quarterly Inspection of Wards by Courts.</b>—In the absence of sufficient reasons to the contrary, all <b>wards either male or female</b> should be produced before the Court <b>after every four months</b>, and the Court should, so far as is possible, examine their physical, intellectual and moral conditions, and ask them whether they have any remarks to make on the subject of the management of their estates. To facilitate this arrangement the Court should maintain a list of all such wards.</p>

#### **Commission’s deliberations on 19<sup>th</sup>May, 2012**

The Commission considered the amendment proposed in Rule 11 of the High Court Rules and recommended that the said rule may be made gender neutralized and guardian should be compelled to produce the wards before court quarterly to make it aware about the condition wherein the ward is being brought up. The Commission observed that after appointment of guardian

wards are left at their mercy and courts did not care to call upon the guardian to ensure proper maintenance of the minor.

The Commission considered the proposal and approved that the amendment of Rules and Orders of Code of Civil Procedure falls under the domain of High Courts; therefore the proposal may be forwarded to the High Courts for consideration.