

As

[~~TO BE INTRODUCED~~ IN THE SENATE]

A

BILL

further to amend the Guardians and Wards Act, 1890

WHEREAS it is expedient further to amend the Guardians and Wards Act, 1890 (VIII of 1890) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Guardians and Wards (Amendment) Act, 20~~19~~²⁰.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Amendment of section 4, Act VIII of 1890.- In the Guardians and Wards Act, 1890 (VIII of 1890), hereinafter referred to as the said Act, in section 4, after sub-section (6), the following new sub-section shall be inserted, namely:-

"(7) "Hizanat" means the legal right of custody of a child;"

3. Insertion of new sections, Act VIII of 1890.- In the said Act, after section 19, the following new sections shall be inserted, namely:-

"19A. Hizanat of Children.- The real mother is entitled to the custody of her male child until he attains the age of seven years and of a female child until she attains puberty or the age of sixteen years.

19B. Right of Hizanat after mother, of women relatives.- In case of absence of the real mother, or if she renounces her right or her right is legally held to have lapsed, the Hizanat of her son less than seven years of age and of her daughter who has not attained the age of puberty or sixteen years shall vest successively in the female relatives in the following order;

Maternal Grandmother however so high in degree, Paternal Grandmother however so high in degree, full sister, uterine sister, consanguine sister, full sister's daughter, uterine sister's daughter, consanguine sister's daughter, mother's sister and father's sister.

19C. Male relative's Hizanat.- When none of the women eligible to Hizanat under sections 19A and 19B are available or willing to accept it or such a woman is disentitled to Hizanat, the male relatives shall then become eligible for custody of the child in the following order:

Father, Maternal Grandfather however so high in degree, Paternal Grandfather however so high in degree, full Brother, Uterine Brother, consanguine Brother, full Brother's son, Uterine Brothers son, consanguine Brother's son.

19D. Right of Hizanat of other relatives.- When none of the persons mentioned in sections 19A, 19B and 19C are available or in case they are unwilling to accept or their Hizanat has lapsed. Hizanat shall then vest in the nearest relative by order of inheritance subject to the welfare of the child:

Provided that in deciding where the right shall vest preference shall be given to the female relatives of the child.

19E. Lapse of Woman's Hizanat.- The right of Hizanat of any person entitled under sections 19A, 19B or 19C of this Act may lapse only if the court decides that a child's welfare does not lie in being in the custody of such a person.

19F. Preference of Child.- Notwithstanding the provisions of sections 19A to 19E, where the male child has reached the age of seven and the female child has reached the age of ten years his / her preference of custody shall be given due consideration.

19G. Power to make Interlocutory Orders.- (1) In any proceedings to be determined by the Court under this Act, the Court may make an interim order with respect to the child concerned.

(2) Where the Court makes an interim order, it may give such directions, if any, as to the services or placement that the child shall receive, pending final disposal of the application:

Provided that if an application for custody is made on behalf of a real mother having Hizanat of a child then interim orders with regard to custody shall be passed in favour of the real mother on the first day of presentation of the application before the concerned Court.

STATEMENT OF OBJECTS AND REASONS

The amendments seek to codify and clarify existing case law and afford protection to mothers in relation to the custody of their children. It further purports to codify the hierarchy of preference in relation to custody.

**SENATOR FAROOQ HAMID NAEK
MEMBER-IN-CHARGE**