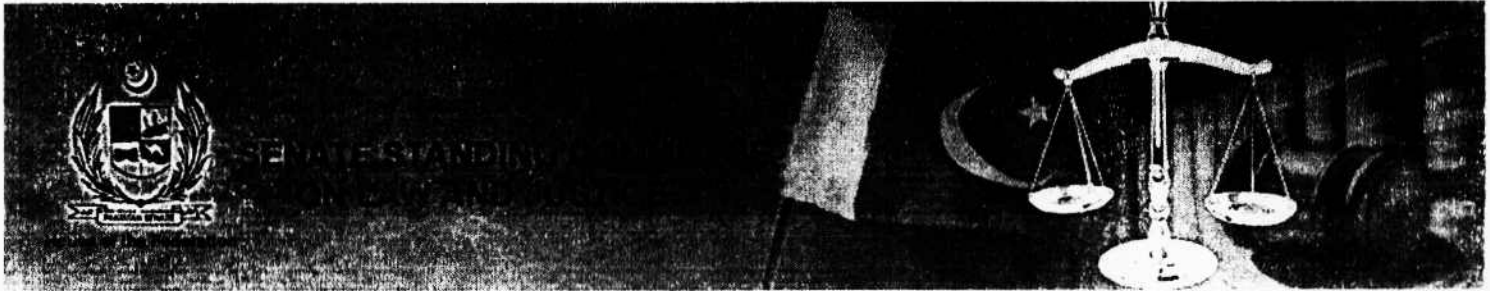


SENATE OF PAKISTAN



REPORT NO. 43

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE GUARDIAN AND WARDS (AMENDMENT) BILL, 2019”

PRESENTED BY

Senator Muhammad Javed Abbasi

Chairman

Standing Committee on Law and Justice

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE GUARDIAN AND WARDS (AMENDMENT) BILL, 2019"

I, Senator Muhammad Javed Abbasi, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Guardian and Wards (Amendment) Bill, 2019", introduced by Senator Farooq Hamid Naek, in the Senate sitting held on 6th January, 2020 and referred to the Committee for consideration and report.

2. The composition of the Committee is as under:-

1. Senator Muhammad Javed Abbasi	Chairman
2. Senator Mian Raza Rabbani	Member
3. Senator Farooq Hamid Naek	Member
4. Senator Zeeshan Khanzada	Member
5. Senator Sirajul Haq	Member
6. Senator Syed Muzafar Hussain Shah	Member
7. Senator Ayesha Raza Farooq	Member
8. Senator Dr. Ghous Muhammad Khan Niazi	Member
9. Senator Mustafa Nawaz Khokhar	Member
10. Senator Sana Jamali	Member
11. Senator Walid Iqbal	Member
12. Senator Muhammad Ali Khan Saif	Member
13. Senator Musadik Masood Malik	Member
14. Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its various meetings and held conclusive discussion in the meeting on 29th January 2021, under the chairmanship of Senator Muhammad Javed Abbasi, with the following in attendance:

1. Senator Muhammad Javed Abbasi	Chairman
2. Senator Sana Jamali	Member
3. Senator Zeeshan Khanzada	Member
4. Senator Mustafa Nawaz Khokhar	Member



4. The Chairman Committee informed the Members that the Guardian and Wards (Amendment), Bill 2019, as introduced by Senator Farooq Hamid Naek, had already been discussed in detail by the Members and concerned ministries. In the meeting held on 13th July 2020, Senator Farooq Hamid Naek, informed that the amendment codifies the issues related to Hizanat as precedents and case laws are followed by courts in their decisions, due to non-existence of express legislative provisions on subject matter. On Senator Musadik Masood Malik's objection on difference of age for a male and female child in terms of custody by mother and his proposal to fix the age at the same level i.e. either 7 years or 16 years for both male and female children, for the sake of gender equality; Senator Naek noted that rationale behind fixing the ages of 7 years and puberty or 16 years for male and female children respectively was that a male child needs his father more after the age of 7 because while growing up he can discuss many issues with father more comfortably than his mother, and a female child has the same comfort with mother than the father. However, he held that if Committee agreed to fix the age of 16 years for both male and female children, he would have no objection to it.

5. Senator Musadik Masood Malik also objected that father's right of Hizanat has been proposed after all female relatives, which is not logical. At this, the Member-In-Charge agreed that right of Hizanat of father should come immediately after mother.

6. Ministry of Religious Affairs presented two key reservations on the Bill. First, the Guardian and Wards Act, 1890, is applicable on all Pakistanis irrespective of their religion whereas hizanat related provisions proposed in the Bill under consideration primarily carry Islamic focus, and in that too only the Hanafi fiqah. Secondly, Sections 7 & 17 of the Act empower the Courts to appoint and declare a guardian of a person/property of 'minor child' keeping in view welfare of the child with regard to his/her age, gender, religion, character and capacity of the proposed guardian and his nearness of kin to minor. With this flexibility, the courts decide the custody and guardianship on case to case basis while keeping particular circumstances of the parties. It was informed to the Committee that amendments might lead to bar the scope of Act to one sect or religious minority.

7. Senator Mustafa Nawaz Khokhar objected to the fact that Ministry of Religious Affairs had based its comments on a centuries old book of a religious scholar from a particular sect, which was neither applicable to all nor was sufficient to meet the challenges of the modern day. He also objected to revocation of mother's right to Hizanat in case she remarries or remarries someone outside the family and termed them against the law of natural justice as well as Islam.

جناب چیئرمین
قائمہ کمیٹی برائے قانون و انصاف
سینیٹ آف پاکستان، اسلام آباد۔

السلام علیکم!

اختلافی نوٹ: (آی)

بچوں کی سرپرستی اور نگہداشت سے متعلق بہت اہم بل ہے۔ میاں بیوی میں علیحدگی یا کسی دیگر حالات میں بچوں کی سرپرستی، حوالگی کے حوالے سے قرآن و سنت سے رہنمائی لینا ضروری سمجھتا ہوں۔ میری درخواست ہے کہ اسلامی نظریاتی کونسل سے اس بل پر رائے لی جائے۔



سراج الحق (سینئر)

28-01-2024

Introduced on 06-01-2020

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, 2019.

(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 parent or other 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**