

The Perpetual Minors

In February MISS ZUBY SEEDAT, a Durban attorney, spoke to a meeting of the Black Sash in Natal. The following article has been written from notes taken at that meeting. Any errors of fact are therefore entirely attributable to the writer and not to Miss Seedat.

African women in Natal are subjected to a position of perpetual minority in law. This has come about because they are not only subject to the common law of the Republic but are also governed by the provisions of the Natal Code.

Traditional African customary law was very flexible and was adjusted constantly to fit the demands of circumstances and changes in the society. Conflicts could be resolved with due regard to the needs and situation of the parties concerned as well as to the interests of society.

But in 1879 an attempt was made by the White administration to codify customary law and to bring it into line with European legal systems. This first attempt remained fairly flexible but in the Natal Code of 1891 the system was made entirely rigid and it is this Code which still controls the rights of African women in the form fixed in 1891.

There were minor alterations made in 1932 and in 1967 when the powers of chiefs were extended but the status of women has remained the same and no adjustments whatsoever have been made to suit the needs of Black women in our contemporary society. The Code has far-reaching effects on the lives of African women.

An unmarried woman, whether or not she is over the age of 21, remains always subordinate to her male guardian. He may be 25 and she may be 60 but he is her guardian in law until she dies.

She may not enter into any contracts or seek employment without the consent in writing of her guardian. She cannot sue or be sued in a court of law, if the action falls under customary law, without his assistance.

According to an Appeal Court judgement she may own immovable property but there has as yet been no ruling as to whether she may sell it without her guardian's consent or who, if she does sell it, is entitled to the proceeds. She may not marry without her guar-

dian's consent and the lobola must be paid to him. If she remains unmarried and has a child the lobola payment for the child must be paid to him and she cannot ever be regarded as the guardian of her children.

If her guardian refuses his consent to her marriage she may appeal to the Bantu Affairs Commissioner. At a customary union marriage an official witness must be present and must ask if she is marrying of her own free will but this is not an effective protection against a guardian who has insisted on the marriage.

If the marriage does not go through because she has declared herself to be unwilling she remains totally dependent on the guardian. A woman will not readily complain about a man who has complete power over her.

Her father remains her guardian until his death. If her mother was unmarried then it is her mother's father. If these are both dead then it may be her fraternal or maternal uncles or their male issue and so on until the blood relationship may be a very remote one indeed.

In today's rapidly industrialising society and in the disruption caused by mass removals, migrant labour and the pass laws many women do not know any guardian. They are in fact managing their own lives and bringing up their own children but they must resort to fabricating a fictitious guardian if they wish to marry or do any of those things which the ordinary common law allows other South African women to do.

Married women are in exactly the same position the only difference being that the guardian is the husband. Customary union marriages in Natal are registered and may be polygamous.

Whatever a married woman earns belongs to her husband and to her kraal (that is to that portion of his kraal which she controls as one of his wives). The only property she owns in her own right is the one beast paid to her for the deflowering of her daughter. This

beast is paid to the mother over and above the lobola beasts which go to the bride's male guardian. The progeny of such cattle also belong to the mother but are inherited at her death by her sons or other male relatives.

If a customary union is dissolved the woman's guardianship reverts to her former guardian. She cannot institute divorce proceedings without his consent.

Rights to the guardianship of children are vested in the father. The courts may award temporary custody to the mother until the children are eight or nine years old but during this period she must obtain the father's permission for anything she wishes to do on their behalf.

As is to be expected African men prefer customary union marriages while the women prefer the greater protection afforded to them by marriage under common law.

In order to be married under the common law a woman must still have the consent of her guardian and be in possession of an enabling certificate issued by the Bantu Affairs Commissioner when he is satisfied that the guardian has consented. In Natal the marriage must be solemnised by a Christian marriage officer.

If her guardian refuses his consent to her common law marriage a woman may appeal to the Chief Bantu Affairs Commissioner in Pietermaritzburg. This appeal must be lodged in the form of an affidavit.

When African couples marry under the common law their estates remain separate but the wife's property is controlled and administered by the husband. If she wishes to enter into an ante-nuptial contract she must have the consent of her guardian to do so.

An African woman in Natal may apply for emancipation but only if she is unmarried, widowed or divorced. She must have good

and sufficient cause for making the application, must own property and must be "thrifty" and "of good character." She must present her guardian before the Bantu Affairs Commissioner and he must state whether he approves or disapproves of her application although the Commissioner has discretion to grant emancipation despite objections from the guardian.

If the Commissioner refuses to grant emancipation the woman may appeal to the Bantu Appeal Court but this court has stated that it is reluctant to reverse a decision of the Commissioner because he has seen the people concerned personally which is not possible in the Appeal Court.

Women are often unable to become emancipated because they either cannot find their guardian or because the guardian refuses to appear before the Bantu Affairs Commissioner.

Emancipated women who have illegitimate children will find their control over their children's affairs easier but the daughters of emancipated women are not themselves emancipated and must have the consent of a male guardian in order to apply for emancipation.

An emancipated woman who marries becomes a minor again unless she and her husband have an ante-nuptial contract.

In all provinces of the Republic an African woman experiences great difficulties in common law marriages. If her husband dies intestate she can lay no claim to his property. This goes down the male line. She is rarely in a position to amass any savings of her own because her earnings must be spent on her household as they come in.

When her husband dies she may be destitute. The man on whom her guardianship devolves is obliged to maintain her provided she lives where he tells her to. With the pass law restrictions this is not always possible for her let alone desirable.

In England and Wales in 1913 there were 110 000 prisoners serving sentences not exceeding five weeks. By 1968 this figure had decreased to 6 000.

In South Africa the number of short-term prisoners had increased from 74 000 in 1913 to 276 000 in 1968.

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