

PARLIAMENT OF INDIA

RAJYA SABHA

JOINT COMMITTEE
ON
THE ADOPTION OF CHILDREN BILL, 1972

EVIDENCE

(Volume III)



RAJYA SABHA SECRETARIA
NEW DELHI
April, 1975

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COMPOSITION OF THE COMMITTEE

Shri Bijoy Chandra Bhagavati—*Chairman*

MEMBERS

Rajya Sabha

2. Shri Nageshwar Prasad Shahi
- **3. Shrimati Margaret Alva
- **4. Shri T. V. Anandan
- *5. Shri Bira Kesari Deo
6. Shri S. Kumaran
7. Shri V. V. Swaminathan
8. Shri Todak Basar
9. Shrimati Sushila Shankar Adivarekar
10. Shri Bhaiya Ram Munda
11. Shri M. R. Krishna
- **12. Shri Prakash Vir Shastri
13. Shri Maqsood Ali Khan
14. Shri Shankar Lal Tiwari
15. Shrimati Lakshmi Kumari Chundawat

Lok Sabha

16. Shri S.R.A.S. Appalanaidu
17. Shri Shiv Kumar Shastri
18. Shri Lambodar Baliyar
19. Shri Dharnidhar Basumatari
20. Shri Shyama Prasanna Bhattacharyya
- ***21. Dr. (Smt.) Sarojini Mahishi
22. Shri Anant Prasad Dhusia
23. Shri Varkey George
24. Shrimati Marjorie Godfrey
25. Shri H. R. Gokhale

*Appointed on the 30th August, 1973, in the vacancy caused by the death of Shri Dahyabhai V Patel.

**Appointed on the 9th May, 1974, in the vacancies caused by the retirement of Sarvashri Shyam Dhar Misra, Man Singh Verma and Joachim Alva, from membership of Rajya Sabha on the 2nd April, 1974.

***Appointed on the 20th December, 1974 in the vacancy of Shri Amar Nath Chawla.

26. Shri Giridhar Gomango
27. Shri Md. Jamilurrahman
28. Shri M. R. Lakshminarayanan
- *29. Shrimati Mukul Banerji
30. Shri Mohan Raj
31. Shrimati Shakuntala Nayar
32. Shri Manikrao Palodkar
33. Shri Krishna Chandra Pandey
34. Shri Ram Bhagat Paswan
35. Shri S. B. Patil
36. Shri K. Kodanda Rami Reddy
37. Shri N. K. Sanghi
38. Shri Sakti Kumar Sarkar
39. Shri Shafquat Jung
40. Shri Biswanarayan Shastri
41. Shri Dharamgaj Singh
42. Shri Somchand Solanki
43. Shri S. B. Thakre
- **44. Shri Bhola Manjhi
45. Shri Niti Raj Singh Chaudhury

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY
AFFAIRS

Shri R. V. S. Peri Sastri—Joint Secretary and Legislative Council.

Shri A. P. Pandey—Deputy Legislative Counsel.

SECRETARIAT

Shri S. P. Ganguly—Additional Secretary.

Shri M. K. Jain—Chief Legislative Committee Officer.

Shri R. K. Mazumder—Senior Legislative Committee Officer.

**Appointed on the 6th September, 1974 Vice Shrimati Bhargavi Than-
kappan resigned.

*Appointed on the 26th March, 1975 in the Vacancy caused by the death
of Shri Pratap Singh.

**LIST OF WITNESSES WHO GAVE ORAL EVIDENCE BEFORE THE
COMMITTEE**

| Sl. No. | Name of witness | Date of hearing |
|---------|--|--------------------|
| 44. | Shri P. N. Abbi, Commissioner, Raipur Diviison, Raipur (M.P.) | 3-2-1975 |
| 45. | Shri R. N. Vaidya, Collector, Raipur Distt., Raipur (M.P.) | 3-2-1975 |
| 46 | Shri Vijayendra Nath Kaul, Collector, Durg District (M.P.) | 8-2-1975 |

THE JOINT COMMITTEE ON THE ADOPTION OF CHILDREN BILL,
1972

VERBATIM RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE

Monday, the 3rd February, 1975 from 9-10 A.M. to 9-40 A.M.
(AT RAIPUR, MADHYA PRADESH)

PRESENT

Shri Shankar Lal Tiwari—*in the Chair.*

MEMBERS

Rajya Sabha

2. Shri Nageshwar Prasad Shahi
3. Shri T. V. Anandan
4. Shri Bhaiya Ram Munda
5. Shrimati Lakshmi Kumari Chundawat

Lok Sabha

6. Shri Lambodar Baliyar
7. Shri Dharnidhar Basumatari
8. Shri Shyama Prasanna Bhattacharyya
9. Shri Anant Prasad Dhusia
10. Shri Md. Jamilurrahman
11. Shrimati Shakuntala Nayar
12. Shri Sakti Kumar Sarkar
13. Shri Biswanarayan Shastri
14. Shri Somchand Solanki
15. Shri Bhola Manjhi
16. Shri Niti Raj Singh Chaudhury

Shri Bedabrata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs also attended the meeting, with the permission of the Chairman.

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY
AFFAIRS

Shri H. C. Vermani, Under Secretary.

SECRETARIAT

Shri M. K. Jain, Chief Legislative Committee Officer.

(Witnesses: Shri P. N. Abbi, Commissioner, Raipur Division; and Shri R. N. Vaidya, Collector, Raipur. Madhya Pradesh, were called in.)

चेयरमैन : मि० अम्बी और मि० वेंच आये हैं। आपसे मैं यह निवेदन करूंगा कि यहां की जितनी कार्रवाई होती है वह गुप्त रखी जाती है। आप लोग भी जो बात यहां गवाह के रूप में कहेंगे, वह कहीं बाहर प्रकट नहीं करें, जब तक कि यह कमेटी पार्लियामेंट में अपनी रिपोर्ट प्रस्तुत न कर दे। आप जानते हैं, यह बिल चिल्ड्रन अधोपान बिल है। भारत में जो अभी तक कानून है वह परशियन, क्रिश्चन, मुसलमान लोगों पर लागू नहीं होता। कस्टमरी ला कहीं-कहीं पर है। 1956 में हिन्दू बिल पास हुआ था, यह बिल ऐसा था जो हर कम्युनिटी पर लागू नहीं होता था, परन्तु यह बिल ऐसा बनाया जा रहा है जो कि हर कम्युनिटी पर लागू होगा।

श्री नीतिराज सिंह चौधरी : भोल्ली-गेटरी नहीं होगा।

चेयरमैन : मैंने आपको बताया कि इस प्रकार का यह बिल है। आपने इसको देख ही लिया होगा, इसलिए इस बिल के बारे में आपकी क्या राय है, यही हम लोग जानना चाहेंगे।

श्री० पी० एन० अम्बी : हमें यह बिल परसों ही मिला है। इस बिल के बारे में हम कोई एक्सपर्ट तो नहीं हैं, लेकिन इस संबंध में हम ने जो अनुभव किया है, उसी के बारे में दो-चार बातों की तरफ आपका ध्यान दिलाना चाहेंगे।

यह तो आप जानते ही हैं कि जब कोई बच्चा एडोप्ट किया जाता है तो वह किसी नेसेसिटी की वजह से ही एडोप्ट किया जाता है। एडोपशन के पीछे यह भी भावना होती है कि आदमी या औरत का नाम बना रहे

और उनकी जायदाद इतने वाला कोई रहे।

चेयरमैन : इसमें फारनर्स जिन बच्चों को एडोप्ट करते हैं उनका भी सवाल है।

श्री पी० एन० अम्बी : मैं यह निवेदन करना चाहता हूं कि जब कोई कानून बनता है तो उसमें राइट्स और प्रिविलेज का भी सवाल सामने आता है। जब किसी बच्चे को एडोप्ट किया जाता है तो उसको प्रोपर्टी के अधिकार भी मिल जाते हैं। इस अधिकार के अलावा एडोपशन हो जाने के बाद किसी वर्ग को शासन द्वारा दी जाने वाली सुविधाएं भी, एडोप्ट किये गये बच्चे को मिल जाती हैं। मेरे क्वाल में यह बिल जो बनाया गया है इसमें कुछ चीजों का जिक्र नहीं किया गया है। शेड्यूल्ड कास्ट और शेड्यूल्ड ट्राइब्स में जो बच्चे एडोप्ट किये जाते हैं, जैसे कि मध्य प्रदेश का बस्तर आदि इलाका है, उनको कांस्टि-ट्यूशन के मुताबिक जो प्रिविलेज दिये गये हैं, उनका पालन किस प्रकार से होगा, उसका जिक्र इसमें नहीं किया गया है। आप जानते हैं कि शेड्यूल्ड कास्ट्स और शेड्यूल्ड ट्राइब्स के बच्चों को मेडिकल कालेजों में एडमिशन और अन्य अनेक प्रकार की सुविधाएं मिलती हैं। लेकिन इन बातों का समावेश इस बिल में नहीं है। इसके अलावा इस बिल में इस बात का भी जिक्र नहीं है कि एक बच्चा एडोप्ट किया जाय या तीन-चार बच्चे एडोप्ट किये जायें। इस बिल को देखने से ऐसा लगता है कि बच्चों को एडोप्ट करने संबंध में कोई लिमिट नहीं रखी गई है कि एक आदमी कितने बच्चे एडोप्ट कर सकता है। तीसरी चीज जो मैं कहना चाहता हूं वह यह है कि जब कोई बच्चा एडोप्ट किया जाता है और खास तौर पर हिन्दू फेमिलीज के अन्दर, तो उसके फेमिली से संबंधित अधिकारों का प्रश्न भी सामने आता है। इस बात पर भी समिति को विचार करना होगा कि क्या अपने समस्त अधिकारों को लेकर कोई बच्चा एडोप्ट किया जाय या नहीं? चौथी चीज

जो कुछ हास्यास्पद-सी मालूम पड़ती है, वह यह है कि इस बिल में उन बच्चों का कोई जिक्र नहीं किया गया है जो कि न तो मेल होते हैं और न ही फिमेल होते हैं। इस प्रकार के बच्चों के बारे में भी कुछ विचार किया जाना चाहिए।

यही दो-चार बातें हैं, जिनके बारे में मैं कहना चाहता था।

श्री नीतिराज सिंह चौधरी : आपको जगदलपुर आदि स्थानों में काम करने का मौका मिला होगा। मैं यह जानना चाहता हूँ कि क्या एडोप्शन के संबंध में आदिवासियों में कोई कस्टम्स आदि हैं ?

श्री पी० एन० अम्बो : मैं दंतेवाड़ा में रहा हूँ। उन लोगों में इस प्रकार के कोई कस्टम्स नहीं हैं।

श्री नीतिराज सिंह चौधरी : क्या एडोप्शन के संबंध में कोई केस आपके सामने आया है, जिसमें किसी प्रकार का कोई विवाद पैदा हुआ हो ?

श्री पी० एन० अम्बो : ऐसा तो कोई मामला मुझे स्मरण नहीं है, लेकिन आदिवासियों में कस्टमरी कुछ भी नहीं है।

श्री अनन्त प्रसाद घुसिया : क्या किसी सेक्ट के किसी लीडर से आपकी इस संबंध में कोई मुलाकात हुई है और क्या आपको एडोप्शन के संबंध में कोई विशेष जानकारी कहीं से मिली है ?

श्री पी० एन० अम्बो : जैसा मैंने कहा दंतेवाड़ा में मैं दो साल तक रहा। वहाँ के आदिवासी कई औरतें रखते हैं। लेकिन कस्टमरी वहाँ पर कुछ भी नहीं है। वहाँ के जो एम० एल० ए० थे, उनकी सात औरतें थीं। मैंने उनसे एक बार एक सवाल किया कि क्या उनमें कोई झगड़ा नहीं होता है ? उन्होंने कहा कि झगड़ा क्यों होगा, उन सब के बच्चे हैं।

श्री अनन्त प्रसाद घुसिया : क्या ट्राइबल्स का कोई महिला आर्गनाइजेशन भी है ?

श्री पी० एन० अम्बो : जी नहीं।

श्री बी० आर० मुंडा : आपको शायद जानकारी होगी कि बिहान आदि प्रान्तों में घर-दामाद की प्रथा है। क्या इस प्रकार की प्रथा वहाँ के आदिवासियों में है या नहीं ?

श्री पी० एन० अम्बो : ट्राइबल्स में इस प्रकार की कोई प्रथा नहीं है।

SHRI R. N. VAIDYA : मैं सभित्त के सामने नम्रता से यह निवेदन करना चाहूंगा कि हिन्दू ला का विद्यार्थी होने के नाते मैंने यह देखा कि अब तक जो कानून था, वह सिर्फ हिन्दुओं के लिए था। By this Bill, we propose to extend the system of adoption which was prevalent among the Hindus—it is by law—to other religions also wherein this custom was unknown. I welcome this Bill but not in the form in which it is here. It is welcome that there is some system among the Hindus which the people think is good for the country, and that system may be extended to other communities also. But at the same time, I am horrified to find that the system which was prevailing among the Hindus by custom, and is applied by law now, although it had been recognised by courts earlier also, is now being tried to be hedged in by so many conditions for Hindus also. I have nothing to say when you extend the benefit to other communities. But why make it more difficult to Hindus? A copy of the Hindu Adoption Act has been added to this Bill and we notice that in that Act there is no provision for the sanction of the court for adoption. Now, the proposed Bill makes it obligatory for a Hindu to seek the permission of the Court for adoption. To my mind, it is uncalled for and an unnecessary harassment to the Hindus. For ages they have been adopting children with a religious mo-

(V)
 tive. That religious motive has now been omitted by law. There was opposition when the Hindu Adoption Act was enacted but then people took it in the spirit of the Constitution. Even under that Act, it was not necessary for a Hindu to go to a court for adoption. But now in the proposed Bill, while I find that they are extending the benefit to others, they are harassing the Hindus and are making it obligatory for them to go to the court, to go through all the procedures of the court, to get sanction for any adoption. To my mind, it is uncalled for.

The second point is that among Hindus only a son could be adopted. And only one son would be adopted out of necessity for doing religious ceremonies. Later on under the Hindu Adoption Act of 1956 the doors were thrown open to girls also. But it is confined to one girl and not more. Now, in the proposed Bill we find that there is no limitation. A person can adopt any number of children. If there is no limitation it would mean that adoption will become a business and a profession rather than an act of necessity.

Then, thirdly I find that for every small thing the court comes in. Having had experience of courts we know—all of us—how lengthy the procedures are and what time and money it requires to get a thing settled in court. Now, for such an important aspect of a man's life like adoption, it does not appear necessary for me to leave it to the normal courts. We should have special courts. If you like, we can have some guidelines to decide on some procedure. The Bill leaves everything to the court and to established procedure which means it may take years for the adoption to be approved.

I have not studied the Bill at length and, therefore, I am not in a position to say much more, but these two or three points struck me. As the Commissioner has pointed out, there is no mention as to what will happen to the

special privileges of Scheduled Tribes and Scheduled Castes. There is only mention of rights as the son of a family and he will carry with him those rights. We do not know what will happen to the privileges of Scheduled Castes and Scheduled Tribes. Will the adopted child carry with him those privileges or will he not? It is not clear.

I must thank the Committee for giving me this opportunity to express my views.

SHRI NITI RAJ SINGH CHAUDHURY: You say that there should be special courts. Without making any comment on that, I would request you to refer to clause 24 (2) (a), (c) and (e). Sub-clause (a) says:—

"the form and the manner in which an application for an adoption order shall be made;"

Then sub-clause (c) says:—

"the procedure which may be followed on hearing applications for adoptions and the circumstances in which and the extent to which such applications may be heard and determined otherwise than in open court;"

This is a special procedure that the Bill authorises and that could be made. The provision is there.

SHRI R. N. VAIDYA: The Statement of Objects and Reasons does not mention that you are going to have special courts. Some courts could be converted into special courts with a special procedure. This may be taken note of.

SHRI NITI RAJ SINGH CHAUDHURY: Please refer to sub-clause (e) which says:—

"the form in which and the authorities to whom an application for the certificate referred to in the proviso to sub-section (1) of section 23 may be made; the provision which an applicant for such certificate has to make for repatriation to India of the child to which the applica-

tion relates and the conditions which such an applicant has to comply with;"

There is a provision about the applicability of the law of evidence. I think your objective could be met.

SHRI BISWANARAYAN SHASTRI: There is a customary practice among the Hindus. It has a religious motive. Provision for adoption of a child from an orphanage is also there. Sometimes it is not done for the benefit of the adoptive parents.

SHRI R. N. VAIDYA: Among the Hindus adoption originated with a religious motive. Subsequently the Hindu Adoption Act recognised and enhanced the field. Provision for the adoption of girls is also there. Now, by this proposed Bill we are making it dependents on the will of the court to recognise or not recognise the adoption. A special procedure has to be followed. At present for Hindus it is not necessary to go to a court. If this Bill is passed, they will have to go to the court for the recognition of adoption.

SHRI BISWANARAYAN SHASTRI: Whatever procedure is being followed is not being prohibited.

SHRI R. N. VAIDYA: It will be prohibited. After the commencement of the Act no adoption will be made except in accordance with the provisions of this Act and any adoption made in contravention of such provisions shall be void and of no effect.

SHRI BISWANARAYAN SHASTRI: If a person adopts a child under the Hindu Adoption Act, will it be treated as an illegal act?

SHRI R. N. VAIDYA: The adoption *ab initio* will be void.

CHAIRMAN: Would you suggest that the Hindu Adoption Act should continue along with this when it becomes an Act.

SHRI R. N. VAIDYA: Yes.

श्रीमति लक्ष्मी कुमारी चूडावत : यहां कोई कस्टम कायदा है या नहीं ?

श्री नीतिराज सिंह चौधरी : मैंने इनसे पूछा था, इन्होंने बताया कि कोई कायदा नहीं है।

श्रीमती लक्ष्मी कुमारी चूडावत : गोद लेते हैं या नहीं ?

श्री धार० एन० वैद्य : ऐसा कोई कायदा आदिवासियों में शा.यद नहीं है।

SHRI BASUMATARI: This Bill applies to the whole society. It is not made obligatory. If you adopt a child, then you will have to give him a share from the property of the adoptive parent. What use is there if a child is adopted and the property does not pass on to him? In Goa we were told that in the case of adopted children they will have to spend their whole life in slavery. Here there is no question of Hindu religion, Muslim religion or any other religion. In the name of religion so many people are exploiting so many people.

CHAIRMAN: This is only an enabling measure.

SHRI BASUMATARI: We went to Goa and found that those who are adopted are not allowed to dine in the same table and sleep in the same room. In view of this experience we support this Bill and we welcome it.

SHRI R. N. VAIDYA: I also welcome the Bill in so far as it extends certain customs to the other communities. But in the name of extending certain benefits to other communities, we should not hedge in the inherent benefits which the Hindus already enjoy.

SHRI P. N. ABBI: Certain rites are performed by the son. When one dies he wants somebody to perform certain rites. That is why one wants to adopt.

श्री नागेश्वर प्रसाद शाही : आपको इस बात की जानकारी होगी कि हिन्दू एडोप्शन एक्ट के अन्तर्गत पूजा आदि की व्यवस्था है और उसमें रजिस्ट्रेशन की कोई व्यवस्था नहीं

(V) है। लेकिन इसका इतना दुरुपयोग हो रहा है कि जब कभी भी कोई व्यक्ति मरता है तो उसकी प्रोपर्टी का झगड़ा खड़ा हो जाता है और फ़र्जी गोदनामा पेश कर दिया जाता है और पूजा की गवाही के सम्बन्ध में पंडित आदि की गवाही भी हो जाती है। अब इस विधान का इतने लार्ज स्केल पर दुरुपयोग होने लगा है कि अब यह महसूस किया गया है कि गोद लेने के सम्बन्ध में रजिस्ट्रेशन की व्यवस्था की जाय। जो बच्चा गोद लिया जाय उसका नाम गवर्नमेंट के रजिस्टर पर दर्ज हो। मैं यह जानना चाहता हूँ कि इस प्रकार के प्रावधान के बारे में आपकी क्या राय है ?

श्री आर० एन० बंधु : मैं समझता हूँ कि इस एडोप्शन बिल का सबसे अधिक निकट का सम्बन्ध विवाह आदि सम्बन्धों कानून से है। शादी के कानून में अनिवार्य रजिस्ट्रेशन की अभी कोई व्यवस्था नहीं है। जब विवाह सम्बन्धी कानून में यह व्यवस्था रह सकती है तो इस एडोप्शन के सम्बन्ध में भी दिक्कत नहीं होनी चाहिए।

श्री नागेश्वर प्रसाद शाही : शादी का सवाल दूसरा है। उत्तर प्रदेश में हमने देखा है कि जब कोई आदमी बिना बच्चे के मर जाता है तो उसकी प्रोपर्टी का सवाल पैदा होता है। अगर उसका कोई निकट का सम्बन्धी नहीं है तो गांव के कुछ चालाक लोग फ़र्जी गोदनामा पेश कर देते हैं।

श्री आर० एन० बंधु : मेरे ख्याल से तो विवाह के कानून और इस बिल का निकट का सम्बन्ध है।

SHRI ANANT PRASAD DHUSIA: The hon. witness referred to the privileges provided for the Scheduled Castes and the Scheduled Tribes in adopting child. If the adopted child is a minor naturally he abides by the social customs and religious customs of the adopted parents. What is the harm if a Scheduled Caste or Scheduled Tribe boy is adopted by some

other person? He derives the benefit provided to him by the Constitution, for the benefit of the boy himself.

SHRI P. N. ABBI: Adopting of a non-Scheduled Caste boy? Then there is no harm. In the case of change of religion also, we do the same thing, we are giving benefits.

SHRI ANANT PRASAD DHUSIA: When he changes the religion, he is no more a Scheduled Caste or a Scheduled Tribe man.

SHRI P. N. ABBI: This is all over MP. A man may be a Christian. But he has got the Scheduled Caste benefit. This is unfair.

SHRI ANANT PRASAD DHUSIA: A Scheduled Caste man, when he gets himself converted to any other religion, is no more a Scheduled Caste.

SHRI P. N. ABBI: He is getting all the benefits.

SHRI ANANT PRASAD DHUSIA: It is a wrong procedure.

SHRI P. N. ABBI: That is wrong. If a child is adopted, it should go as his own child, not taking his privileges along with him.

SHRI DHARNIDHAR BASU-MATARI: You have not applied your mind to a distinct thing in regard to the Scheduled Castes and the Scheduled Tribes. The Scheduled Castes are those who are rather untouchable. Only on the ground of untouchability the Scheduled Castes are there. In regard to the Scheduled Tribes, from whatever religion they come, they are as such. Now, why have you denied them the right? If you take these boys or children in adoption, you must look upon them as your own sons.

SHRI P. N. ABBI: When I was Director of Tribal Welfare, a Mussalman claimed that five generations back they were tribals, that they were converted to Islam. Therefore, they got a certificate to

that effect from the District Magistrate. Benefits had also been given to him. His daughter was admitted to the Medical College, and after three years, after intensive research and investigation it was found that these were all false.

SHRIMATI LAKSHMI KUMARI CHUNDAWAT: Is it only in Madhya Pradesh?

SHRI P. N. ABBI: I am giving only instances of cases where it may be misused.

SHRI SOMCHAND SOLANKI: The Collector said that non-Hindu people adopted by the Scheduled Castes and get benefits for the time being—to get education and all these things. There is no mention about it in this law, therefore they will get that boy back—that was his doubt. We are putting a different thing that a Scheduled Tribe man is adopting a Hindu. Suppose a Hindu boy, a non-Scheduled Caste boy, is adopted by a Scheduled Tribe.

His doubt is correct—he will get the benefit for the time being—the boy adopted by the Scheduled Caste parents—and then afterwards he will go back to that particular family. This was his doubt in the beginning. We are putting the question in a different way.

श्रीमती लक्ष्मी कुमारी चूंडावत : अभी यहां के एम०पी० साहब ने कहा कि अजकल यहां पर भी बच्चों को गोद लेना शुरू कर दिया गया है और इसी तरह की दिक्कतें यहां हो रही हैं।

चेयरमैन : ठीक है अभी हम उन सब एरियाज में हम जा रहे हैं तब मालूम ब जाएगा।

Thank you very much.

(The witnesses then withdrew and the meeting adjourned at 9.40 a.m.)

Saturday, the 8th February, 1975 from 9-00 A.M. to 9-40 A.M.
[AT DRUG, MADHYA PRADESH]

PRESENT

1. Shri Shankar Lal Tiwari—in the Chair

MEMBERS

Rajya Sabha

2. Shri T. V. Anandan
3. Shri S. Kumaran
4. Shri Bhaiya Ram Munda
5. Shrimati Lakshmi Kumari Chundawat

Lok Sabha

6. Shri Shiv Kumar Shastri
7. Shri Lambodar Baliyar
8. Shri Dharnidhar Basumatari
9. Shri Shyama Prasanna Bhattacharyya
10. Shri Anant Prasad Dhusia
11. Shri Md. Jamilurrahman
12. Shri Biswanarayan Shastri
13. Shri Somchand Solanki
14. Shri Bholu Manjhi
15. Shri Niti Raj Singh Chaudhury

Shri Bedabarata Barua, Deputy Minister in the Ministry of Law, Justice and Company Affairs also attended the meeting with the permission of the Chairman.

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

Shri H. C. Vermani, Under Secretary.

SECRETARIAT

Shri M. K. Jain, Chief Legislative Committee Officer.

(Witness, Shri Vijayendra Nath Kaul, Collector, Durg was called in).

चेयरमैन : हम यहां मीटिंग कर रहे हैं और दुर्ग के कलेक्टर साहब मि० कोल यहां आए हैं उनका एविडेन्स लेना है ।

मि० कोल यहां जो कार्रवाई होगी वह गुप्त रहेगी इसलिए जो आप गवाही के रूप में कहेंगे वह किसी को न कहें जब तक कि इसकी रिपोर्ट पार्लियामेंट में पेश न हो जाए ।

SHRI VIJAYENDRA NATH KAUL: You may make any observations which you may like.

SHRI VIJAYENDRA NATH KAUL: I have one point to make that in case there is a calamity and the child is adopted and he is again rendered destitute, he is barred under the present law as I see it for second further adoption.

CHAIRMAN: Your suggestion is that in such a case this boy who has become a destitute should be allowed to be adopted by somebody else.

SHRI NITI RAJ SINGH CHAUDHURY: Your feeling is—this destitute child is adopted. But the parents die in some misery and he again becomes destitute. Under the law as it is proposed, that boy cannot be adopted again. Is it not?

WITNESS: Yes. His rights have to be protected. He should be eligible for further adoption.

CHAIRMAN: May I summarise what you have said? If the boy is adopted once, he should be eligible for another adoption. Any further remark?

WITNESS: Another point is about the procedure. If cases go to the civil court it will take a very long time for decision. So, these cases should have a special procedure for quick and expeditious disposal. Either a time-limit may be incorporated for disposal of adoption applica-

tions within the Act itself or to ensure expeditious disposal some other procedure should be prescribed.

CHAIRMAN: The rules are yet to be framed.

WITNESS: The rule-making power given by the Bill does not provide for any such restriction or time-limit for the disposal of such cases because in the Bill itself it is said that the application has to be decided under the provisions laid down for such an application under the normal civil law. I think a specific mention of the time-limit within which the case should be disposed of is required. Otherwise, sometimes the entire adoption will be delayed.

CHAIRMAN: Anything more?

WITNESS: The other problem which I think may come up is that sometimes people want to be adopted for securing the privileges available under the Constitution. It is normally noticed that people try to give false affidavits claiming that they belong to Scheduled Castes or Scheduled Tribes. There is a tendency to try and secure privileges by claiming to belong to reserved categories and *vice versa*. What would be the position of the child who is adopted by Scheduled Caste or Tribe parents. It may not require any amendment of the Act. But that point is there and needs to be gone into.

SHRI NITI RAJ SINGH CHAUDHURY: From your experience you are saying that sometimes the provisions about adoption are misused or abused to get sufficient privileges. A person who is not eligible for admission into a medical college files a false affidavit that he is a Scheduled Caste, and he gets the benefit.

CHAIRMAN: Anything more? What have you to say about foreign adoption? You may have gone through the Bill.

WITNESS: I have no comments to make on that. There is only one other

point. In clause 14(iii) (b) it is stated—"lives or is made to live by begging." But "crime" is not included. So, I think that the scope of the section should be extended so as to include committing crime.

SHRI NITI RAJ SINGH CHAUDHURY: As it happens in Bombay, children are picked up and they are made to commit crime, sell wines, etc., dressed in good clothes. In cycle tubes they carry wine, etc.

WITNESS: It is stated here—"frequent or is allowed to frequent the company of any prostitute, or of 'any smuggler..." "Committing crime" should also be added to the words here.

SHRI NITI RAJ SINGH CHAUDHURY: That should be specifically included?

श्रीमती लक्ष्मी कुमारी चूडावत : आपके ख्याल में क्या यह सही है कि जो कानून हम बना रहे हैं चिल्ड्रन प्रोटेक्शन का, इसके साथ-साथ कस्टमरी सिस्टम चलने दें ?

साक्षी : अगर दोनों चर्चेंगे तो इसका कोई फायदा नहीं होगा ।

श्रीमती लक्ष्मी कुमारी चूडावत : जैसे शादियां होती हैं उनमें कुछ लोग कोर्ट में जाकर भी करते हैं और कुछ लोग अपने रीति-रिवाज के साथ भी करते हैं ।

साक्षी : अगर इसको कम्पलसरी नहीं करते हैं तो इसका जो प्रोवीजन है बच्चों को प्रोटेक्ट करने का उसको एन्फोर्स नहीं कर

श्रीमती लक्ष्मी कुमारी चूडावत : आपके ख्याल में इसे कितने साल तक के बच्चों पर लागू करें ?

साक्षी : 21 साल ।

श्रीमती लक्ष्मी कुमारी चूडावत : आदिवासियों में ऐसा हो ता है कि वे अपने भाई के

लड़के को या रिश्तेदारों के बच्चों को गोद लेते हैं । उनमें हो सकता है कोई छोटा बच्चा न हो, उसमें 25 साल का भी हो सकता है और 50 साल का भी हो सकता है । अगर कोई 25 साल का या इससे ऊपर किसी को गोद लेता है तो इसमें क्या दिक्कत है ?

साक्षी : मेरे ख्याल में तो 21 साल से कम होना चाहिये । जो आपने कहा ठीक हा कहा । इसलिए मैंने कहा कि 21 साल का होना चाहिए ।

श्रीमती लक्ष्मी कुमारी चूडावत : मुझे किसी को गोद लेना है और मेरे परिवार में जरूरी नहीं कि कोई ऐसा हो जिसे गोद लिया जा सके तब मैं अपने रिश्तेदारों में से हो लूंगी ।

साक्षी : इनमें रिलेशन को डिफ़ाइन कर दिया जाए। इसमें कोई एक्सटेन्सिव रिलेशन-शिप बना दिया जाए और उसे नेचुरल फुटिंग पर लागू कर दिया जाए । अगर रिलेशन को डिफ़ाइन नहीं किया जाता तो उसका मिसयूज होगा ।

श्री अनन्त प्रसाद धुसिया : आप जानते हैं कि जब यह बिल एक्ट बन जाएगा तो हर एक आदमी जो किसी बच्चे को गोद लेना चाहता है उसका कर्ट में रजिस्ट्रेशन करवाना होगा । ऐसी हालत में क्या आपको इस बात का अन्दाज है कि लोगों के लिए कई प्रकार को दिक्कतें और कम्प्लिकेशन्स पैदा हो जाएंगी ?

WITNESS: That is why I said that there should be a time-limit and the procedure should be extremely simple that when an application is made, it must be decided within a prescribed period of time. Otherwise, there will be difficulty and the purpose of adoption may be even lost.

SHRI NITI RAJ SINGH CHAUDHURY: There should be a provision that from the date of application if permission is not granted within three months it shall be deemed that

permission has been granted. That is what he suggests.

श्री शिव कुमार शास्त्री : मैं स्पष्टीकरण के तौर पर यह जानना चाहता हूँ कि इस कानून के होते हुए भी अगर कोई व्यक्ति अपने रीति रिवाजों के मुताबिक किसी बच्चे को गोद ले लेता है तो उस स्थिति में क्या व्यवस्था होगी ?

साक्षी : मेरे विचार में इस कानून से पहले जो एडोप्शन हो चुके हैं उन पर यह कानून एप्लाइ नहीं करेगा ।

श्री शिव कुमार शास्त्री : मैं तो यह बात जानना चाहता हूँ कि इस कानून के एक्ट बन जाने के बाद अगर कोई व्यक्ति अपने रीति रिवाजों के मुताबिक किसी बच्चे को गोद ले लेता है तो क्या उसको कानूनी कठिनाइयों का सामना नहीं करना पड़ेगा? क्या यह कानून उस स्थिति में व्यक्ति की मदद कर सकेगा या नहीं, यह मैं जानना चाहता हूँ ।

साक्षी : उस स्थिति में यह कानून व्यक्ति की मदद नहीं कर सकेगा ।

SHRI BISWANARAYAN SHAS-TRI: Suppose a child is adopted by a person and the adoptive parent dies. This adopted child may be adopted by another person. During the infancy of the adopted child if the adoptive parent dies, who will give the consent for the second adoption?

SHRI NITI RAJ SINGH CHAUDHURY: There should be provision for a second adoption.

WITNESS: One point I want to make. Clause 7 (1) (b) says :—

“An adoption order in respect of a child shall not be made—

(b) where the child is in the care and custody of an institution except, with the consent of the institution given on its behalf by any person entrusted

with, or in charge of, its management.”

In the case of a child whose parents are lost what has to be done? For instance, a child is recovered from a Thana or hospital. Who will give consent in such cases. This must be sorted out.

SHRI BISWANARAYAN SHAS-TRI: The guardian of the destitute child or the authority in the orphanage can give the consent. Suppose the person who adopted a child suddenly dies and the child is to be adopted by somebody else. What is to be done?

WITNESS: He will be in the same position as an abandoned child. He should be treated as an abandoned child and the provisions of section 7 (b) should apply. Whomsoever has the custody of the child must be deemed to be the guardian of the child.

SHRI BISWANARAYAN SHAS-TRI: There are cases in which the insured persons are killed. In the case of an adopted child he will inherit the property of his adoptive parent. Do you not think that in such a case the adoptive parent may be murdered or killed by an interested person? Suppose there is a rich person. He adopts a child and after his death the child will inherit his property. Suppose there is person 'B'. He wants to adopt the child so that he will get the property of the adopted child. He would kill the adoptive father.

WITNESS: That would apply to a normal father also.

SHRI BISWANARAYAN SHAS-TRI: Since you are in the administration I am asking this question.

WITNESS: That applies equally to any rich father. He will not allow adoption till this man is alive.

SHRI BISWANARAYAN SHAS-TRI: Here adopted child means he will inherit the property. Naturally

consent may not be given for adoption by the other relatives. Here there is no relation and that difference is there.

WITNESS: I could not follow.

SHRI BISWANARAYAN SHASTRI: Suppose a person has a son. He has other relatives. After the death of the father, the other relations will be guardians or their consent will be required. In this case the consent of others, according to this provision, is not necessary.

WITNESS: As I see it, there is no difference between an adopted child

available for further adoption and a child with natural parents. The only bar in the former case is to further adoption. According to the provisions of proposed section 6, the child cannot be further adopted. It goes against the interests of the adopted child.

CHAIRMAN: Thank you very much.

(The witness then withdrew and the Committee adjourned at 9.40 a.m)
