

[20 December, 2000] RAJYA SABHA

*Clauses 2 to 31 were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill,*

SHRI BALASAHEB VIKHE-PATIL: Madam, I move:

That the Bill be passed,

*The question was put and the motion was adopted.*

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THE JUVENILE JUSTICE (CARE AND PROTECTION OF  
CHILDREN) BILL, 2000 - *Contd.*

THE DEPUTY CHAIRMAN: We win now take up the Juvenile Justice (Care and Protection of Children) Bill, 2000. मंत्री जी ने अपना भाषण कल कर दिया था। One thing I have to ask the House. In the Business Advisory Committee, no time was given for discussion on the Bill. I have some names of Members before me. I would like to know the opinion of the House. There are not many Members who want to speak, but, by and large, there is unanimity on the Bill which was needed to be brought for strengthening the protection of children, and it is in the true spirit of the protection of children that definitely, justice should be given to them in a proper manner. So, I would ask the House, "Shall we give one hour for discussion?" We can finish it in one hour. For that, I will have to remove a lot of names, and I will go according to the names given in the list. I have a targeted time of one hour. If there is anything essential that you want to say about the Bill itself, you are welcome to say.

श्री संघ प्रिय गौतम (उत्तरांचल) : एक घंटे से पहले हो जाय तो कोई बात नहीं।

उपसभापति: अब आप इतने ज्यादा एंथ्यूजियास्टिक मत होइए।

श्री बालकवि बैरागी (मध्य प्रदेश) : मैडम, कल जिन विसंगतियों की ओर ध्यान दिलाया गया था क्या वे दूर कर दी गई हैं।

THE DEPUTY CHAIRMAN: When she starts, I will tell her. Let me first give time for discussion on the Bill. Misraji is here; I will ask him. The thing is that we have one hour. I would appreciate if you all abide by the time. We have only today and tomorrow. Then there is Friday. After this, we have got Financial Business to finish. The Appropriation Bill is there. There is a Supplementary List of Business which is circulated. So, look into it. I know that you all can speak for hours on the protection of children,

but in the true spirit, and as you have studied the Bill at least last night, if you think there are any suggestions to give, please give them. But if we discuss the protection of children in the entire country and around, then I think we need six or seven hours. So please abide by your time. So. one hour is given.

SHRI RANGANATH MISRA (Orissa): Madam Deputy Chairman, I thank you for allowing me to speak on the subject. I appreciate that it is the Government's obligation to have a municipal supportive legislation to implement the Convention on the Rights of the child.

I congratulate the Minister because she has been able to take up the subject. But I have not been very happy with the Bill as presented. It is well-known to all of us that the law maker, that is, this House and the Lok Sabha, applies its mind at one point of time and once the Bill is transformed into a statute, this House has nothing more to do with it. Thereafter, it comes under the jurisdiction of the court to start interpreting. While this House stops dealing with it, the interpreting authority is entitled to keep on dealing with the matter, as and when it comes. Therefore, it is necessary that the single application by this authority should be done in such a way that there is no loophole in the law. The intention and the purpose for which the law is made should be available in clear terms and the legislation should be such that it serves the purpose for which it is made.

Madam, this House is entitled to a mistake-free draft Bill. I have been able to detect about 40 mistakes. There would, probably, be many more mistakes really appearing in the Bill which require correction. I have, in terms of what transpired yesterday afternoon, handed over a corrected copy-1 mean with my suggestions of correction--to the Minister as also to the Law Minister. I don't intend to stand on formalities and I request the House also not to take them on a formal basis. Since these mistakes are continuing, unless these mistakes are corrected, these words may not really convey the meaning that is intended to be brought about and the purpose of the legislation may not be effectively served. There are many places where a comma makes a different meaning, if it is not put at the place where it should be. Therefore, by saying that the mistake of a comma or semi colon or a singular subject with a plural verb or a plural subject with a singular verb is a small or a trivial mistake, you are really overlooking the purpose.

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The second thing is with reference to clause 41 which deals with the right to adopt. Yesterday, I had pointed out, and I would like to reiterate, that the Hindu Adoption and Maintenance Act, 1956 has a provision in section 11. I will pass on a copy to you, Madam, for your reference. It states:

"In every adoption the following conditions must be complied with:

- (1) "If the adoption is of a son, the adoptive father or mother, by whom the adoption is made, must not have a Hindu son, son's son or son's son's son, whether by legitimate blood relationship or by adoption, living at the time of adoption."

This means that if you have son, you are not entitled to adopt a son. Similarly, there is a provision in the second clause about a daughter. If one has a daughter, he or she is not entitled to adopt a daughter. "This provision applies to Hindus, Jains, Buddhists and Sikhs" This is available at the top portion of the same page.

"This Act applies - (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prathana or Arya Samaj; (b) to any person who is a Buddhist, Jain or Sikh by religion, and (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion." Therefore, this Personal Law applicable to the Hindus does not permit an adoption by a person if he already has a natural or an adopted son. Section 41 (2) of the present legislation also deals with adoption. Therefore, there is an enabling provision for adoption. The question that arises for consideration is this. There is no restriction here, as in the terms of the Adoption Act which has a prohibiting clause. There is no such clause here. You can adopt 10 or 15 or even 20 children at a time. There is no problem that way. So, even if one has a natural son, he is free to adopt a boy. The protection that is available to a Hindu and others, who are already covered by the same provision, does not authorise an adoption, while the present statute seeks to allow adoption. I have two aspects to place for the consideration of the House. One is that, the bar that is there in this Act, applicable to Hindus, is being taken away, and an enabling provision with a contrary scope is being introduced by the proposed legislation. The second one is that there is a social element which one has to consider. When this 1956 Act was adopted, it was felt that the real purpose of the restrictive provision was on

account of the fact that if there is already a son or an adopted son, to adopt another stranger would create disharmony in the family and it would not have the family unit in proper shape. We are passing through difficult times. Social order and discipline that used to be maintained earlier is absent. Social disorder has been spreading, and the family which is the basic natural unit, - this is recognised everywhere; even the Universal Declaration of Human Rights accept the family as a natural element or the first institution -- would get affected on account of the fact that the combination is not harmonious. If you import another boy from outside, when there is already a natural son or an adopted son, then there is bound to be dispute; there is bound to be chaos and disharmony. Therefore, the real legislative purpose behind the restriction introduced in the Hindu Adoption and Maintenance Act, 1956, was for the purpose that the homogeneity in the family may not be disrupted by introducing an alien element into the family. And that, if you already have a son, then there is no point in introducing another or in duplicating that. If that is taken into consideration, then, it will be easy to understand why such a restrictive provision is beneficial. I personally feel that many of you might have had the occasion to see families getting disrupted on account of almost a similar situation. In the Courts, as a lawyer and judge, I have handled many such cases where families have been disrupted on account of the fact that a stranger has been introduced, and homogeneity has not been developed between the natural son and the adopted son. We have cases where, for example, after marriage, a child is not born. And thinking that the couple is growing and becoming old, they think of adoption. Soon after adoption, a natural son is born and brought into the family. Between the natural son, who is born later, and the son who has been adopted already, there used to be series of disputes. Earlier, it used to be that half of the share used to be given to the adopted son. After a natural son was born, the natural son would get double the share of the adopted son. But this is no more available that way and the system has, therefore, got to be rationalised. If this be the consideration, that the family must be saved, disruption should not come and homogeneity should be maintained, one appreciates the ban the restriction; and if that was there, that should not be taken away.

So, I submit two aspects. One is that the restrictive provision in the Hindu Law Act should be taken into consideration, as applicable to people to whom it applies, the classes to whom it applies, and that should not be allowed to be taken away by the proposed legislation. The second

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one is: the restrictive provision is socially reasonable one and, therefore, should not be done away with. Both should be maintained. I have suggested an amendment for consideration.

SHRI R. MARGABANDU (Tamil Nadu): Can you enlighten us on the question of inheritance, Sir?

SHRI RANGANATH MISRA: Now it is equal share.

THE DEPUTY CHAIRMAN: And in the case of other communities, what is the provision?

SHRI RANGANATH MISRA: No adoption is possible. In law, conceptually, there is no adoption, though there have been cases of adoption in recent times. But in a loose sense, we call it an adopted child.

I have suggested an amendment to section 41, for the provision to be made as follows: -

"Such adoption shall be subject to the Personal Law of 'the doptive parents.'"

It is a proviso to section 41(2).

THE DEPUTY CHAIRMAN: No. That is in the case of others who adopt a child; whatever religion that person is observing, the child will follow the same.

SHRI SANGH PRIYA GAUTAM: I am sorry, Madam. I think you are pointing to sub-section (6) of section 41, which says:

"(6) The Board may allow a child to- be given in adoption

(a) to a single parent, and

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters."

I think, it is prohibited in the Hindu Adoption Act that you have referred to.

SHRI RANGANATH MISRA: No, no. That is a different thing. I am talking of only section 41(2) which authorises adoption. And I want that this provision should be subject to the rider that it will be subject to the personal law of the adoptive parents. If that is accepted, then we have no difficulty. I would request that all of us who are anxious for abandoned children to be supported and their rights to be recognised should consider

it seriously. In fact, when I was working in the Human Rights Commission or even earlier in the court, I was a great supporter of - children and their rights. I feel guilty that this is a country where, fifty years ago, we promised to children certain rights in Articles 24 and 45, but these have not been implemented and children have no capacity to form unions, to demand, to make our activities difficult; otherwise, we would have attended to them long before; and now, fifty years have gone but we have not been able to do that. Therefore, I am anxious that this should be done and we should comply with the international agreement through supporting legislations. But this should not be the way. And I am not used to a legislation that has forty defects, and each of these defects becomes a part of the law and cannot be corrected, and if it is taken out before a court, the court is bound to make a comment about it. Why should we exhibit such conduct is also a matter of consideration. I did not propose 41 or 50 amendments and each one to be pointed out because I expected that the Minister would present a Bill which would read English. I remember of a case, in 1933, when an adoption dispute was taken to the Privy Council. A local lawyer-because there was a lot of evidence on facts-had gone to brief the barrister there. After the case was disposed of-it is AIR-1933/Privy Council, probably, page 214 or 114. It is a case of adoption between two perfect families. The Solicitor charged hundred pounds to render the brief of instructions into King's English. That was a special item in the Bill of Costs. Hundred pounds for the English briefing to be translated into King's English. The lawyer who had gone there, appeared before the Master and raised objections. Twenty pounds were given above the hundred pounds for raising a frivolous objection because what was originally read was not really English. So, this is a case of that type. The Bill placed before us will require assistance to make meaning out of it. We would be unnecessarily called upon to have an additional, unnecessary, exercise. This should not repeat. We have a draftsman; we have a Ministry; we have the system. Therefore, this specimen should not be available to be redone before the House. Thank you.

THE DEPUTY CHAIBMAN: It will be much better if the Law Minister, who is here, clarifies this. Then, we can finish the Bill sooner. I will just tell him, in brief, about what happened yesterday. The Bill was brought, and Mr, Ranganath Misra and some others said that there were certain mistakes in the Bill. He has referred to it before you. But he also said that there were certain other mistakes in the language which could change the total meaning of it. That is why, if you could explain it as to what it is, then

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it will be easy. We had before us, earlier, another Bill on Narcotics, where we had the same kind of problem, because once it becomes an Act, it becomes difficult to change it. So, the Minister of Finance who was piloting it, accepted it. ...(Interruptions)... Yes; he was there. Shri Balkaviji pointed out those mistakes. There was a difference between the English and the Hindi versions of the Bill. So, that was ratified later, on our pointing it out.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Madam, I will just refer to the principal points which the hon. Member has made, with his very wide experience, as far as the law is concerned. I have also had the opportunity of discussing this subject with the hon. Minister. The point which has been made is that we have provided for adoption under section 41 of this Act. This adoption which has been provided for, and the scheme of adoption which has been provided for, may run contrary to the Hindu (Adoption and Maintenance) Act, particularly the provisions of section 11 (vi).

Under the Hindu (Adoption and Maintenance) Act, the restriction is this was a restriction considered appropriate in 1956 if you had a son of your own, or a grandson of your own, you could not adopt another son because they, probably, felt at the time when the Bill was drafted, that the new son who was adopted, even after adoption, may remain a neglected child in the family, and may not get fair justice. That, probably, was the reason. Similarly, a provision was there that if you already had a daughter or a granddaughter, then you are barred from adopting daughters. So, that is as far as the Law of Adoption is concerned. That law is applicable only to those who are Hindus, Jains, Buddhists, to whom this law is applicable.

Now, this legislation which has been brought is a social legislation, with a social purpose, and does not deal with a primary emphasis on adoption. The primary emphasis of this is that, we have lakhs and lakhs of abandoned, neglected and orphaned children in this country. In every city, you have street children; you have children in orphanages. Therefore, there has to be some scheme under which rehabilitation of those children can take place,

Section 40 of this Act mentions. "The rehabilitation and social reintegration of a child shall begin during the stay of a child in a children's home or special home.." -So, you create these institutions— "...and the rehabilitation and social reintegration of the child shall be carried out

alternatively by (1) adoption, (2) foster care, (3) sponsorship, and, (4) sending a child to an after-care organisation." Therefore, you work for the integration of the child with the society by these four methods, that is, adoption, foster care, sponsorship and sending him to an after-care organisation.

Now, as far as the adoption is concerned, they say, "...in the case of adoption, where a child lives with the family itself, becomes a member of the family. The primary responsibility for providing care and protection to children shall be that of the family." Then, the method of adoption is mentioned and then the restrictions are mentioned, mentioning how do you adopt. No child shall be offered for adoption unless two members of the committee declare that the child is legally through for placement as an abandoned child, and then it says, "The board may allow children to be given in adoption to a single parent," which is contrary to the scheme of the 1956 Act "and to parents to adopt a child of the same sex, irrespective of the number of living biological sons and daughters." So, we are now trying to consciously make a departure from the 1956 law. The reason being, that this law has nothing to do with the religion, either of the child or of the parent. This law is not a personal law. This law has nothing to do with religion.

This law has something to do with the social purpose. The social purpose being that, millions of abandoned children are neglected children or orphaned children, and they must be picked up, and either sent to the homes or be sponsored by well to do people or even be adopted into the families of those affluent people. This law is intended to encourage people, who may be well-off economically and socially, who have the resources. They may have a house, they may have children; and, yet, they agree and say, "To pursue a social purpose, we must either sponsor one child or take one child into adoption and develop the child, grow up the child, as a member of our own family." Therefore, this is a special legislation for rehabilitation of these neglected children.

The former Chief Justice, Misraji would bear out that the law has always been well laid out, that whenever there is a need for a special category, a special law is created. Then, it is that special law which will apply. Most of these children would be those, we are not even aware of what the religion of these children would be, because these children are orphaned, these children, maybe, immediately after the birth, had been left on the roads and in some places, and their religion is not known. Their



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religion will not act as a bar because it may not even be known. The parents' religion also will not act as a bar. What is being suggested is, to pursue that social purpose, to encourage well to do people to adopt these children or sponsor these children, you must either sponsor them or you can even adopt them into your families.

So, this special law will have the effect, in the case of these category of children, that is, orphaned, neglected, abused, children, of overriding the general law, which is the 1956 law. So, if there is any person who is to be adopted, who is not in the category of orphaned or abandoned or neglected or abused, then the original law will apply; but, for this category, if, through these institutions, somebody is to be sponsored or adopted, this special law will apply. This special law will defy the religion of the child and it will defy the religion of the parents, and, therefore, this law itself will apply.

I would request Justice Misra to consider this point that in view of the special legislation, and the social purpose of this legislation, the amendment, the suggestion, may not really be pursued; and it is not even necessary to pursue the suggestion, to say that in whichever family you are adopted, you will follow the religion of the parents because this law has nothing to do, really, even with the customary adoption law. It has nothing to do with religion. It has something to do with rehabilitation of orphaned and neglected children and, therefore, for these category of children, the 1956 law will not apply, *interruptions*)

The second point which has been raised -- it is a general point -- that there are certain drafting mistakes, etc. Though the specific details have been given, I have been trying to compare the list which was given in the other House, The hon. Minister also went through the entire list which is with the hon. Members. If there is anything specific, the hon. Minister could go into those questions. But what was given in the other House, it was discussed at length and it was found that really there was no inconsistency because a large number of amendments really related to the use of word 'the' and some related to replacing it with a more suitable phrase. But the tenor of each of those clauses where those words have been used substantially is not any different whether those words are there or not. I would request the hon. Members to consider if any such areas where the use of a particular phrase is creating a different emphasis as such.

THE DEPUTY CHAIRMAN: Before me there is a notice of amendment by Shri Ranganath Misra that at page which says : 12, after line 25, the following proviso be inserted, namely: -

"Provided that such adoption shall be subject to the personal law of the adoptive parents."

This is being circulated. . (*Interruptions*).... If you want clarification, then it should not be in this disorderly manner. (*Interruptions*)... Please listen to me. (*Interruptions*).., If you want that this Bill is discussed, then let us discuss it in a proper manner. You make your speeches and then let the Minister reply. If you say that after your clarifications are finished and you are going to pass the Bill without discussion, then fine, I will allow you at this stage. Otherwise, I will call the next speaker and accordingly others.

THE MINISTER OF STATE OF THE MINISTRY OF SOCIAL JUSTICE AND EMPLOYMENT {SHRIMATI MANEKA GANDHI} : Madam, (*Interruptions*)....

SHRI FALI S. NARIMAN (Nominated): Madam, amendments can be taken up a little later after opinions are discussed. Otherwise, we will have to vote on it without everybody knowing it. (*interruptions*)...

THE DEPUTY CHAIRMAN: The amendment will come when the concerned clause will come. . (*interruptions*)... Why I read it out because the Law Minister is here. If he wants to make any clarification about it, then it could be taken into consideration.

SHRIMATI MANEKA GANDHI: Madam, . (*interruptions*)... Madam, I would request that Mr. Nariman be asked to speak, (*interruptions*)...

THE DEPUTY CHAIRMAN: Let the Minister speak. (*Interruptions*)...

SHRIMATI MANEKA GANDHI: Mr. Nariman may be asked to give his opinion also as a jurist since it is a technical-legal matter for which the Law Minister has taken time off. Since legal questions are being asked, perhaps Mr. Nariman could also ...(*Interruptions*)...

THE DEPUTY CHAIRMAN: Mr. Nariman's name is there. (*Interruptions*)... If you want to speak (*Interruptions*)...

SHRI FALI S. NARIMAN : Madam, I will take only three or four minutes on this main question. My only request to the hon. Members is to consider this that adoption in this Bill is as a measure of rehabilitation of

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orphaned, abandoned, neglected or abused children. This is not, and is not, intended to be a general law of adoption. This Bill relates to children. This is very important, I recollect, Madam Deputy Chairperson, that I gave evidence here more than 25 years ago before a Select Committee of Parliament on the Adoption of Children Bill, 1972. It was not passed although it was only enabling. Therefore, all our views with regard to adoption have to be slightly kept aside for the purpose of this Bill. It does not apply to all children in the first place. It only applies to certain categories of children who need rehabilitation. The second important thing is that clause 41 (6) to which an amendment is sought is only enabling because it says, "the Board may allow a child to be given in adoption." Now, whether it may allow having regard to the personal law, or it may not allow having regard to the personal law is a matter on which the Board would have to take a decision in each individual case. I would respectfully suggest - Justice Misra may also kindly consider it -- that since there is already power with the State Governments to issue guidelines under clause 41 (3) - clause 41(3) expressly this -- perhaps the Central Government Should indicate to the State Governments to issue an appropriate guideline to the Board emphasising that, "adoption," is a measure of rehabilitation, that it should be made truly effective to enable any adopted child to enjoy the social rights and privileges in the adoptive family without any discrimination, bearing in mind all aspects of the personal law of the adoptive family, without interference with the religious rights and custom!; of the family into which the particular orphan or destitute child is given in adoption.

Madam, if this is followed, I do not think we will have any difficulty at all, because there are a lot of people who like the Parsis; have no law of adoption. When we say that we adopt so and so, it has no legal effect at all. Therefore, the important thing is, this law is intended really to rehabilitate the child. The Board will consider whether there is any legal impediment, and, after considering it, come to a conclusion whether it will allow it or it will not allow it. We cannot generalise. May I only draw attention to the fact that the International Convention on the Rights of the Child, Article 20 and 21, expressly states that the State parties -- we are a State party to the convention -- shall, in accordance with their national laws, ensure alternative care for such a child, and such care, includes "adoption". So, the International Convention does not prescribe that we should override our laws at all, in the first place. That is a matter of intention. In individual cases, whether or not a particular abandoned child

should or should not be given to a particular family depends on the circumstances of that family, the personal law of that family, what happens in that family, whether that particular son is settled abroad and is very well cared for, etc. In each event, it may or not. Therefore, there is no question of overriding anybody's law or not overriding anybody's law. It all depends on the facts of each case, and I would respectfully suggest that if a suitable guideline is framed with regard to not over-riding any personal law -- because that creates a great deal of problems all round -- I would request the hon. Member who has moved the amendment to consider whether he would like to insist on it.

SHRI ADHIK SHIRODKAR (Maharashtra) : Madam...

THE DEPUTY CHAIRMAN Shall we start the discussion?

SHRI ADHIK SHIRODKAR: One minute. Madam.

THE DEPUTY CHAIRMAN: I want an assurance from the House. I will permit all the legal luminaries to give an opinion on this, provided the House passes it without discussion. If the House is again going to have one hour or two hours of discussion, then we might as well go in a proper manner and not in a haphazard way.

SHRI RRANAB MUKHERJEE (West Bengal): Certain legal points have been raised and three very eminent legal luminaries have also made their contribution. There are other Members who are also lawyers. So, I think you should devote some time for the discussion, - it is left to --about an hour or so, so that the Members can speak. But I entirely agree with you that the discussion should take place in an orderly manner so that the members can make their contribution.

SHRI R. MARGABANDU: Madam, I have only one clarification to seek.

THE DEPUTY CHAIRMAN: I am sorry, Mr. Margabandu, if I call you, I have to call Mr. Ram Jethmalani and others. Please sit down. Take your seat, please. I had already called Mr. Ranganath Misra's name first. He was not speaking out of context. He was speaking in his original position. So, that is it. Now, I will call Shrimati Savita Sharda. She is not present. Shrimati Bharati Ray.

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PROF. (SHRIMATI) BHARATI RAY (West Bengal): Madam, I will be as brief as I can. This is a very interesting Bill and a very significant Bill. I very much appreciate the purpose, that is, to deal with the subject with sympathy, empathy, sensitivity and imagination. In that way, I support and I welcome the Bill. Particularly, I like two clauses. Clause 21 is very imaginative, really, and it prohibits the publication of the name and address of the juvenile in conflict with law. Anonymity will, certainly, help the process of resocialisation. I like clause 60 which, on the one hand, makes it obligatory for the affluent parents to pay for the maintenance of the child in a special home and, on the other hand, offers financial assistance to the indigent parents for the journeys made to take the children back and forth. I also support the association and recognition of the village panchayats, Zilla Parishads and Municipal Corporations as the local authority in respect of juvenile justice and protection.

[THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) in the Chair]

And, yet, Sir, I have one or two comments to make. While the Bill deals with the care of juveniles, it ignores the point why they are so. No child is a born criminal. It becomes one. It is the lack of economic security, lack of education, training, work as a child labour or a bonded labour or a municipal manual scavenger and lack of nutrition that makes criminals out of children in this country. I will not go into statistics. Sir, 11 million children are on the streets; four lakhs out of nine lakhs prostitutes are minor girls. As the hon. Minister knows, every third case of rape is of a minor girl. If the Government pays some attention to grapple with these problems to resolve them, we will, probably, grasp the intensity of the anguish of all victimised children. Why do I make this point? It may sound irrelevant. I make this point because it becomes clear when you look at the actual provisions of this Bill. What it says? We need to pay more attention to those forces and to those people who instigate children to become criminals. There is a proverb in Bengal. It means, you water the branches and not the roots. You see clauses 23, 24 and 25. Those who are in charge and control of the children, if they assault or cause mental anguish and things like that or wilfully neglected, What are you doing? You are giving punishment for only 6 six months! Employment of juvenile children for begging, your maximum punishment is only 3 years! Maximum penalty for giving intoxicated liquor and subs drugs is only for three years! Abuse of children at home is increasing daily. We know of sexual exploitation of minor girls within the four walls of the home. Begging,

unfortunately, has, almost, become a profession, a business with a host of middlemen charging commission, and a number of anti-socials with networks over huge areas. There is a racket of masterminds operating with a vicious nexus between begging, criminal activity and drug peddling. The situation is even worse. (Time-bell) Sir, only two minutes. As you know, I do not speak for long. Sir, it is worse than the Oliver Twist scenario. These people are the real criminals. And, therefore, they must be given more stringent punishment.

I will complete in two minutes. I am not a lawyer, but I am a mother. Therefore, I understand the problem that Justice Misra has pointed out. Suppose i have a son. I know the purpose is good; it is an enabling clause. But, i wonder whether anybody will adopt a son or a daughter when one has a son and a daughter and grandchildren only for philanthropic reasons. I would argue that we can adopt children for other uses which I need not spell out. The other uses are such as exploiting, bonded labour, employment, selling and so on and so forth. Therefore, this enabling clause - whatever may be the purpose and however good it may be — should be reconsidered because this may, by trying to help them, end up in giving them further troubles and further problems.

Lastly, chapter II deals with the Juvenile Justice Board. Hon. Minister has also suggested Child Welfare Committee. Excellent! In both of them, you have suggested women. But there is no mention of a vocational trainer or a psychiatrist or an educationist, to listen to the unheard voices, to detect the particular flairs of individuals, and to try to understand them. Therefore, Madam, please consider these points also.

SOME HON. MEMBERS: Not Madam, but Sir!

PROFESSOR (SHRIMATI) BHARATI RAY: Yes. I am addressing Madam, through you, Mr. Vice-Chairman, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I will accept the confusion. Now, Shrimati Vanga Geetha. Madam, you have three minutes. Please remember, after this, we have to sit up to almost 8.30 p.m.

SHRIMATI VANGA GEETHA (Andhra Pradesh): Sir, I support this Bill. It is a well-intentioned Bill. It is a good Bill. I am very grateful to the hoo. Minister because it is only due to her enthusiastic efforts that this Bill has come. This Bill will change the lifestyle of the street children, who need care and protection. This Bill seeks to replace the Juvenile Justice

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Act, 1968. The enactment has two parts -- the first part deals with juvenile offenders; and the second part deals with juvenile children who deserve care and protection. The question is not of the enactment of a law, but care is necessary while implementing the law. We have juvenile homes in different parts of our country. These homes are meant for providing care and protection. But, unfortunately, they fail to fulfil their duty to safeguard the interests of the children. Sometimes, the children in the shelter homes undergo mental and physical torture; and, sometimes, they just run away from the shelter homes. So, it should be rectified. The United Nations has given consideration to the personnel who will administer the law. The personnel should be qualified and should include sufficient number of specialists, such as educators, voluntary instructors, councillors, social workers, psychiatrists, psychologists. These things are very necessary. If you don't take them into consideration, the enactment will be of no value at all. The administration should be careful in the selection and recruitment of personnel of every grade. I think, the Bill takes good care of it. The children are suffering because of two problems in our country -- one is the poverty; and the second is the urbanisation. Because of poverty, the children are committing crimes. So, they are put in the jails as juvenile criminals. The second is the urbanisation. Because of urban affluence, they are committing crimes. However, many a time, they escape. For treatment of this abnormality, social justice and empowerment is required. The juvenile is in conflict with the law because of poverty in our country. So, when they are put in the juvenile homes, they should be treated properly. They should be allowed to earn while they learn. Let them be put into the mainstream. It is the beginning of the first step in that direction. If they are given proper care, affection and love, many of these crimes would be avoided. The Statement of Objects and Reasons provides for involvement of voluntary organizations. The role of voluntary organizations has not been well-defined in this Bill. Voluntary organisations should be assigned sufficient role. There should be a sincere monitoring of the activities of these organizations. Juvenile Justice police units should not be kept as a part of the present police set up. They should have a totally different approach through gender and child sensitisation. The Juvenile Justice Board and Child Welfare Committees proposed to be set up should have more community involvement.

Lastly, the Bill provides for setting up of Committees at the district level. My request to the hon. Minister is : If Committees at the taluq level and at block level are set up, then, it would be useful.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please conclude. You have already taken your Party's time.

SHRIMATI VANGA.GEETHA : I am concluding. I hope that the Government will put them in the mainstream and make them gentlemen again.

Once again, I congratulate the hon. Minister for earning a very good name in the country for showing a genuine concern towards animals. I think, only a person like her could have brought forth this type of a Bill. This Bill has been brought forth for the purpose of providing proper care and protection to the juvenile children.

On behalf of the Telugu Desam Party and on my own behalf, I support this Bill. Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mrs. Saroj Dubey, you have two minutes,

**श्रीमती सरोज दुबे (बिहार) :** सर ,दो मिनट में क्या बोलूंगी ?

SHRI PREM CHAND GUPTA: How can she finish her speech in two minutes? ...(Interruptions)... Please give her more time.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The time has been allotted Party-wise. ...(Interruptions)... Why are you creating a conflict between me and her?

**श्रीमती सरोज दुबे:** माननीय उपसभाध्यक्ष महोदय ,किशोर न्याय अधिनियम , 2000 जो सदन में लाया गया है ,यह एक अच्छा कदम है । लेकिन इस की बहुत सराहना इसलिए नहीं की जा सकती क्योंकि यह व्यावहारिकता से बहुत दूर है ।

महोदय ,माननीय मंत्री जी ने कल बताया था कि इस विधेयक की तैयारी में उन्होंने न्यायविद् और पुलिस अधिकारियों से भी सलाह ली थी ,लेकिन उन्होंने उन संगठनों से सलाह नहीं की जो इस क्षेत्र में काम कर रहे हैं और न महिला सांसदों तक से विचार विमर्श किया । इसलिए इस में कमी रह गई है जिस की ओर माननीय न्यायमूर्ति मिश्र जी ने भी इंगित किया है ।

महोदय ,आप जानते हैं कि देश में तमाम तरह के बच्चे हैं । कुछ बच्चे मजबूरी में अनाथ हो जाते हैं ,कुछ बच्चे गरीबी के कारण सड़क पर घूमते रहते हैं और कुछ बच्चों को असामाजिक तत्व और माफिया ले जाते हैं और उन से भीख मंगवाते हैं ,उन पर अत्याचार करते हैं । इसलिए मुझे लगता है कि मंत्री जी ने इस तरह के बच्चों का वर्गीकरण कर के अध्ययन नहीं किया है । महोदय ,कुछ बच्चों को इस देश में एक घूंट दूध नहीं मिलता और बीमारी के समय एक गोली तक नहीं मिलती ,उन बच्चों के लिए किस तरह से यह कानून बनाया गया है ,यह मेरी समझ में नहीं आ रहा है । माननीय मंत्री जी ,इस में जरूरतमंद बच्चों के संबंध में ,किशोरों के



संबंध में सक्षम प्राधिकारी का जिक्र किया गया है और सक्षम प्राधिकारी किसी भी एडॉप्शन के मामले में किसी को योग्य संस्था का प्रमाण दे सकता है और किसी को भी योग्य व्यक्ति का प्रमाण दे सकता है कि वह समाजिक कार्यकर्ता है या योग्य व्यक्ति है। माननीय मंत्री जी ने इस बारे में कोई गाइडलाइंस नहीं दी है। अब यह सक्षम अधिकारी खुद सक्षम नहीं हैं, अच्छा अधिकारी नहीं हैं तो अगर वह किसी भी व्यक्ति या किसी स्वैच्छिक संगठन को सक्षमता का प्रमाण दे देगा और बच्चों का व्यापार शुरू हो जाएगा। महोदय, इस तरह से संस्थाओं को छूट दे दी गयी तो इन बच्चों पर देश में ही नहीं बल्कि विदेशों में भी अत्याचार शुरू हो जाएगा। महोदय, मैं ने इस में एक जगह देखा है कि राज्यों को एडॉप्शन के मामले में खुद कानून बनाने के लिए, नियम बनाने के लिए छूट दी गयी है। इस बारे में भी मेरा एक सुझाव है कि हर राज्य में अलग-अलग तरह के विचार की सरकार होती है। इसलिए केन्द्र सरकार को चाहिए कि उन को एक गाइडलाइंस दे दे ताकि पूरे देश में बच्चों से संबंधित और किशोरों से संबंधित जो कानून बनें उन में समरूपता हो ताकि हर जगह अलग-अलग तरह का बिखराव न होने पाए। महोदय, राज्यों को इतनी छूट नहीं दी जानी चाहिए और इस बारे में उन को गाइडलाइन जरूर दी जानी चाहिए। इस के अलावा मैं मंत्री जी से कहूंगी कि बच्चों पर इतने अत्याचार हो रहे हैं कि आज बच्चे सड़क पर घूमते हैं। दिल्ली की सड़कों पर ही आप देखें तो ये बच्चे गाड़ी पोंछ रहे हैं, उन्हें विकलांग बनाकर उन से भीख मंगवाई जाती है, औरतें छोटे बच्चों को गोद में लेकर भीख मांग रही हैं।

THE VICE-CHAIRMAN (SHRI ADH1K SHIRODKAR):  
Madam, that is why this Bill has been brought forth here.

**श्रीमती सरोज दुबे :** मंत्री जी, क्या इस तरह के बच्चों के बारे में आप ने कोई सर्वे करवाया है? इन बच्चों का कैसे सुधार होगा, यह भी मंत्री जी को बताना चाहिए। और जो सक्षम अधिकारी हैं, उनको बच्चों के बारे में पूरी मनोवैज्ञानिक बातें मालूम हैं या नहीं, यह भी देखना चाहिए। इन सारी बातों की इस बिल में कमी है, जिनको इन्हें पूरा करना चाहिए।

इसके साथ ही साथ मैंने बच्चों का व्यापार करने के बारे में जो बात की थी, वह बहुत गंभीर है।...(समय की घंटी)...मैं दो मिनट में अपनी सारी बातों को कह नहीं पा रही, इसलिए सब गड़बड़ हो रहा है। मैं केवल एक और बात कहना चाहती हूँ कि बच्चों का बड़ा भारी धंधा चल रहा है। आप जानते हैं कि अरब कंट्रीज में छोटे-छोटे बच्चों को ले जाकर ऊंट पर बांधा जाता है, लड़कियों के साथ डोमेस्टिक वॉयलेंस हो रहा है। होटलों में या घरों में जो काम करती हैं, उनको साथ डोमेस्टिक वॉयलेंस हो रहे हैं और यह जो किशोरों के एडॉप्शन की बात है, वैसे तो मिश्र जी ने सारी बातें बता दी हैं, मैं उनका समर्थन करते हुए कहना चाहती हूँ कि अगर इस तरह से एडॉप्शन होता रहा तो घर में आपस में ही इतने झगड़े शुरू हो जाएंगे कि किसी परिवार में सुख-शांति नहीं रह पाएगी। इसलिए इस बिल पर बहुत व्यापक विचार करने की जरूरत है, जो लोग इस क्षेत्र में काम कर रहे हैं उनसे एक बार पुनः सलाह लेने की जरूरत है ताकि यह विधेयक व्यावहारिक हो सके और इस देश में जो लाखों-करोड़ों की संख्या में बच्चे तड़प रहे हैं, जो अशिक्षा और अभाव में पल रहे हैं, जो गांव से भाग रहे हैं, जो अत्याचार सह रहे हैं, उनको कुछ राहत मिल सके और यह किशोर न्याय विधेयक बच्चों के लिए राहत का काम कर सके, उन्हें सुनहरा भविष्य दे सके और बच्चों को सामाजिक सम्मान दे सके। इसलिए इसमें सुधारों की जरूरत है और मेरी तो यह राय है कि इसको सिलेक्ट कमेटी में भेजा जाना चाहिए और एक बार व्यापक रूप से विचार होने के बाद ही इसे आना चाहिए वरना इस पर किसी कोर्ट में स्टे हो

जाएगा ,यह बिल जहां का तहां रह जाएगा और जिस उद्देश्य से यह बिल लाया गया है ,वह उद्देश्य पूरा नहीं होगा और हमारे भारत का जो बचपन अब सिसक रहा है वह आगे भी सिसकता रहेगा ,उसमें कोई सुधार नहीं होगा । धन्यवाद ।

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I would like to request the hon. Members to be brief and avoid repetition. It is an accepted position that there is inhumanity, ill-treatment and all that to the children, In order to avoid all these things, this Bill is being brought. So, referring to these things will not add to the discussion. It will only be a repetition without any purposeful outcome. I will request you to restrict to the Bill itself. Now, Shrimati Bimba Raikar. You have got three minutes.

SHRIMATI BIMBA RAIKAR (Karnataka): Sir, India is a very big country and it has got a huge population. So many problems have been created only because of huge population. One main problem is poverty and unemployment. Because of this poverty, illiteracy and ill-health is there. In a family where the head of the family is the father, when he develops bad habits, vices, -the family is broken, and the wife, the mother of the children, cannot take care of the children and they go astray and go to the roads. This type of children are called orphans and destitutes. I want to know from the hon. Minister whether this Bill is only for the offenders or whether this Bill is also for the orphans and destitutes. If we only think of the offenders, then what about other children, who are mentally and physically handicapped, who are orphans and destitutes. What I feel is that there should not be any discrimination among the physically and mentally handicapped children, destitutes and orphans. So, the assessment of juvenility should be based on the recommendations of Justice Krishna Iyer Commission, that is, the code of rights of children. Madam, if we just think in terms of this code, in Karnataka, we have got only seven types of offenders, whereas, over 3000 orphans and destitutes are there. If you are thinking only about the seven offenders, what about the other 3,000 children? I would like to say that our Government is taking care of these children by spending about Rs.600/- to Rs.700/- per month, and whatever help we are getting from the Centre is insufficient. I think, the Centre is giving Rs.350/- or so. It is very difficult to run the institutions where the children are staying, with such a small amount. So, the Government has to think of giving more funds. I request that more funds should be given to these institutions.

You must also think of constructing buildings. Where these institutions are running, the buildings are nearly hundred years old.

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Whenever the inspectors from the Centre come and inspect them, they say that the building is like this, and they pass all sorts of remarks. So, when the Centre thinks of the institutions, it has to think of the old buildings also. The Centre should give more funds to construct buildings.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please conclude.

SHRIMATI BIMBA RAIKAR: Sir, the maintenance of buildings must be properly done. Sufficient provision should be made for paying salaries to the staff.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Madam, these are matters of details; that will be worked out, Let us go to the broad concept of the Bill.

SHRIMATI BIMBA RAIKAR: No, Sir. Since we are running these institutions, we know how difficult it is to run them. When parents come and leave the children in the institutions, we can't say 'no' to them; that is why, we have to take care of the children, and the Government has to take care of the funds. It is very difficult to run an institution with insufficient money. I request the Minister, through you, Sir, to take care of the funds. She must think of the rehabilitation of children so that they can stand on their own feet. Sir, I don't wish to say anything about adoption because it is a legal matter. I only want to say that in our institutions, people come and ask for children, and only those who have no children come and ask, and those who have got sons, daughters and grand-daughters, would not come to the institution asking for a child. It is a social adoption. There also, we have to take care that those who are taking the children must treat the children properly. In some cases, they have taken the children, but they are using them for their household work. So, we have to think about that matter and give more funds for adoption.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I can't help it.

SHRIMATI BIMBA RAIKAR: With these words, I support the Bill and I thank the Chair.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you very much. Shri C.P. Thirunavukkarasu. Your time is two minutes.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Sir, in Clause 32, it is stated:

"Any child in need of care and protection may be produced before the Committee by one of the following persons :-

- (i) a police officer or special juvenile police unit or a designated police officer, public servant, voluntary social worker and the child himself;
- (ii) any public servant;
- (iii) childline, a registered voluntary organisation or an agency as may be recognised by the State Government;
- (iv) any social worker or a public-spirited citizen authorised by the State Government; or
- (v) by the child himself."

If the child himself appears before the Committee, his welfare can be taken care of by the Committee itself. My submission is this. If the child who surrenders before the Committee, is neither an abandoned child nor a neglected child nor an orphan, but is not willing to go anywhere and appeals to the Committee, "You please take care of me." He is neither an orphan, nor an abandoned child, nor a neglected child,

I want to make another submission. In Clause 41(5), it is stated:

"No child shall be offered for adoption."

In Sub-clause 41 (5)(b), it is stated;

"Till the two: months period for reconsideration by the parent is over in the case of surrendered children."

The Committee has to consult the parents whether they are willing to give their child. If he himself surrenders before the Committee, the parents' consent has to be taken into consideration. That is why, as pointed out by Mr. Ranganath Misra, "The Board may allow a child to be given in adoption-

- (a) to a single parent, and
- (b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters."

If the child voluntarily surrenders before the Committee and if he is a Hindu, under those circumstances, it can't be said that he does not have any caste and that he has no religion. As far as the surrendered child is concerned, he is having a caste; he is a Hindu. Under these circumstances, the Hindu Adoption and Maintenance Act is applicable to that particular person. If a person is adopted by virtue of the provisions of section 6 of the Act, whether he will have a right to the property of the adopted father and mother is not spelt out clearly. That has to be spelt out clearly. If it is not done, many litigations may arise tomorrow between a person adopted under section 6 of the Act and the natural son of the family. Unless it is clarified, we cannot come to a definite conclusion. It was pointed out in this House that it could be left to the States, when the rules would be framed. With great respect, I submit that every State will frame a different sort of rules. To incorporate all these things into the rules, we can add a proviso, as suggested by Mr. Misra, "provided such adoption will be subject to the personal law of the adoptiv\* parents". If such a provision is there, it will be more convenient and there will not be any further litigation over that issue. The Board may allow the child to be given in adoption. But, as far as the male is concerned, it will create a lot of problems, if you add a proviso to that effect, every problem will be solved.

I want to say two more things with respect to this Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): You please conclude. You have already taken more than two minutes.

SHRI C.P. THIRUNAVUKKARASU: Sir, I am talking only about the Bill.

In clause 12 (1) of the Bill it is stated:

"When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release...."

According to clause 12(1), the power was given only to the Magistrate to release the person brought before him. If you look at clause 12(2), you will find that when such person having been arrested is not released on bail under sub-clause

(1) by the officer in charge of the police station, such officer shall cause him to be kept in custody and may be released on bail. According to clause 12(1), only the Magistrate is competent to release him on bail. I am unable to understand why clause 12(2) has been incorporated. It is as if the police officer is to arrest him and he is entitled to bail. It is totally redundant and the clause, as it is, should be omitted.

Then, in clause 27, it is stated that the offences punishable under sections 23, 24, 25 and 26 shall be cognizable. But in the marginal note it has been mentioned as "Special offences". In the marginal note also it should be mentioned as "Cognizable offences" and not as "Special offences". In all other Acts also this has been mentioned as "Cognizable offences" and not as "Special offences".

There are other anomalies in this Bill. They have to be removed by the Government.

As far as Tamil Nadu is concerned, with a view to improving the lot of the orphaned child, the Mother Teresa Memorial Financial Aid has been constituted. According to its constitution, the orphans are entitled to a sum of Rs.7,000 for their marriages. The EVR-Maniyammai Memorial Free Education Scheme has been implemented in Tamil Nadu and under that scheme a deserted or orphaned female child is given sewing machine, education facilities, etc., up to a sum of Rs.24,000. These are the salient features of the schemes which Tamil Nadu is following in respect of orphaned and destitute children. With respect, I urge on the Minister to consider these suggestions. Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Javare Gowd. Unfortunately, you have only one minute.

SHRI H.K. JAVARE GOWDA (Karnataka): Mr. Vice-Chairman, Sir, as far as this Bill is concerned, I would like to draw the attention of the Law Minister to the amendment suggested by Shri Ranganath .Misra. If that is adopted, the problem is solved. There is only one word. What is that one word? In the definition clause you have specifically mentioned all the other things, but you have not defined who is an adoptive father or mother.

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If you had defined that one word, according to me, the entire problem would have been solved. You have specifically defined the words "Board", "competent authority", "fit person", "local authority", etc. To give moral support to the juvenile and to safeguard the dignity and integrity of the juvenile, you have removed the word "court" and put "local authority". The whole intention is that. Sir, so far as adoption is concerned — we are all practising advocates - we know that the Courts are bound to interpret it in their own way. Now, in Section 41 (6), you have stated about single parents. If the single parent does not have any issue or any relative, then where would his/her property go? What is the legal position? To overcome this, I urge upon the concerned Minister as well as the Law Minister to kindly clarify it in the definition section. An adopted father has only a limited purpose, namely, adoption, care and protection, and he does not have any other right. Now, this matter also may be clarified. As regards the other matter, I congratulate the Minister; she has taken pains to bring in this legislation with a broad consensus. This is the need of the day because we are seeing a lot of children begging, and they are the means for some persons for getting income. Apart from that, we are also seeing in the Remand Homes that the children are not properly taken care of. Under these circumstances, it is essential to have this legislation, and it has to be passed. But the Law Minister should take this opportunity and make an amendment in the definition clause. Thank you, Sir.

SHRI N. THALAVAI SUNDARAM (Tamil Nadu): Sir, until and unless Sections 14 and 15 are amended, there is no use having this Act. Our former Chief Justice, Shri Ranganath Misra, has suggested some amendments. As far as Section 41 of the present legislation is concerned, it says: "The Board may allow a child to be given in adoption to a single parent." Now, after the death of that parent, how can that child claim the property? The Bill also says: "Amendments shall be subject to the personal law of the adoptive parent." So, until and unless the legislation, which has been moved, is amended, there is no use having this Act. Hence I request the hon. Minister to make an amendment, so far as this provision is concerned.

**श्री गांधी आज़ाद** (उत्तर प्रदेश) : धन्यवाद उपसभाध्यक्ष महोदय, मैं किशोर न्याय (बालकों की देखरेख और संरक्षण) विधेयक 2000, को लाने के लिए मंत्री जी का स्वागत करते हुए इसका समर्थन करता हूँ। महोदय, हमारे संविधान में यह व्यवस्था की गई है कि बालकों की सभी आवश्यकताएँ पूरी की जाएँ और उनके बुनियादी मानवीय अधिकारों को पूर्ण संरक्षण दिया जाए। यह दायित्व राज्य सरकार का है। किशोर बालकों को न्याय मिले इस बात को ध्यान में रखकर संयुक्त राष्ट्र संघ की महासभा ने 20 नवम्बर, 1998 को किशोर बालकों से संबंधित

कन्वेंशन को अंगीकार किया और खुशी की बात है कि हमारे देश ने भी इस कन्वेंशन का 11 दिसम्बर, 1992 को पूर्ण समर्थन किया।

महोदय, कोई भी माता-पिता अपने बच्चों को अनैतिक कार्य करने के लिए उत्साहित नहीं करता है। कोई भी पेरेंट्स अपने बच्चों को भीख मांगने के लिए बंधुआ मजदूरी करने के लिए उत्साहित नहीं करता है, लेकिन उनकी मजबूरी के कारण बच्चे अनैतिकता के शिकार हो जाते हैं। स्थानीय पुलिस बच्चों का अनावश्यक रूप से उत्पीड़न करती है इस वजह से भी ज्यादातर बच्चे अनैतिक कार्य में लिप्त हो जाते हैं। इसके साथ साथ गांवों में सामंतशाही व्यवस्था के शिकार बच्चे भी उत्पीड़न के शिकार होने के कारण अनैतिक कार्यों में लिप्त हो जाते हैं। अतः मंत्री महोदया से मेरा निवेदन है कि इन सब कारणों को दूर करने के लिए विचार किया जाए और इन कारणों का निवारण किया जाए तो शायद अनैतिक कार्य करने वाले बालकों की संख्या में कमी आ सकती है। इस किशोर न्याय के लिए 50 प्रतिशत हिस्सा प्रदेश सरकारों का और पचास प्रतिशत हिस्सा केन्द्रीय सरकार का सुनिश्चित किया गया है। साथ ही साथ 11 करोड़ राज्यों के लिए और संघ राज्य के लिए एक करोड़ रुपए रखे गये हैं। मेरी राय में इतने बड़े देश के लिए यह धनराशि बहुत ही कम है। मैं मंत्री महोदया से अपील करना चाहता हूँ कि इस अनुपात को, केन्द्रीय शेयर को और बढ़ाना चाहिए ताकि उसी अनुपात में प्रान्तीय शेयर बढ़े और ज्यादा से ज्यादा लोगों को न्याय मिले। महोदय, किशोरों को न्याय दिलाने में लगे लोग किशोरों का सुधार करने की जगह अपना ही सुधार करने लगते हैं जो अच्छी बात नहीं है। इन सारी बातों पर प्रतिबंध लगाने की प्रत्याशा में और किशोरों को पूर्ण न्याय मिलने की आशा में मैं इस बिल का समर्थन करता हूँ। धन्यवाद।

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Madam, there is one thing. The hon. Member, Shri Ranganath Misraji, has suggested an amendment. There is one more alternative, perhaps. The expression "Notwithstanding anything contained to the contrary in any other Act", could be a qualifying clause for your adoption, or, you may also consider the expression, 'Adoption under this Act will not be considered adoption under the personal law of the adoptive person'. If you can consider either of these two *via media*, it may, perhaps, obviate the possible legal wrangles that may take place, obviously, for property. Would you consider giving a reply?

SHRIMATI MANEKA GANDHI: Sir, has everybody finished?

SHRI RAM JETHMALANI (Maharashtra): I wish to speak, Sir. And after that, the Minister can respond to what you have said.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Yes; of the three luminaries who were referred to by the earlier Chairman, I was one-quarter of them.

SHRI RAM JETHMALANI : Sir, I know that the time is very short. I will take the first ten seconds only to pay a compliment to the very



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enlightened Minister who has brought this very enlightened measure before the House and. I believe, this measure deserves the complete support of all sections of this House.

Now, Sir, there is an amendment which has been proposed by my friend, Shri Ranganath Msra. Sir, I am a little surprised that this amendment comes from a distinguished ex-Chief Justice of India. To subject all adoptions under this Act to the personal law of the parties is to retard the process of rehabilitation, to create endless complications and disputes, and it will end up the poor child in a court of law, rather than in a family which will rehabilitate him.

The original purpose of personal law adoption - I am talking particularly of Hindu Law - was wholly spiritual. The spiritual purpose that the Privy Council mentioned in Amrendra's case long, long ago was that there should be a male child available to offer 'pindas' to your departed ancestors, because, according to Manusmriti, there is no place in heaven for a sonless person. Therefore, that was the original purpose of adoption. Now the purpose of adoption under this Act is totally, totally different. It has nothing to do with religion. It has nothing to do with the 'pindas'. It has nothing to do with any spiritual rehabilitation of your ancestors. It has something to do with the physical, economic and social rehabilitation of the unfortunate child. Therefore, Sir, adoption under this Act to be subjected to the principles of an institution that is totally foreign to this, is to create endless complications. I must concede that this legal state of affairs leaves one question in a somewhat ambiguous State. Is the child adopted under the provisions of this statute a child for the purpose of the law of succession? It is true that this question is a question that is still doubtful and is not effectively answered. But I would rather leave this question unanswered today because if those magnificent persons with munificent intentions, who want to do social service, want to adopt a child and they want to so adopt the child so that he has also a right of inheritance, it is for them to take care. But if they don't want to give him rights of inheritance, or, they want to give him something less, they can disinherit the child by will. Therefore, that freedom to dispose of your property remains. But I will be very happy if the courts, hereafter, construe that an adopted child under this statute is also a child for the purposes of the law of inheritance. I concede, Sir, that this is ambiguous, but let us leave this ambiguous. Some day, some court will give to it a more beneficial interpretation. Sir, I think the idea being to prevent vagrancy, prevent

abuse, prevent abandonment ...*(Interruptions)*... I don't see why a person should not be able to adopt. ...*(Interruptions)*... I hate to speak about my first person singular. I have adopted a grand child who is a Muslim boy. Now, if you apply the personal law to all adoptions under this Act, you might create complications. The Hindu Law does not permit adoption of Muslim children. So, this is a secular measure which has been brought in. For the first time, it is an enlightened piece of secular legislation, and I am surprised that you want to revert back to the middle ages and subject it to the personal law. Therefore, Sir, I respectfully suggest to my friend, Shri Ranganath Misra to withdraw this amendment, and leave this in a state of measure. This, in fact, is one step in the direction of creating a Uniform Civil Code, though, Sir, I must make it very clear that I am wholly opposed to a Uniform Civil Code. I am for uniform justice in all laws. All laws require to be modified to produce justice, and this is one measure which does it; so, let us not complicate things for the poor child.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you, Mr. Jethmalani. Now all the four legal luminaries have spoken and the square is complete, which requires to be answered. ...*(Interruptions)*... Nothing.

SHRI R. MARGABANDU: Sir, I want to speak for the clarification of Shri Ranganath Misra and the Law Minister. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): You have already spoken. ...*(Interruptions)*...

SHRI R. MARGABANDU: Sir, I may be permitted to speak for just one minute. With reference to the amendment, "provided that such adoption shall be subject to the personal law of the adopted parents. ...*(Interruptions)*... In respect of the personal law of a Hindu - it has been rightly pointed out ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): You have already made your point.

SHRI R. MARGABANDU: A person having a son, cannot adopt a son or a daughter. Now, if he adopts another son or daughter, that adoption becomes invalid. If that becomes invalid under the Hindu law, then he will not inherit any property. That is why Shri Thalavai Sundaram has suggested that unless sections 14 and 15 of the Hindu Succession Act are amended, giving power to inherit - as rightly said by Shri Ram Jethmalani - it will not serve the purpose. So, that should be taken care of.

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SHRI C.P. THIRUNAVUKKARASU : Sir ...*interruptions*)...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No more discussion. Everybody had an opportunity. ...(*Interruptions*)... No interruptions will go on record. Now, the hon. Minister. ...*interruptions*)...

SHRIMATI MANEKA GANDHI: Sir, to begin with. I would like to thank the Law Minister, Shri Nariman, Shri Jethmalani, who is brilliant, as usual, Justice Misra and other legal luminaries who have applied their minds to it. I am happy that they have managed to clear most of the confusion that had existed. I thank all the hon. Members who have taken part in the discussion, Before I begin - I am going to keep my speech very brief because I would like the Law Minister to clarify whatever needs to be clarified. I want to say that when I became a Minister, the first thing I started was child line, which was a rescue service for all children on the road. We started it in nine cities, and we simply did this. We have a phone number - 1098. We said, any child that was being abused, sexually or otherwise, was being beaten, was being misused by the police, was begging, was simply tired of being on his own or of her own, could call this number which is toll-free and we could pick them up. We have picked up, in Mumbai alone, 1.5 lakh children; we have picked up 40,000 children in Delhi. We are now spreading it to 30 cities because from everywhere has this demand come. There are many, many children who, for no fault of their own, are street children, who did not ever know their parents, who grew up in gangs, who are abandoned, who were found in dustbins, who were found in gutters, who were taken from Bihar and thrown into Delhi when they were just two years old who have nobody; that is why we thought of this Bill as a secondary measure to child line. It has taken me two years. As explained yesterday, there is no legal luminary, there is no social worker, and there is no policeman of repute involved in the making of this Bill. I am not a legal person and I am going to say it in my own way.

The primary objective behind allowing adoption is to ensure the right of a child without a family, who may be abandoned or orphaned or destitute, to grow up in a congenial atmosphere and to see that it is not denied to him or her. When you talk about inheritance, what is my purpose? My purpose is not to incur the liabilities of the personal law nor confer the privileges of the personal law. It is really to let the adopted child get a home. It is that simple.

The Law Minister will clarify many things. He will tell you much better than me. All I know is that we have to get some way to get these children off the roads and into our minds and hearts. As we have become one billion people, I would say, out of that, 400 million would be completely powerless individuals, at the mercy of the system that they did not create. Let us not quibble over small things like 'a's. 'the's and grammatical errors.

I will sort them out, because I am as keen as you are in protecting them so that there are no loopholes. Tomorrow, somebody will come and will do even a better job than me. This is the best that I could possibly do.

To answer one by one, Mrs. Bharati Ray mentioned that the Bill had not gone into the causes of the destitution, neglect, etc. It is true. We have not gone into the causes. The causes-you and I know them well - are because of over-population, lack of care, lack of education, etc. My idea is not to go into the causes but to see whether I can deal with the consequences of those causes. Then, you also suggested on the punishment period of six months to three years. But let me explain it to you. All the offences against children have been made cognisable now, under clause 7, for the first time. Before this, they were not even recognised as offences. You could do whatever you want, to a child. So, we felt that these were good enough, to begin with. I would like to make them more stringent because it enrages every woman as to why a child should be taken advantage of.

Regarding Mrs. Dubey, about the guidelines to be provided, it may be pointed out that once the Bill is passed, model rules will be framed for enabling the States to make rules as well. Mrs. Dubey also mentioned that the Bill provides for all juveniles. The Bill provides for rehabilitation of juveniles, as an option.

Mrs. Raikar and others said that the Bill talks only of delinquents. No, it is not. The heading of the Bill is clear; and it is 'protection'. It is divided into two. One is for delinquents and the other is to give an option-to children who are not delinquents, they are merely abandoned,

We have spent a lot of time arguing over adoption. There are many social options given here. Perhaps, we should look at those as well. I would be deeply grateful if this House would join in looking after the children by passing this Bill.

Thank you.

**6.00 P.M.**

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The question is:

That the Bill to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment, as passed by Lok Sabha be taken into consideration.

*The Motion was adopted.*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): We shall now take up clause-by-clause consideration of the Bill.

*Clauses 2 to 40 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Clause 41. "Tiere is one amendment. Mr. Misra, are you moving?

SHRI RANGANATH MISRA: Sir, I do not propose to press my amendment in view of what the Chair observed and if that is considered. You made an observation at one point of time, I accept the solution that you have proposed. If it is available to there, then it will be all right.

*Clause 41 was added to the Bill*

*Clauses 42 to 70 were added to the Bill.*

*Clause 1, The Enacting Formula, Preamble and the Title were added to the Bill.*

SHRIMATI MANEKA GANDHI: Sir, I move:

That the Bill be passed.

*The question was put and the motion was adopted.*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR):  
The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at three minutes past six of the clock, till  
eleven of the clock on Thursday, the 21<sup>st</sup> December,  
2000.