

Maintenance
(Amendment) Bill

to the Indian Penal Code only instead of specifying all the offences in all the other Acts. We have said: "other Acts in force". Even there we have given the right of discrimination to the Government. All these offences will be applied only by the Central Government by notification so that they may be brought within the scope of the extradition arrangements which may be entered into.

These are my submissions, in my humble opinion. I reiterate that this is a non-controversial Bill, and the heat that was introduced was completely unnecessary and completely unjustified. Shri H. N. Mukerjee was a member of the Joint Committee which went through the Bill and the unanimous recommendation of that Committee was incorporated in this Bill itself, and yet, I do not know how he came to generate such heat.

Shri Hari Vishnu Kamath: You have dispelled the heat and given light.

Shri A. K. Sen: I hope I have, but that prerogative is not mine. It must be somebody else's. My prerogative is only to assist hon. Members.

Mr. Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

HINDU ADOPTIONS AND MAINTENANCE (AMENDMENT) BILL

The Minister of Law (Shri A. K. Sen): I beg to move:

"That the Bill further to amend the Hindu Adoptions and Maintenance Act, 1956, be taken into consideration."

This is a very simple Bill. There was a lacuna in the original Act which came to light. If I may read this section the lacuna would be apparent immediately. In the original Act, we made provision for adoption of

children whose parentage was known but not of children whose parentage was unknown. Children who have been brought up in orphanages or founding homes had been cast away by their unknown parents or by parents who had never married, which means illegitimate. If hon. Members would turn to the annexure, they will see the Explanation which says:

"The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:—

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion...."

—a child whose parentage is not known at all, and nobody knows whether he is a Hindu or any other—

"and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and"

We have had cases which have been brought to our notice and to the Prime Minister's notice also, genuine cases where persons have taken in adoption children from founding homes and orphanages and whose parents are not known. They have now been told that these children will not be entitled to inherit their property because they would not be capable of being adopted legally as their children. Many such cases have been brought to our notice. We thought that we should make the law clear and enable such parents to adopt legally such children whom they want to adopt whose parentage is not known. That is why the alteration is suggested in clause 2(bb) which reads as follows:

"any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and".

[Shri A. K. Sen]

Then, in clause 3, we have put in a substantial change, giving the power of adoption "where both the father and mother are dead or have completely and finally renounced the world". That is in the original Act. Then, we are adding in this Bill, "or have abandoned the child". Then comes "or have been declared by a court of competent jurisdiction to be of unsound mind."—this is most important—"or where the parentage of the child is not known, the guardian, of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself". We bring the court here so that the guardian, who may be *de facto* guardian, may not give unfair adoption, and that is why we have imposed the court as the final safeguard as for all the minors in this country. In many cases the guardian himself wants to adopt the child. This has come to our notice. So we give him the legal status of adopting a son or daughter so that the adopted child has all the legal attributes of an issue that can inherit legally the properties, etc.

We have also altered the definition of the word "guardian" so as to include a person having the care of the offspring or a child—"a person having the care of the person of a child or of both his person and property and includes a guardian appointed by the will of the child's father or mother". Where the parents are known, there will be a law. We have many cases where the person has brought up a child as the actual guardian and he should be given the power to give or take in adoption with the permission of the court. This is a very necessary measure intended to give the benefit to large numbers of children who are brought up in foundling homes and orphanages, when their parentage is not known to the whole world, or brought up by affectionate persons who have been *de facto* parents and who want to become legal parents, or have been brought up by guardians in orphanages or

foundling homes who want to give them in adoption to deserving people. The court's jurisdiction has been interposed so as to constitute a reasonable safeguard against any abuse of the authority by the guardian.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Hindu Adoptions and Maintenance Act, 1956, be taken into consideration."

Shrimati Vimla Devi (Eluru): Mr. Speaker, Sir, I feel very happy in rising to support this Bill, which is to amend the Hindu Adoptions and Maintenance Act, 1956. It is very kind of the Government to come forward to amend this Act. The proposed amendments are very good and I support them.

We know of many cases where children are abandoned whose parents are not known. They are abandoned at the stage of birth itself, owing to many social circumstances, or circumstances in society or other conditions or even due to some natural disasters. The problem has been there for a long time and it has not been solved effectively. Some associations here and there have taken up the cause of abandoned children and have been bringing them up. Most of the children who are abandoned and whose parentage is not known are left to themselves and they go either begging or stealing in various places. Juvenile delinquency has been on the increase in all the towns and most of them are found to be orphans whose parentage is not known.

13 hrs.

Long back from ancient times, the fate of the abandoned child is well-known to us. Karna was an abandoned child, whose parentage was not known. Though he was more skilful and courageous than Arjuna, his position in society was not accepted; he was not given proper education and

he was not taught archery, which he was very fond of, by proper *gurus*. And finally, because of the social injustice done to him, he fell before Arjuna. There are so many unknown Karnas in India. The fate of these children is being uplifted to some extent by this amending Bill.

This amendment that a child whose parentage is not known can be adopted by kind persons would help to some extent such children, but it does not solve the whole problem. Anyhow, it is very good to remove this lacuna in the Act and provide that these children can be adopted by kind persons. I hope that more fortunate and well-to-do persons will adopt one abandoned child each. Especially, the Members of Parliament can show the way and it will be very good if they will follow this Act and adopt one abandoned child each.

Shri Hari Visnu Kamath (Hoshangabad): Potential Karanas.

Shrimati Vimla Devi: It may be said that by this Act, more and more children may be encouraged to abandon their children. I do not think that will be the case, because parents abandon their children because of so many circumstances.

Mr. Speaker: Why should they fear that parents will abandon their children if it is likely that one of the Members of Parliament will adopt those children?

Shrimati Vimla Devi: My friend suggests that Ministers should adopt two abandoned children. I do not see why the number of abandoned children will be on the increase because of this amending Bill.

I think these two amendments are good. One provides for a child whose parentage is not known to be adopted. The other provision is that the man who brings up that child can give that child in adoption. In the present Act, there is only provision for testamentary guardian or guardian appoint-

ed by law giving the child in adoption. But now the person who brings up that child in kindness can give that child in adoption.

This amended Act will only help a few children. A number of them are unprovided in our society. So, Government must come forward and provide facilities to make the children grow up in proper circumstances and take their place in society as useful persons instead of choosing so many illegal professions. I do not want to elaborate this point any further.

With these words, I welcome this amending Bill.

Shri U. M. Trivedi (Mandsaur): Sir, we have now passed the stage where we can offer the cogent criticism so necessary against the question of Hindu adoption and maintenance. That stage is long past and we have now a law on the statute-book. But this law goes much farther than what has been shown in the Statement of Objects and Reasons. The farming of this clause (bb) indicates that the attribute of cavalier, which was thrown at each other by the Deputy Leader of the Communist Party and the hon. Law Minister will aptly apply to the Law Minister in this case.

Mr. Speaker: Both of them perhaps have left and now he is joining the arena.

Shri U. M. Trivedi: The whole position is, if a child whose parentage is known, but whose parents have abandoned the child—a child born of a Muslim father and a Muslim mother—this law provides that even that child can be brought up by a Hindu and be given in adoption to a Hindu. Is that the conception? If we read clause (bb), it makes us comprehend that it is so. It says:

“(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not

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known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh".

Now, a child can be abandoned by a Muslim, a Christian or a Hindu. It is not necessary that the abandonment of children is a peculiarity of the Hindus. If such a child is brought up by a Hindu, simply by saying, "I have brought him up as a Hindu", does the child become a Hindu? The child knows in his heart of hearts that he is a Muslim.

Dr. M. S. Aney (Nagpur): How will the child know?

Shri U. M. Trivedi: The age is not specified here. The abandonment may take place at the age of 5 years. The child will know that he is a Muslim because his name is Abdul Rasual or something like that. Nothing is specified here about the age at which the child is abandoned. The law must be very specific on this point. I have suggested that instead of the word "or", let us have the word "and". The Minister is not here; I do not know whether it will be convenient to him and the Government to accept my amendment. You will understand it, Sir, if I read.....

Mr. Speaker: I consider that it is clearly indicated that the child may be of any religion, if it is brought up by a Hindu, Sikh or Jain.

Shri U. M. Trivedi: If that is the meaning of the Government, then there is serious opposition from all sides of the House to this amending. Can the religion of a Muslim child be changed by mere acknowledgement? What right have you to change the religion of a boy? There are so many cases reported all over India. You have no business to bring up a child in any religion except the religion in which it is born. So many cases will crop up. Simply by bringing up the child as a Hindu, the international position in law is not to be changed.

Mr. Speaker: But he is not to be forced on a Hindu.

Shri U. M. Trivedi: The question ought to be whether he is abandoned both by his father and mother and his parentage is not known. Abandonment will be an essential feature. Certainly, if a child is not abandoned it is not to be brought up by others. If a child is abandoned and its parentage is not known, in that case, certainly, that child may be brought up by a Hindu. There is no objection to its being brought up by a Hindu. But if its father is known or its mother is known and it is also known that that child is a Muslim or a Christian, we cannot convert that child just because that child is brought up in a Hindu institution. The Statement of Objects and Reasons makes it very clear though in the actual wording of the clauses this point has been missed. I will, Sir, with your permission, read out a portion of the Statement of Objects and Reasons. It is said:

"Children are sometimes abandoned by their parents for fear of social opprobrium, for reasons of poverty and for other reasons. If these children could be given in adoption, they might grow up in congenial home atmosphere as good citizens. These abandoned children are very often brought up in foundling homes or other children's institutions."

The word 'foundling' has got this meaning that a child as soon as it is born is put in some institution without any indication as to who the parents are. The word 'abandoned' is not defined here. What has been stated in this Statement of Objects and Reasons is that these children are put in foundling homes. What happens is that a child is placed in a box or a basket and kept outside a foundling home without any indication as to whom it belongs. The child is left to the mercy of the weather. Early morning the child is found by the foundling home and brought up there. In such circumstances a child may be

brought up as a Hindu and may be adopted as a Hindu. But the language of this law which is being propounded is very clear on this point, that an abandoned child means any child whose religion is probably known to us. Such a child cannot be converted into another religion. It is not conducive also to the healthy growth of the Hindu community, because nobody knows at what time that child will turn back to its parent religion. That will create dissensions in the whole family to which he might belong. That will also create difficulty for the reversioner. That will create innumerable difficulties as far as the Hindu law of succession is concerned. Under these circumstances, I will urge upon the hon. Minister to consider this proposition. If his object is exactly what has been stated in the Statement of Objects and Reasons, that this is to apply to children who have been abandoned and found in foundling homes without their parentage being known.....

Mr. Speaker: The words are: "very often brought in foundling homes". Therefore, that list is not exhaustive.

Shri U. M. Trivedi: Sir, you are right. You have been a member of the judiciary of a very high status. Therefore, I have no quarrel with you. My proposition is very simple. I say that this very proposition indicates that the meaning was not felt by the hon. Minister who brought in this Bill that it might apply to a case where it is known that the child does not belong to the Hindu religion. The sentence used here is indicative of it that the mind did not go with the text prepared. The mind was concentrated on this point that the abandoned child must also be a Hindu or its parentage is not known. Both these things have gone with this proposition. Not for one moment could it have been conceived that this applies to an abandoned child whose parentage is known.

Mr. Speaker: The hon. Member may have difference of opinion.

Shri U. M. Trivedi: It is true. It is possible. What you say is just possible, that the hon. Minister had also that in view that even a Muslim child or a Christian child could be brought up. Then the law of Mahomedanism or the Muslim rule may also be adopted, that when I say this is my boy he becomes my boy.

Mr. Speaker: That is what I infer from the words.

Shri U. M. Trivedi: If that was the purpose, the whole of the Hindu law has got to be amended. Sir, this law is not going to serve the purpose unless the amendment suggested by me is accepted.

In the same way, Sir, amendment of the phraseology in clause 3 would also be necessary.

The other question, which is a very indubitable proposition, is this. Permission is to be sought from the court, which would mean a district magistrate. It is said here:

"Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself."

In this there is one catch. A child may not be abandoned by the parents. It is just possible that somebody may have lifted the child. It may be that the parents are alive, they are crying for the child and yet the child is not to be found. Child lifters are there, child lifting takes place and a child is a child. Therefore, this provision, which savours of a man acting in his own interest, which allows a man who might have lifted a child to get permission to adopt that child

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himself, ought not to be there. Otherwise the purpose of the child lifters will be served and will be legalised. I will therefore suggest that this point may also be looked into in coming to a conclusion whether this provision of law will be a healthy provision or not. I suggest that the words "including the guardian himself" should not be there. A man may be in disguise. He might be playing the role of Dr. Jekyll and Mr. Hyde and he might be a child-lifter himself. After one or two years when he has been able to keep the child away from the parents he might come and say that he is the guardian, he has brought up the child and he may be given permission to adopt the child himself. In that way he may legalise his nefarious activity. This provision should not be there.

Sir, I do not wish to offer any further criticism because I know that it is futile in the present age and with the present position in law. When this question of adoption of child has gone a long way we are not going to go back upon it. Otherwise, Sir, I had opposed it and I do oppose it even today. I am not reconciled to the fact that this Hindu Adoption Act is in any way helpful to the Hindu community as such. The amendment which I am offering is only from my understanding as a lawyer. Realising this position, Sir, I submit that these two amendments may be accepted and then the law, of course, may be passed.

Shri Heda (Nizamabad): Mr. Speaker, I welcome this Bill. Before I offer my few comments I will refer to a point just now raised by Shri Trivedi. He was trying to make a distinction between a child which is lifted and a child which is abandoned. In fact, these two are quite different situations which can be found out very easily. The lifting of a child is a crime which can be established by law when the circumstances arise. But there are very clear cases where a child is abandoned. If you go to any big maternity home or hospital

you will find any number of poor mothers who have got a number of children who would say 'I have got a number of children; so, I would like to abandon this child; if anybody is prepared to adopt it, I am prepared to part with it'. So, there are a number of cases, good or bad, where the child is abandoned. Of course, there may be a case in a hundred or thousand where a lifted child is also posed as an abandoned child and thereby the guardian who has lifted the child misuses the child. So far as adoption is concerned, I do not think this Bill will give such a guardian any additional power. Till the crime of child lifting is detected, he is as good as a parent to the child and, therefore, adoption under this Bill will not give him any further power.

On the other hand, this will have a very good effect on the social institutions, voluntary institutions which have come forward to take care of the lost children in the foundling homes. Now they have got inadequate resources and the number of children is always increasing. We hardly come across an institution which has got further scope of taking care of more children adequately. Every institution is running short of resources. So, the big question mark, the big problem, before these institutions is how to cope up with the work. Apart from the financial aspect, this Bill permits the adoption of children by couples who are in need of a child. Therefore, the child will get the natural love and affection of father and mother and very good surroundings. So, in all cases, it is the best remedy than allowing these children to remain in the foudling homes and other institutions. There was a lacuna in the Act so far, and adoption was not legalised. So the question was who can give a child in adoption. Now this Bill gives this much power, which is a very limited power, to the manager, or superintendent, or the man in charge of the voluntary organisation that he may, as a real guardian of the child, give in adoption that child

to some person who is in need of a child. That status of the person in charge of the voluntary organisation is very clear. Nobody can suspect that he has lifted the child or he is misusing the child. So, such a person is given the status of a legal guardian so that he can give in adoption that child to a couple which is in need of a child. I think this is a very wholesome provision that we are introducing.

Further, it is not an absolute or discretionary power that is being given to the executive committee, manager or the superintendent of the home. He is further asked to take the permission of the court. It is only when the court gives the permission that adoption can take place. After that provision there hardly remain anything which can be objected to.

I welcome the idea of adoption from another angle also. These days we are all talking of national integration as the prime need of the hour. If national integration is to take place, the various differences of caste—I am not talking of religion or language or region—which, though not prohibitory, do enforce certain limits on inter-dining and more than on inter-dining on inter-marriage, should disappear. I think adoption will go a long way in wiping out these caste distinctions.

In this context I remember an old theory propounded by Thakar Bapa when he was in charge of the Harijan Sevak Sangh and Gandhiji was looking after that work. Then a time came when they were discussing how best they can solve the untouchability problem. Thakar Bapa came up with an idea that a harijan child, may be a boy or girl, may be adopted by each caste Hindu and brought up with his own children, just like one more child born to him. In that way, the adopted child becomes one more member of the new family. Gandhiji liked that idea and he later elaborated it in *Harijan*. He said that while the contact of the harijan child

with his real parents may be maintained and may not be lost, at the same time, he should become for all practical purposes like inheritance, morals, social customs and marriage part and parcel of the new family. This was a very laudable idea and Gandhiji made an appeal that at least 10,000 parents should come forward to adopt harijan children. But very few people came forward to adopt such children in response to the appeal of Gandhiji.

I started my public life, when I was only in my twenties about thirty years ago with harijan work. I have under me a number of boys who have been given scholarship or other benefits. My own experience is that many of the harijan boys and girls who have come to prominence now are those who have been adopted by good Savarna parents into their families. Because, they had no stigma attached to them, they had no feeling that they are harijans. They had no bitterness towards the caste Hindus. They took it for granted that for some historical some national wrong on a very large reasons, good or bad, there has been scale for which nobody has to be blamed or cursed and so there is no question of being vindictive. In this way, that adopted boy or girl becomes a part and parcel of our household and we treat him as one among ourselves which is a very healthy development. So, through this Bill we are trying to develop a very healthy idea which will go a long way towards national integration. With these words, I lend my support to this Bill.

Shrimati Yashoda Reddy (Kurnool): At the very outset, I would like to congratulate the hon. Minister for bringing forward this enactment. As we all know, in India from the early times in adoption only the father had the exclusive right of giving away a child. Even the mother, who was the natural guardian of the child, had absolutely no say and father treated a child more a proprietor of a property than as a guardian looking after

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the interests of the child. There is no denying the fact that times have changed and after the codification of the law we have restricted the proprietary right of the father of giving away the child in adoption without the consent of the mother. Now the mother, if the father of the child is not alive, can give the child. That is to say, the mother has got the right to give away the child. Now, through this amendment we say that if the father and mother are not there, then the brother or other effective guardian has the right to give the child in adoption to other people, of course, after getting permission from the court for such adoption. This is a very good provision which rectifies a lacuna which was there. It has not come a day too soon.

But before referring to this I should like to say a little about bad drafting even in the original Act though I have no right to bring in any amendment as far as the original Act is concerned. If you see the original section 9 in the Hindu Adoption and Maintenance Act, you will find that there are such words which should not have been there and which show bad draftmanship or, shall I say, inadvertence on the part of hon. Members that they allowed it to be passed.

Section 9, sub-section (2) says:

"Subject to the provisions of sub-section (3), the father, if alive, shall alone have the right to give in adoption."

Certainly there is no necessity here for the words "if alive" because a father can give his consent only if he is alive. I am not saying that these words should be removed now because I have no right to move an amendment to the original section. But what I say is that such words are absolutely unnecessary and we ought to have taken care in drafting.

Another thing is this. They say that the mother's consent is necessary.

But what happens if the mother is dead? Nothing has been clarified in this Act. Suppose, the mother is dead and her consent has not been taken by the father. Then, can the father give the daughter or the son in adoption? If you go a little further, can a widower ever give a son or a daughter in adoption? This sort of doubt comes in. I do not know whether any case law has been made about it after 1956.

One more thing which I would like to bring to the notice of the hon. Minister is that such a lacuna in the Hindu Marriages Act is causing a great difficulty for the children born out of a marriage. Just as here children cannot be given in adoption if there is no consent of the father or the mother, what happens to children born out of the second marriage because under the Hindu Bigamy Act the second marriage becomes null and void? The second marriage of a person is no marriage at all.

The House may know that recently in the Madras High Court there was a case where children were born to a particular person through the second marriage. As long as the gentleman was alive he was giving some maintenance to the second wife and the children, but the moment he died the other reversioners and the first wife said that there was no marriage at all. So, the marriage being null and void there could not be any children born out of the marriage. The District Munsif invoked the old Hindu law because there was no specific provision in the Hindu Marriages Act and said that illegitimate children could be provided out of the father's money. But the High Court Judge—I do not remember his name—was pleased to say that as there is no specific provision the child has no right to the property and as the marriage does not exist the children could not have been born. Though, in fact, the child is there, the Judge said that he could not take cognizance of the birth

of the child and the child does not exist in law; so no maintenance should be given. Of course, he wrote in his judgment that it is a serious lacuna and the Supreme Court may recommend that the law may be changed. So, I wanted to bring to the notice of the hon. Minister that such serious lacunae are there.

13.33 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

I am glad that this Bill has been brought forward because now at least orphaned children and children who do not have any means of maintaining themselves have got some scope for being adopted by a family.

Just now Shri Heda was saying as to why we should restrict it to certain religions. In India adoption has got more of a religious basis than other countries. In other countries adoption was not there in the earlier days. In countries, like America, after material prosperity adoption has been allowed. Adoption is more of a material aspect. They want the children to have better prosperity, more wealth and to become better citizens. But in India adoption has got a twofold principle, one is the religious aspect because it is said that we do not have *moksha*, or what it is called, if we do not have a son and the second aspect is that of looking after the property.

India is a secular country. Therefore why should we restrict it only to Hindus, Sikhs and Jains? It is high time that the Government brought forward a sort of a comprehensive Bill whereby all orphaned children irrespective of caste, creed or religion could be adopted by any person. If a comprehensive Bill is brought forward so that children of all religions could be adopted, it would be better.

Shri Gauri Shanker (Fatehpur):
Mr. Deputy-Speaker, Sir, the provision contained in this amending Bill will give an idea, as has been suggested by Shri Trivedi, that if a child has

been abandoned and his parents are unknown, that child could be a child of a Muslim or of a Christian. If the parents are unknown, that child may be the child of a Muslim or of a Christian in which case there would be a legal difficulty if such a child is allowed to be adopted because if a child whose parents are not Hindus is adopted, according to the cardinal principles of Hindu Law he will not be relinquishing the right to the property of his natural parents. This question can crop up very easily if after a child is abandoned his parents are traceable again, because as soon as a child is born he belongs to a certain religion and that religion itself will not relinquish him unless he offers to relinquish it. So, if a child whose parents are unknown happens to be a child of a Muslim or of a Christian and not of a Hindu and if he is given in adoption, as has been suggested in this amending Bill, he will not be relinquishing his right to his natural parents' property. This also is a legal flaw and a defect in this Bill.

As has been said just now, Hindu adoption is primarily a religious matter. There is another thing also. I have my own apprehension that if such children who are not children of Hindus are allowed to be adopted, there will be the question of impurity of blood and they would be giving birth to *varnashankars* which our religion never permits. I would suggest that the Government should come forward with revolutionary measures. Nothing will come out of these half-hearted measures or hotch-potch things. If the intention of the hon. Law Minister has been to give protection or relief to all such children who have been abandoned or who being brought up in maternity homes or founding houses, I would say that this particular Bill will not give any relief. As long as the person who has to adopt has got his own free will, can do it voluntarily and there is no compulsion, I, can assure you that it will not give relief even to one child in a thousand. I would welcome it if

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the Government came forward with measures that make adequate provision for such children whose parents are unknown or who have been entrusted to maternity homes or foundling houses for their bringing up and education so that they may become good citizens and may have their own earning. That would have been a good measure and that would have been welcome. But if this has been done only for the purpose of giving relief then, as I have just now said, I will assure you that it will not give relief as long as the person who has to adopt has got an option. Of course, he will not like to adopt any child whose parents are unknown because there is the fear of social boycott and there are other measures. So, I support the amendment that has been put forward by Shri Trivedi, namely, that a child who has been abandoned or whose parents are unknown should not stand in the clause and it should be ascertained that his parents are Hindus; then only he should be allowed to be adopted.

This is point No. 1.

Then, again, here, it has been said in the definition of guardian:

“guardian” means a person having the care of the person of a child or of both his person and property and includes—

- (a) a guardian appointed by the will of the child's father or mother, and
- (b) a guardian appointed or declared by a court;”

Here, previously, guardian who was appointed by order of the court was allowed to do it. Now, it has been done away with. I submit there is a very great fear. There are instances of blackmailing. There are instances of such persons who would themselves lift away such children and there is a provision in the Amending Bill that they can adopt them-

selves. For the purpose of that, there can be possibility of blackmailing. I oppose this. A person has brought up a small child and he says he is the guardian of the child. He approaches the court for permission to get that child adopted. Then, nobody can challenge that this fellow is not a proper guardian because that clause has been deleted. I would submit that there should be a safeguard and the guardian should be appointed only by order of the court in order to avoid blackmailing which is still prevalent and that would be done in certain cases. This measure of making it more liberal in the case of adoption by Hindus, as has been suggested in this Amending Bill, as I have said, will not give any relief to such children who actually deserve relief.

As I have said just now, either the thing should be revolutionised completely. Let there be legislation also that a person who is in need of a child, who wants to adopt, will be compelled to adopt a certain child which has been brought up under these circumstances in rescue homes whose parents are unknown. If that measure is also there, then, of course, there may be relief. But, this half-way measure will lead us nowhere.

It has been just now suggested by a hon. Member on this side that it is a very good step towards national integration. I fear, I have got my own apprehension as to how it will lead to national integration. Only if you legislate and particularly our Central Government comes forward and legislates that inter-caste marriages are legalised and there is compulsion that one has to marry inter-caste, then only, we can have any sort of national integration. With these measures, if you say that it will lead to national integration, I will say, it will not lead to any sort of integration, what to say of national? As long as a person who has to adopt has got the free will, has got his option to voluntarily adopt anybody, it will not give any help.

I support the two amendments which have been put forward: first about guardian which has been defined here. The guardian who has been duly appointed by the court has been deleted. That should find a place. There should be a specific provision that only such a child whose parents have been Hindus should be allowed to be adopted. It has been pointed out that there may be a case of child lifting. But, it was said that it is an offence. I say, if a child is lifted actually and entrusted to some rescue home, how can distinction be made that this child is an abandoned child or it is a child which has been lifted and entrusted to a maternity home? There cannot be any distinction and there cannot arise any chance of thrashing out evidence in these circumstances. If there is no safeguard for the appointment of a guardian and if any person comes forward by his own free will and asserts to say that he is the guardian of this particular child, then, there are chances of blackmailing. It will lead to a lot of corruption in this manner. I think, unless these two amendments are incorporated, the present amendment will lead us to certain chaos and certain legal flaws. Of course, it will be a clear direct attack against the religion of the Hindus.

Shri Sham Lal Saraf (Jammu and Kashmir): Sir, I rise to support this Bill moved by the hon. Law Minister mainly on humanitarian grounds. Who does not know what happened in the country after the partition of the country? I am an eye witness in hundreds of cases where children, boys and girls, were entrusted to rescue homes. But, the managers had no authority to give them in adoption though hundreds of men and women were prepared to take these boys and girls with them and bring them up with fondling care. I would rather say that this Bill is very much belated. I wish it had been moved earlier. My hon. friends who come from States like Jammu and Kashmir, Punjab, Himachal Pradesh and

Delhi and Bengal know fully well what situation they have to face and what are the sufferings of the children who came like that from the erstwhile Indian territories now known as Pakistan. I submit that the intention of this Bill is a very pious and correct one. The sooner it is passed into law the better it is for everybody, especially to those poor children for whom there is nobody to take care at the moment.

Two amendments have been moved by my hon. friend—I am sorry, I was away from the House at the time when they were moved—Shri U. M. Trivedi and supported by my hon. friend Shri Gauri Shanker. Personally, I think, when I read the Bill itself along with the Statement of Objects and Reasons, these cannot hold water. By getting this Bill passed, the Government wants that the managers who run established rescue homes or recognised person or persons for running these homes, have also the right with the permission of the court—am I right?—to give the children in adoption. I do not know how it militates against the point that has been raised by Shri Gauri Shanker. In short, I would say that the amendments proposed are not at all inkeeping with the spirit of the Bill. Rather the explanation given goes contrary to the very spirit of the Bill and also will not help what my hon. friends wanted to say while speaking on this Bill in this House. Therefore, I submit, in order to enable rescue homes and such homes where abandoned children are brought up—it is very clear, lifting is a different matter altogether and it can be treated under the law separately; this is simply for abandoned children—the managers should also be authorised, with the permission of the court, to give these children in adoption to others. I do not see that there is anything that our friends can say against this. So, I whole-heartedly support this Bill. I would say that if it is passed today, I can assure the hon. Minister, it will help a lot especially in these areas where even now

[Shri Sham Lal Saraf]

hundreds of children are brought up in rescue homes and there are other such homes in the country. Therefore, I wholeheartedly support the Bill.

Dr. M. S. Aney (Nagpur): Sir, I am glad I am given an opportunity to express my views on this important Bill. At the outset, I state I welcome the Bill. The question as regards the condition of the children in orphanages is a very real one which ought to be taken up in view of the fact that they are the future citizens of this country. We know many children are uncared for. They are children of the soil. They may be Hindus, Mohammedans, Christians, anything. Something has to be done to bring them up properly. Many children are brought up in orphanages, and later on, we find that there is nobody to care for them, and no proper support is available to them to grow up as proper citizens. If some such arrangement as adoption is there, there is a way to provide for a better house for them, and for providing better surroundings for them to grow up as proper citizens. At present, there is always the stigma on their heads that they are children who are illegitimate, and there is nobody to care for them and so on.

I personally think that this measure is not enough. I would very much like the hon. Minister to come forward one day with a Bill to remove any such thing as illegitimate child at all from this country. Whatever may be the wrong committed, the stigma of illegitimacy covers not so much the person who is the real offender in this matter, but the poor fellow who is the victim of that offence. Therefore, the State has to take a view in this matter from the point of view of those who suffer and not from the point of view of those who are the causes of that suffering. That is a very important thing.

When we look into this matter, we find that orphanages have got limited funds. I have had occasion to go and see some of them, and even in the best of them, unfortunately we have not

got the real missionary spirit to work for the orphanages in the true interests of the boys themselves. Therefore, there is need for those boys who are brought up in those orphanages to be taken care of by the citizens of this country. What is the way to do it? The only way in which we can do it is by providing some kind of adoption of those children by the respectable people.

So far as legal adoption is concerned, Hindu law is the main statute which has to be taken note of. In the case of the Hindu law, what is required is that there must be somebody who will give the child in adoption to a person who takes the child in adoption. Unless there is somebody to give in adoption, there cannot be any adoption; and the person who can give in adoption can only be the mother or the father; other persons have no right to give the child in adoption at all. That being the case, even if there are some persons who are willing to adopt the boy, no adoption can take place unless there is somebody to give the child in adoption. Without adoption, no status can be given to that boy as a member of the family in which he is being taken.

The status of the boy is a very important thing for his growth as a proper citizen of this country. To grow without any status means to carry a stigma on the head all along. If we give a new status to the boy by making him feel that he is the son of a particular man or a child belonging to a particular respectable gentleman in the city, then he will have a new confidence in himself, and he will really feel that he is a unit of the society, and he is a proper member of the society. It is only when he grows in that spirit, that true citizenship will grow. Citizenship is not to be had by simply imparting to the boy some bookish knowledge about some ten commandments or ten thousand commandments which are there on paper; a true citizen can only grow in the company of men with the full confidence that he is one among them. Adop-

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tion has been one of the methods by which this could be achieved.

In India, adoption started with some religious idea. I also know that the present law of adoption has no such religious motive. In view of the steps already taken, why not take advantage of this, with a view to consolidate the law and to give benefit to all those persons, who, for one reason or another, for no fault of theirs, have been victims and have had to undergo life-long troubles, so that their absorption in society as proper citizens can be accelerated? When we look at the question from this moral point of view, we find that it is not merely some religious question, but in my opinion it is a question of national importance.

So far as I am concerned, let me tell you one thing. Probably many legislators here may have some wrong views about me. But let me tell them that I am personally convinced that if this country has to grow as a nation hereafter, we have to abandon many of the ideas which we regarded as very precious, very valuable and very essential for the sake of the Hindus living in this country as Hindus. We have to abandon those ideas; we have to change those ideas; we have to broaden our minds, and we must be prepared to embrace everybody in our country as being as much a part of ourselves; as it is possible for us to do. In this progressive period, the Hindus of India must rise to that level. This is not the time for me to enter into the details of those broader questions.

When I look at this question from this point of view, I feel that a small beginning is being made by my hon. friend today by bringing forward this Bill. I hope that a day will come when he will be bringing forward Bills of this kind in larger number, and many of the disabilities which hamper the proper growth of the Hindus and the consolidation of the entire nation gradually into one will be removed, and

the proper way for progress will be paved so that the nation can make proper progress. From this point of view, I welcome this measure. I would not like to enter into the criticisms which have been made by some of my hon. friends. For instance, it has been asked: 'How can a Mohammedan child be adopted by a Hindu? The child never knew its father or mother and it is an abandoned child. So, how can it be said that it is a Mohammedan or a Hindu and so on? And suppose a Hindu comes forward to adopt that child, then it is provided in the Bill that the child will also be a Hindu. If at the time of adoption, somebody, comes forward and says that he is the father of that child, then the question as to what the religion of the child is can be considered. The main thing, however, is that the stigma attached to the child should be removed.

At the time of famine, at the time of difficulties and at the time of troubles, great displacements of families have taken place in this country, and on such revolutionary occasions, some thousands of children have become orphans. We must make some arrangements whereby they can be gradually absorbed in society as members of honourable families in this country. It is only in that way that a new nation can grow. In my opinion, this Bill is a small step leading towards that higher ideal. Therefore, I welcome this Bill and I give my whole hearted support to it.

Shri P. Venkatasubbiah (Adoni): I join with the several Members who have spoken on this Bill in congratulating the Government for having brought forward this Bill. Though it is an amendment which is very small in nature, it is going to make a good beginning to remove the various social stigmas that have been attached to the birth of the children in our country. There have been several instances, as our friends have pointed out here, where for no fault of theirs, the children, because of some act of omission or sin committed by their parents

[Shri P. Venkatasubbian]

are being looked upon by society as unwanted creatures in this world.

We have noticing several instances in this country where the parents, due to poverty and other extraneous circumstances or because of the acts committed by them which are not in conformity with the social customs and regulations are abandoning their children and those children are being left uncared for. This Bill rightly provides a protection to those children, gives them self-respect, and gives them a rightful place in the society. In that respect, I can say that this Bill will lead to the formation of a casteless society in India for which we are striving hard all these days.

In some places, during the course of severe drought or famine conditions, we know how parents leave their children at the doors of somebody else and go away, and the children are left there without being looked after. Several cases have been brought to the notice of social workers, and I myself know, and I have had the good fortune of starting such destitute homes, and, therefore, I know perfectly well how these children are being left uncared for and not looked after properly.

It has been stated in this Bill that the managers of the foundling homes and other children's institutions will be given the right of the court; some hon. Members have conveniently forgotten that the court ceases to operate in this affair.

The courts are there. The managers of the institutions which are recognised institutions where children are being taken care of, will act as the guardians. They have the right to give in adoption children who are being brought up in those institutions. So there is protection of the court. So it is only to give the right to the people who have brought up these children that this amendment has been brought forward. It is a very appropriate amendment and as the revered Dr.

M. S. Aney has pointed out, though it may look small in the nature of things, it will go a long way to create a casteless society in this country and will also remove the social stigma on many children and inculcate in them a sort of self-confidence, courage and the feeling that they too are citizens of this country and have got the same rights as other children to live an honourable life.

14 hrs.

With these few words, I wholeheartedly support the amendment that has been brought forward.

Shrimati Sarojini Mahishi (Dharwar North): I join other hon. Members of this House in congratulating the hon. Minister on having brought forth this amendment at least now. I wonder whether we were not so progressive six years ago when the parent Act was passed to have made this amendment. When the Hindu law itself was codified, I think this ought to have come to the notice of the well-known legislators. But I am sorry to say that it was not brought to their notice. Now at least we have been progressive enough to welcome this amendment.

The law of adoption has greatly engaged the attention of the ancient law-makers and commentators of the ancient *smritis* also. The sutra period which followed the vedic period was a period during which we find Baudhyana, a great *pravachanakara*, as he is called, has mentioned 11 substitutes for a natural born son. The son was encouraged by the ancient law-makers because the *putra* was supposed to give the father heavenly bliss.

“पुत्राम नरकात् त्रायते इति पुत्रः”

The daughter was not encouraged; the birth of a daughter was not welcomed. Anyway, in order to see that the son was adopted by a person desirous of getting heaven, eleven substitutes were suggested by Baudhyana. I may quote a few of them. One is

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'श्रीरस' that is, the natural born son; then "क्षेत्रज, दत्तक, कृत्रिम, गृह, अपविद्ध, कानोय, स्वयंदत्त, क्रीत" पुनर्भव and others.

All sorts of sons were recognised as sons capable of performing ablutions at the funeral ceremony of the father. That was the main thing; that was the spiritual concern with which the child was adopted. A child who was bought could be adopted, then a child born of a re-married widow, then the son born of a virgin, the son born of a bride—all such sons were recognised.—

"क त, पुनर्भव, गृह" This means that the Hindu law-makers had adopted a liberal attitude as regards the adoption of such sons into the society.

I do not know why at the time of the codification of the Hindu law, this view was not taken into consideration. Of course, this was only with the spiritual aspect. But today we have got other aspects also. With the changing circumstances in the country today, with the changing social values, changing moral values, changing political values and so on, we have to adopt a broader outlook in these matters.

What has been attempted in this case is a widening of the definition of the word 'guardian.' We find that certain other persons who are guardians of the person and property of the children, who are recognised as such by the court of law and who have been appointed as guardians by the will of the father and mother—all such people will be considered as 'guardian' within the scope of this definition. Therefore, the restriction put upon the definition of the word 'guardian' in section 9 (4) is being removed. Taking into consideration the changing values in society today, it is better that these people are recognised as guardians for this purpose. Here I may quote a remark made by Justice Lokur and Justice Divatia in a case in 45 (Bombay Law Reporter) *Trikangonda Gowda vs Shivappa*. Their Lordships remarked that the present Hindu

law was undesirably frozen; however, it could still make a good case before a modern legislature, if an attempt was made to remove the legal disabilities which no longer held the ground. Certain legal disabilities might have crept into the Hindu law on account of which it is now undesirably frozen. Such legal disabilities may be removed by the reasonable law makers of the present-day legislature. Therefore, the definition of the word 'guardian' has been widened and it is but proper that this is being done.

Then there are other questions. Who can adopt the child? Who can give the child in adoption? Who can be adopted? These are the three questions which have since a long time been engaging the attention of law-makers. There were certain restrictions as regards the person to be adopted. Sometimes a person having a number of children was himself adopted. Now, of course, there is restriction on that. Now that anomaly has been removed to a great extent. I think the difficulties that were brought before the learned Judges have also been solved to a certain extent.

There are certain restrictions on people to be adopted. It is said, 'any child, legitimate or illegitimate...' I wonder why the words 'legitimate or illegitimate' should be there at all. No child should be marked with the particular stigma that it is illegitimate. It should not come to know that it was an illegitimate child. A child is a child, legitimate or illegitimate.

Then as regards the clause 'who has been abandoned both by his father and mother or whose parentage is not known.' Many Opposition Members were rather keen on the definition of the words 'abandoned by the parents whose parentage is not known.' How will it be possible to make out the caste or creed of a particular child whose parentage is not known? Many Members of the Opposition presumed that a child may be a Mohammedan or may be a Christian. Of course, if we know exactly about the parentage,

[Shrimati Sarojini Mahishi]

we cannot say 'whose parentage is unknown.' In the case of a child whose parentage is unknown, we cannot go on presuming things at the outset. A child whose parentage is not known may belong to any caste or may belong to any particular community. After all, the definition of 'Hindu' is not so very definite, as far as my knowledge goes. 'Who is a Hindu?' is always a question before us. The definition, 'A Hindu is a person who is governed by the Hindu law', may not be a very good definition. 'A person who is not a non-Hindu is a Hindu'—that also may not be a very good definition.

Therefore, for the purpose of this law, the definition of 'Hindu' has got a very wide connotation. The fact that the Hindu religion is going to gain in numerical strength is something which must be welcome. I do not wish to criticise other religions or encourage them because India is a secular State and we do not encourage or discourage any religion. Therefore, the outlook must be that if the Hindu religion is going to be numerically strengthened by the absorption of all such children whose parentage is not known into the Hindu fold, this must be considered as an opportunity the Hindus have got of welcoming such children into their own religion, showing at the same time a liberal outlook. In this view, I do not know why there should be any objection at all.

'A child whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh'—I think there is a little restriction here also, because no parent or no person will be under any compulsion or under any coercion or undue influence to adopt any child. The idea is that a person who is of sound mind, who is competent to enter into a contract or who is competent to think for himself, alone may adopt voluntarily. Therefore, there is no compulsion or anything of the kind, and therefore he is left to himself to adopt any child, legitimate or illegitimate, belonging to any

community, provided both the person giving the child in adoption and the person taking the child in adoption agree over that particular act of adoption. Therefore, I do not think that the words "legitimate or illegitimate" and the words, and "who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh" are necessary, and a time may come when the Government will be required to remove these words as mentioned by the revered hon. Member, Dr. Aney.—Especially in these days when we are talking so much about national and emotional integration and a casteless society, when we find a number of children in the foundling homes and orphanages, we must encourage and welcome such an idea of adopting these children. The person who is in charge of the foundling home or orphanage should have the right to give the child in adoption with the permission of the court, because he should not enter into an immoral transaction. There may be certain people who are managers of foundling homes who may be given the permission of the court to give a child in adoption. Permission of the court is necessary because the person taking the child in adoption and the person giving the child in adoption may agree, but the purpose may be immoral and end in undesirable social incidents, and the court may not be made aware of such adoptions. It is with a view to put an end to such immoral transactions, that the phrase "with the previous permission of the court" has been made use of. Therefore, I must congratulate the hon. Minister on having brought this particular amendment. At the same time, I must say that if the words to which I referred earlier are also removed, which will show that we are having a broader outlook and that we are a progressive people, it will be better.

श्रीमती शशांक मंजरी (पालामऊ) :
उपाध्यक्ष महोदय, हिन्दू ग्रहण और पोषण
(संशोधन) बिल, १९५६, का मैं स्वागत करती

हूँ। इस से पिछड़े हुए बालकों की सुरक्षा होगी।

अभी तक बालकों को दत्तक ग्रहण करने के पहले न्यायालय से पूर्व अनुमति लेनी आवश्यक थी। अभी तक जो पिछड़े हुए बच्चे अनाथालयों द्वारा पाले जाते थे, उन बच्चों को दत्तक देने का अधिकार अनाथालयों को नहीं होता था। इस कायदे से ऐसे पालकों को यह अधिकार मिल जायेगा, जिस से कि बालकों को सुरक्षा और उनकी तरक्की के लिए गोद देने का मौका मिले।

गरीबी, सामाजिक निन्दा आदि कारणों से अक्सर माता पिता अपने बच्चों को छोड़ देते हैं। अब ऐसे बालकों को पालने वाला भी दत्तक दे सके तो अच्छे घरों में उनकी देखभाल हो सकेगी और उनको अच्छे नागरिक बनने का मौका मिलेगा। अब तक तो ऐसे पिछड़े हुए बालकों की बहुत दुर्दशा होती थी और ऐसे बच्चों को जिन्होंने पाला पोसा है उन के दत्तक आदि करने का उनको कोई अधिकार प्राप्त नहीं होता था। इस संशोधन के द्वारा, गरीबी के कारण जो कई माता पिता बच्चों को छोड़ देते हैं और जो अनाथालयों में पाले जाते हैं, उन बालकों को अच्छे घरों में गोद दिया जा सकेगा।

मैंने स्वयं भी यथाशक्ति अपने देश के कई गरीब बालकों की देखभाल की है, उनको पढ़ाया है, और उनकी शादी करवायी है।

बहुत से देशवासी अधिक संतान होने से उनका पालन पोषण ठीक तरह नहीं कर पाते। अब ऐसे लोग अपनी सम्पत्ति से योग्य व्यक्तियों को अपनी संतान गोद दे सकते हैं।

संरक्षक द्वारा बच्चों को गोद देते समय रूपया पैसा आदि लेने की अनुमति नहीं

होनी चाहिए और इस पर सरकार द्वारा निगरानी होनी चाहिए। विशेषकर लड़कियों के मामले में ऐसा होना चाहिए कि जो उन को दत्तक लेते हैं वह उनकी बिक्री न कर सकें। इसके ऊपर सरकार को निगरानी रखनी चाहिए और जो व्यक्ति ऐसा करें उन के खिलाफ सरकार को सख्त कदम उठाना चाहिए।

Shri A. T. Sarma (Chatrapur): I thank the hon. Minister for having brought such a nice amending Bill, and I wholeheartedly support it.

First of all, abandoned children have not been neglected in our society from the Vedic ages. My hon. friend on the other side narrated one incident. Let me narrate the incident of Sakuntala. Sakuntala was abandoned by her parents, but she was not neglected in society, and she was given all honour and respect. So, from the Vedic ages you will find instances where such children were not neglected in society but were given due respect.

I will give one Vedic instance, that is the instance of Jabali. Jabali was born of Jabala, and who his father was, was not known even to his mother Jabala. When he approached a Guru, the Guru asked his father's name. He could not give it, and approached his mother, and his mother told him:

यौवने बहूपचरन्ती नाहम् वेद कस्ते पिता
त्वं जाबानाया स्तनयोडसि ।

"Jaubane bahupacharnti naham bed kaste pita. tom jabalayastanayosi."

"In my young age I had contact with so many, I do not know who your father is. You are the son of Jabala."

He approached the Guru and repeated the same thing. The Guru named him Jabali, and he became a Maharshi, and society respects him to a great

[Shri A. T. Sarma]

extent. So, from the Vedic period till now, nobody dishonours such children, as mentioned by some of my hon. friends.

Even in the Smriti, these children are treated with respect. Manu has mentioned twelve kinds of sons. He defines:

श्रीरसः क्षेत्रजश्चैव दत्तः कृत्रिम एव च ।
 गृहोत्पन्नोऽपविद्धश्च
 दायदा बाधवा स्वपत् ।
 कानीनश्चय सहोदश्च कीतः पौनर्भवस्तथा ।
 स्वयं दत्तश्च सौदश्च षड्दायाद -
 बांधवा । :

Out of these, first six sons are दायद and दस्वव i.e., they are entitled to paternal property and to offer pinda to their parents. These abandoned children are called अपविद्ध and occupy the sixth place among the sons. Even in the Dharma Shastra, these children are not ignored, and they are given a proper place, and they are also entitled to the paternal property. But, due to some oversight, when the Adoptions and Maintenance Bill was passed in 1956, this point was neglected and now it has been brought to the notice of our hon. Law Minister. And, this Bill deserves encouragement wholeheartedly.

From the other side, two objections have been raised to this Bill. One is, if the child is a Muslim, Christian or of some other religion, whether it would be taken as an adopted son or not. According to the existing Act, that child is not entitled to be taken as an adopted son. As per sub-section C of Section 2, the original Act is applicable only to a person who is not a Muslim, Christian, Parsi or a Jew by religion. If it is known that the child is a Muslim, Christian or of any other religion, then it cannot be taken as an adopted son and the Act would not be applicable to him.

Under section 10 of the Act, with regard to the capability of being taken in adoption, it is stated that he or she shall be a Hindu or that he or she shall not be of any other religion. Unless he is known as a Hindu or unless he is not known to be of any other religion, he cannot be adopted. So, we need not be afraid that Hinduism will be at stake.

There is another objection that has been raised by my hon. friend, Shri Trivedi. That is, if the child does not like, whether he will be taken in adoption or not. Certainly, not. There are three conditions which are essential for adoption. One is, the man who gives in adoption must have the capacity to give. The second is, the child must have the capability of being taken in adoption; and the third is that the adoptive father must have the capacity of taking such a child in adoption. Accordingly, if the child does not like, then the question ends there. He cannot be taken as an adopted son by force. So, there is nothing wrong in accepting this Bill in toto. Some of my hon. friends have criticised saying that a legitimate or illegitimate child can be adopted. Our Dharma Shastras are very clear and liberal. They allow all sorts of privileges to the citizen of Bharat Varsha. I think that if these privileges are granted they would prove good citizens of our country, useful to society.

So, I wholeheartedly support this Bill.

Shrimati Renuka Ray (Malda): Mr. Deputy-Speaker, Sir, so far as this Bill is concerned, I join with those who welcome this step in the right direction. I do not think it is a very revolutionary measure, as some people seem to think. It is a step, which, I am glad, has been taken better late than never because I think it should have been done when the original Hindu Code was adopted in this House. But, nevertheless, I am glad it has come now.

(Amendment) Bill

I want to point out to my friends, particularly those who have some objections to this measure, the conditions that prevailed in undivided Bengal in 1943 when people were dying on the streets of Calcutta and in the districts, when so many of us went about picking up children and putting them in 'homes'. We did not know whether they were children of Hindus or Muslims or Christians or of any other religion. We did not know whether they were children of Brahmins or children of lower castes. They were all put in 'homes' and then the Save the Children Committees were formed. Most of these children have grown up and are having some avocations. We had a difficult task in those days because we could not get those children adopted. We had to keep them in Children's Homes because it was not known whether they were Hindus or Muslims or Christians etc. The water-tight compartments of religion stood in the way of humanity and we were not able to give those children in adoption even to those who were willing to adopt them. It is a far cry from those times today; and I am glad that in this Bill which the Law Minister has brought forward this question of what religion belonged to the parents of abandoned children has been completely waived. The Hindu Adoptions and Maintenance Act is being amended and it will go to the credit of the Hindus that they had the vision to bring about this change.

Shri Trivedi dwelt at length on the question of abandoned children, who, presumably, may not be children of Hindus. One of the reasons he brought forward was, what if the children is quite grown up and does not want to be adopted by a Hindu—supposing he is a Muslim or a Christian? I think if the hon. Member goes through section 9, he will find that before granting permission to the guardian, the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being, for

this purpose, given to the wishes of the child, having regard to the age and understanding of the child, and that the applicant for permission had not received or received etc. That is something else. This has been included in this Bill. Therefore, if the child which is a little older and can reason for himself does not want to be adopted, the Court will not give permission. So, the matter ends there. I do not think it is a valid point that has been brought forward by Shri Trivedi. I hope Shri Trivedi would listen to what I am saying and will agree with me . . .

Shri U. M. Trivedi: I am attentive, Madam.

Shrimati Renuka Ray: The other point that was raised about the guardian has already been answered. I think those in charge of the Children's Homes in the States have, certainly, a better right, perhaps, than some of the parents, to be the guardians who can give in adoption. In any case, the safeguard of the Courts permission is there.

I was pained to hear one of the speeches made here today. Even today when we are talking in terms of national integration some of us are worried about some children that do not belong to some religion or caste being adopted on the ground that the purity of blood not being there, they are beyond the pale. It is very sad that even today we have got such ideas. Of course, Shri Trivedi did not mention it; but a subsequent speaker did so. I do feel that the time has come when not only should we welcome this measure but we should go much farther and we should have a National Code of Laws and we should realise that we come first as Indians and not as Hindus or Muslims or Christians etc. Religion may be one's private and personal matter. (*Interruption*). I am sure that our Law Minister who is bringing in a Bill for codifying the laws of Christian marriage will follow that

[Shrimati Renuka Ray]

with a Code for Muslim Law. When all these have been done we shall be able to have a National Code which is the aim of everybody, I think. But it is beyond this particular Bill. I should also say that when the question of adoption was being considered by the Law Minister, he should also take up some amendments required in the chapter on maintenance. For instance, if a woman changes her religion, surely that is not a reason why her maintenance should be stopped. The House should be liberal enough to recognise that a person may change the religion. If a woman is a wife and even if she lives apart on account of change of religion, she must be entitled to maintenance; it should not be stopped on account of the change of religion. I hope that the matter will be taken up sometime in the future. So far as amendments regarding adoption are concerned, I fully support them.

श्री मोहन स्वरूप (पीलीभीत) : उपाध्यक्ष महोदय, जो बिल हमारे सामने है, उस का और उसके प्रिंसिपल एक्ट का मंशा हिन्दू धर्म, उस के सिद्धान्तों और रीति-नीति के मूलाविक एडाप्शन की व्यवस्था करना है। प्रिंसिपल एक्ट में बताया गया है :—

“This Act applies to anyone who is a Hindu by religion in any of its forms or developments, . . .”

इस से साफ जाहिर है कि हिन्दू धर्म के अन्तर्गत एडाप्शन का सवाल इस में मौजूद है।

जहां तक एडाप्शन का सम्बन्ध है, वह तबिअत से होती है। जिस भ्रादमी का कोई बच्चा नहीं है, अगर वह किसी खूबसूरत या होनहार बच्चे को देखता है, तो वह उस को गोद लेना चाहता है। यह बात तो तबिअत पर मुन्ह-सिर है। लेकिन प्रिंसिपल एक्ट और इस बिल में एक लैकुना रह गया है। जिस बच्चे को एडाप्शन में लेना है, उस की स्वीकृति का सवाल न तो

प्रिंसिपल एक्ट में आया है और न इस बिल में। जहां तक एडाप्शन में देने का प्रश्न है, वह साफ हो गया है, लेकिन मैं भ्रज करना चाहता हूँ कि पन्द्रह साल का बच्चा नासमझ नहीं होता है। यह भी पता लगाना जरूरी है कि उस की मंशा क्या है और आया वह अपने एडाप्टिड फादर के साथ रहना चाहता है या नहीं। इसलिये इस का भी स्पष्टीकरण होना चाहिये।

इस बिल में इल्लेजिटिमेंट और एवन्डन्ड चाइल्ड पर खास तौर पर जोर दिया गया है। जहां तक एवन्डन्ड चाइल्ड आबारा बच्चे, का सम्बन्ध है, यह आंकना मुश्किल है कि वह किस धर्म से सम्बन्ध रखता है। *

श्री काशी राम गुप्त (अलवर)
‘एवन्डन्ड’ ‘आबारा’ नहीं होता है।

श्री मोहन स्वरूप : ‘एवन्डन्ड’ को ‘आबारा’ ही कहा जायेगा।

श्री काशी राम गुप्त : ‘एवन्डन्ड’ तो ‘छोड़ा हुआ’ होता है।

श्री अ० कु० सेन : परित्यक्त।

श्री मोहन स्वरूप : एवन्डन्ड चाइल्ड के बारे में यह आंकना मुश्किल है कि वह किस धर्म से सम्बन्ध रखता है, उस का वे आफ लिविंग क्या रहा है, उस की रीति-नाति क्या है। मैं समझता हूँ कि जब तक वह बच्चा किसी खास संस्था या किसी खास व्यक्ति के पास न रहता हो, तब तक उस को गोद लेने का सवाल नहीं होना चाहिये। इस किस्म का बच्चा अपने एडाप्टिड फादर के लिये अभिशाप हो सकता है। इसलिये एडाप्शन में दिये जाने वाले बच्चे का किसी आरफनेज या फाउंडलिंग होम में होना जरूरी है।

इस बिल की क्लॉज २ (बी० बी०)

(Amendment) Bill

में एक लंकुना रह गया है। उस में कहा गया है :—

“Any child legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and”.

इस में इस बात का स्पष्टीकरण और होना चाहिये कि उम को कैसे ब्रिग अप किया गया।

इस के अलावा मैं समझता हूँ कि इस बिल को और कम्प्रीहेंसिव होना चाहिये। हमारे यहां बहुत से लोग शिड्यूल्ड कास्ट्स या डिड्यूल्ड ट्राइब्स कहलाते हैं, जिन के उद्धार का जिम्मा हम ने सरकारी और गैर-सरकारी दोनों तौर से लिया हुआ है। वे लोग हिन्दू रीति-रिवाज और रहन-सहन के मुताबिक रहते हैं और पूजा पाठ करते हैं। मैं समझता हूँ कि उन लोगों को भी इस में शामिल करना चाहिये। अगर कोई भ्रादमी, जिस का बच्चा नहीं है, शिड्यूल्ड कास्ट्स या शिड्यूल्ड ट्राइब्स के किसी बच्चे को पसन्द करता है, तो उस को ऐसा करने का अधिकार होना चाहिये, लेकिन इस बिल के अन्तर्गत वह ऐसा नहीं कर सकता है। इसलिये इस बिल को और व्यापक बनाना चाहिये।

प्रिंसिपल एक्ट के सैक्शन ६ के सब-सैक्शन (४) को सन्स्टीट्यूट किया गया है। स्टेटमेंट आफ आवर्जैक्ट्स एंड रीजन्स में कहा गया है कि फाउंडलिंग होम के मैजोर को अधिकार होना चाहिये कि वह किसी बच्चे को एडाप्शन में दे सके। यह अच्छी बात है, लेकिन यह बात साफ होनी चाहिये कि वह फाउंडलिंग होम या आरफनेज किस तरीके से चलाया जाता है, वह क्रिस्टियन है या मुस्लिम है। इस की परिभाषा होनी चाहिये और साथ ही स्पष्टीकरण होना चाहिये।

एक्सप्लेनेशन में “गार्डियन” को डिफाइन किया गया है और उस में (ए) और (बी)

ये दो किस्म के गार्डियन्ज दिये गये हैं। मैं चाहता हूँ कि उस के प्रागे यह और जोड़ देना चाहिये :—

- (c) Managers of foundling homes or childrens' institutions.
- (d) any other person who is looking after the abandoned child in good faith and is acceptable to the child.”

बहुत से अच्छे लोग होते हैं, जो किसी इंस्टीट्यूशन से सम्बन्ध नहीं रखते हैं, जो कोई आरफनेज या फाउंडलिंग होम नहीं चलाते हैं। उन को अगर कोई भुला-भुला बच्चा मिल गया, तो वे उस को रख लेते हैं और उस की देख भाल करते हैं। अगर कुछ बच्चे को ऐसे किसी व्यक्ति के साथ रहना पसन्द है और उस के साथ रहने में कोई ऐतराज नहीं है, तो ऐसे व्यक्ति को गार्डियन मानना चाहिये, हालांकि उस को न तो मां-बाप ने चुना और न कोर्ट ने। मैं अर्ज करना चाहता हूँ कि जो भ्रादमी चोर-डकैत नहीं है अच्छा भ्रादमी है, प्रतिष्ठित और वह एक बच्चे की देखभाल करता है। तो उस को भी गार्डियन माना चाहिये और “गार्डियन” की परिभाषा में उस को भी शामिल करना चाहिये।

मोटे तौर से इस बिल का समर्थन करता हूँ, लेकिन साथ ही मैं मंत्री महोदय से प्रार्थना करता हूँ कि इस बिल को ज्यादा व्यापक और कम्प्रीहेंसिव बनाया जाये।

Shri Himatsingka (Godda): Mr. Deputy Speaker, I support the principles of this amending Bill as it will remove a number of difficulties felt in giving or taking a boy in adoption. I happened to be connected with an orphanage for about thirty years and I can say from my personal experience that there are instances where boys are abandoned by their parents in the sense that they are made over to the orphanages by a number of persons who cannot maintain them or by the widows and so on. A number of persons were willing to take them in

[Shri Himatsingka]

adoption when they found that a boy was good-looking or intelligent. In fact such boys were given in adoption with the consent of parents in case where the parents or the mother were living and made over the children to the orphanage for maintenance and the permission of any court was not needed. In the course of the last twenty years or so about 200—300 boys must have been given in adoption and put in good families where they were brought up as good citizens and their future also is assured.

I welcome this amendment but the provision for taking permission from the court may stand in the way to some extent. It will, firstly, mean a certain amount of expenditure in every case. Application will have to be made. If a boy is an absolute orphan with no one to look after him and if somebody is willing to take the boy in adoption, this restriction should not be there. Then there is suggestion about the consent of the boy. I do not see how it will work. Generally children are adopted when they are young. The adoptive fathers want to bring them up in their own homes so that they might come to love their mother and father. Such boys are generally of a tender age and there cannot be any question of the consent of such boys. The wishes of the child are very difficult to be ascertained unless the boy is more than 12 or 13 years of age. Therefore, no restriction should be introduced in cases of such boys being taken in adoption when they are being maintained by the recognised social institutions of a public nature.

I feel, therefore, that the Bill has been introduced is a welcome measure and here should be no objection to the boys who have been brought up as Hindus being taken in adoption even if they might have been of parents belonging to other religions. When a young child is brought up as a Hindu, I do not see what traits of any other religion can be in him. Therefore, the words that have been

used here, viz., "who in either case is brought up as a Hindu," etc., are proper, and henceforth there will be no difficulties which might have existed otherwise.

Therefore, I welcome this measure which is very timely and I hope that it will be passed unanimously.

Shri N. R. Ghosh (Jalpaiguri): I welcome this Bill which has been introduced today. I would refer now to some objections which have been raised by certain hon. Members. As a matter of fact, those objections have no substance. One hon. Member says that it will be an encroachment on our Hindu religion. He forgets that our Hindu religion was much more liberal than as it is at present. As a matter of fact, Manu actually recognised 12 kinds of sons, and if we investigate into the parentage of some of our most Venerable rishis and munis, I believe they would be by our present standards, considered outcastes. Therefore, I would submit that we should not glibly speak about Hindu religion, and let us not speak about its pollution by this Bill.

There has been another objection. Some hon. Members think that there will be great harm if a Muhammadan boy is adopted in a Hindu family. If we look into the Act, there is some doubt whether a Muhammadan boy can at all be adopted because there are certain sections in the parent Act which definitely say that only a Hindu can be adopted. But then in the present Bill, sub-clause (bb) says as follows:

"any child, legitimate or illegitimate, who has been abandoned both by his father and mother..."

Suppose the father is a Muhammadan and he has abandoned his child, this bill definitely allows the adoption of the child, though the child is a Muhammadan in a Hindu family. I wish the Minister of Law looks into this aspect, namely, whether the previous section—Section 10, will stand in the

way of the adoption of a Muhammadan boy in a Hindu family or not. My reading is that it will create some difficulty though this sub-section definitely says, without any limitation, that "any child, legitimate or illegitimate, who has been abandoned both by his father and mother" the point may be considered.

The other portion—"whose parentage is not known" of course may in some cases exclude those boys who are known to be Muhammadans. They may not be eligible to be taken in adoption. But as regards the boys whose father and mother have abandoned them, I believe a Muhammadan boy can be adopted, according to the present bill.

An Hon. Member: How will they know that?

Shri N. R. Ghosh: I suppose that even if it is proved afterwards that actually the founding was a Muhammadan, even then, that boy can be legally adopted in a Hindu family. The adoption cannot be challenged. That is my reading. I think that is also the intention of this legislation. We should not shut out such boys if actually there is a case of adoption of this nature. We have been conservative to the disadvantage of our religion and to disadvantage of our society. Let us not be more conservative now, why not return to our pristine liberalism?

There was another objection which a lady Member mentioned. That was in regard to section 9(2) of the original Act, namely:

"Subject to the provisions of sub-section (3), the father, if alive, shall alone have the right to give in adoption, . . ."

She objected to this clause but I think she has not properly understood its meaning. The section means to say that if the father is alive, he alone has the right to give in adoption as contra distinguished from the fact that neither the uncle nor the grandfather or any other will have that right, and that is also after the consent of the mother is obtained. Therefore, I think the amendment is all right.

Then I would very respectfully to your notice one particular aspect of the Bill. Without going into the details, I shall simply mention section 11(6) of the original Act. The child to be adopted must be actually given and taken in adoption by the parents or the guardians concerned or under their authority with intent to transfer the child. . . . etc. The Law Minister certainly knows that on account of essentiality of *Dattia Homam* and other technical difficulties, many of the adoptions could not be proved in a court of law and even when a child has been adopted and has enjoyed the properties, after the suit is lost, he could not remain in that family. I would ask, while the other technical rules have been done away with, why this actual taking and giving are being insisted upon. Suppose there is a document of adoption, duly executed and registered, why should that not be sufficient? Under the Transfer of Property Act, a registered document is sufficient. I know of a case where in spite of the registered document of adoption, because the giving and taking could not be proved, the adoption was held invalid. At least the Law Minister should take into consideration this aspect of the question, namely, if there be a registered document proving that actually there was an adoption, why there should not be a very strong presumption that the giving and taking had taken place. That is a matter which I would bring to the notice of the Law Minister for his consideration.

As regards the Bill itself, there has been an objection to the deletion of the word "and". This omission has been deliberate and it is absolutely necessary. Otherwise, if it is considered to be a conjunctive "and", there will be a lot of difficulties. The omission of the word "and" makes the provision specific and clear. Therefore, this has been done properly.

Then there is sub-clause (bb) which says:

"any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known. . . ."

[Shri M. R. Ghosh]

Then, there is the word 'and' in the latter part here. I would like the Minister to consider my suggestion that here for the word 'and' the word 'or' may be substituted. That will make the object of the Bill more specific and will serve the purpose we have in view.

In all other respects, this Bill is very welcome. I would join with other speakers and say that instead of this piecemeal legislation about Hindu Code, etc., we should have an Indian Code, which will embrace all the people of India. Of course, there is no adoption among Mohammedans. But that does not matter. It will be an enabling section and nobody will compel anybody to take any child in adoption. All these provisions are mostly enabling legislation.

Another thing I would like to bring to the notice of the Minister is this. In the parent Act, it is said:

"Notwithstanding anything contained in sub-section (1) nothing contained in this section shall apply to the members of the scheduled tribes....." etc.

This is unduly harsh and unfair to the scheduled tribes. If the scheduled tribes want to take advantage of this legislation, they will not be allowed to do it. When this is only an enabling legislation and when it does not compel anybody, I do not see why the scheduled castes and scheduled tribes are being kept out of the operation of this Act. I know of a very sad case where a member of the scheduled tribe was taken in adoption by a registered document, and his adoption was found to be valid in the District Court and in the High Court, but it was upset in the Privy Council after several years because a particular custom was not proved. I think the time has come when we should not make any distinction of this nature about scheduled tribes. What about integration? I think this matter may be taken into consideration by the Law Minister.

श्री रघुनाथ सिंह (वाराणसी) : उपाध्यक्ष महोदय, लोकनायक भ्रणे ने जिस उदार दृष्टि को इस सदन के समक्ष उपस्थित किया है वही दृष्टि स्वतन्त्रता के बाद भारतवर्ष की होनी चाहिये। श्री त्रिवेदी ने श्रीर गोरी शंकर जी ने इस विधेयक पर इस बात के लिये आक्षेप किया है और विरोध किया है कि जो लोग हिन्दू धर्म के मानने वाले नहीं हैं उनको भी एडाप्शन में लिये जाने का अधिकार इस में दिया गया है। लेकिन अगर आप इस विधेयक के स्टेटमेंट आफ आब्जर्वेट्स एंड रीजन्स को देखें तो उस की अन्तिम लाइन जो है वह बिल्कुल स्पष्ट है। उस में लिखा है :

"who has been abandoned by both of his parents or whose parentage is not known, but who in either case, is brought up as a Hindu will be a Hindu by religion."

जब स्टेटमेंट आफ आब्जर्वेट्स एंड रीजन्स में है कि इस प्रकार का जो लड़का होगा उस का धर्म हिन्दू समझा जायेगा, तो मैं नहीं समझता कि यह विवाद कहां से उत्पन्न हो गया कि वह हिन्दू नहीं होगा। कोई मुसलमान या कोई ईसाई एडॉप्ट होने के बाद तो हिन्दू हो सकता है लेकिन अगर कोई बालक हिन्दू धर्म के अनुसार, हिन्दू रीति के अनुसार, रखा गया है, उस तरह से उस का लालन पोषण हुआ है, तो वह हिन्दू नहीं हो सकता, जन संघ का यह सिद्धान्त मेरी समझ में नहीं आया। जन संघ एक तरफ तो स्वाब देखता है कि भारतवर्ष एक ऐसा राष्ट्र होना चाहिये जहां सब लोग एक हों लेकिन दूसरी तरफ इस प्रकार की बात करता है। मैं उन को याद दिलाना चाहता हूं, कि मुसलमानों की तरफकी क्यों हुई। आप के कुतुब उद्दीन ऐकब्र, अलतमश और बहलोल लोदी, जिन्होंने यहां पर राज्य किया, वे सब "एवंडंड चाइल्ड" थे। लेकिन मुसलमानों के अन्दर यह ताकत थी कि हजरत मुहम्मद के मरने के पचास साल बाद तक जो जहां पर भी मिला उसे उन्होंने ने भ्रणे में शामिल कर लिया।

ऐबेन्डन्ड चाइल्ड भी हो, तो कानून से नहीं लेकिन एक तरह से उन्होंने ने उस एंडाण्ट कर लिया। फल यह हुआ कि पचास वर्षों के अन्दर मोरक्को से ले कर लाहौर तक उन का राज्य हो गया। लेकिन हम क्यों अलग होते चले गये? मैं जनसंघ के भाइयों से अच्छता चाहता हूँ कि आखिर क्या कारण है कि हिन्दू जाति, जिस की संस्कृति का वे इतना उल्लेख करते हैं, सिकुड़ती चली गई, हम ने एक सोमा बना ली। हम ऐसे बैंक का तरह से हो गये जिस बैंक से रोज रुपया उधार लिया जाता है लेकिन बैंक में पूंजी जमा नहीं की जाती।

अगर आप भारत वर्ष को उदार और स्वतन्त्र दृष्टि से देखते तो आप सब को इस विधेयक का समर्थन करना चाहिये था और यह दृष्टि वह थी जिसे श्री अणु ने इस सदन के सामने उपस्थित किया।

श्री बेरखा : (कोटा) : जन संघ का उद्देश्य यह नहीं है कि मुसलमान अलग रहें

श्री रघुनाथ सिंह : आप को इस ढंग से मोचना चाहिये था कि किसी भी धर्म को मानने के लिये हर एक आदमी स्वतन्त्र है अगर किसी का लालन पोषण हिन्दू धर्म के अनुसार हुआ है और वह हिन्दू बालक समझा जाता है, तो हम उसे हिन्दू समझेंगे, दूसरा कुछ नहीं। इस दृष्टि में मैं इस विधेयक का समर्थन करता हूँ।

श्री अ० क० सेन : उपाध्यक्ष महोदय, आज मूझ को भी स्वाहिज हुई है कि मैं यहां पर हिन्दी में बोलूँ।

यह देख कर मूझे बड़ा हर्ष हुआ कि इस सदन के सभी दलों और उपदलों से इस विधेयक को सहमति मिली है।

Shrimati Vimla Devi: We cannot understand it. At least the Minister must answer in English. I could have spoken in Telugu and expressed my-

self better, but I spoke in English so that the House may understand.

श्री अ० क० सेन : मैं तो एक ऐसे अंचल से आता हूँ, जहां पर दूसरी भाषा नहीं बोली जाती।

Shrimati Vimla Devi: We are very eager to know what the Minister is going to say in reply.

Shri A. K. Sen: Very well, Sir. I shall accede to the request of the fair sex.

I am extremely grateful for the universal support which this Bill has evoked. It shows how changing society reflects itself on the minds of our people and more orthodox notions give way to more enlightened ideas, a desire to do justice and serve the purpose of law, which is to make life more harmonious.

The sole objection which has been raised is about the possibility under this law of a Muslim boy or girl being adopted by Hindu parents. I do not feel very apprehensive about that possibility. In fact, that is a possibility which is inherent in the provision of this very Act, because when a Hindu family wants to adopt an unknown child or a child whose parents are unknown, this possibility is inherent that a Hindu family may embrace within itself a child born of parents who might not have been Hindus. The definition, therefore, has been changed that a child which has been brought up as a Hindu or Sikh or Jain will be regarded as a Hindu child. That, I think, accords with our notions.

The argument that simply because an unknown child might have been or might not have been born of Muslim, Christian or other parents, therefore, we must bar the possibility of its being adopted into a Hindu family is an argument which, I have no doubt, will not appeal to any of us here. I personally feel, as Shri Raghunath Singh has also said, that this also

[Shri A. K. Sen]

disclose a very narrow state of mental attitude, an attitude which has certainly not done benefit to the Hindu community, even if you look at it from the narrow interests of the Hindu community, because it has made us more and more shrunk, instead of allowing us to expand more and more. I do not want to appeal to history, but it is known to all of us that by being narrow-minded, we have succeeded in driving away from our fold many who might have been of benefit or advantage to us. But we need not deal with those larger questions, suffice it for the limited purpose of this Bill that an unfortunate child whose only fault is that his parents are not known should not be deprived of the advantage of being adopted into the family where he has been brought up as a Hindu or a Sikh or a Jain. That is the only question.

15 hrs.

It is true, as Shri Ghosh has pointed out, that section 11 possibly might have to be altered in order to—I wish Shri Ghosh was here—bring it in harmony with the new alterations made. Though possibly no difficulty of substance would be created, yet I think it is a consequential change and it follows from these amendments. Sir, I give notice of this amendment and I hope hon. Members will excuse me for giving notice of it now. It is purely a consequential amendment. The amendment will be like this:

Page 2,—

after line 22, insert— ..

'4. Amendment of section 11.—

In section 11 of the principal Act, in clause (vi), after the words "from the family of its birth", the words "or in the case of an abandoned child or a child whose parentage is not known, from the place or family where he has been brought up" shall be inserted."

That means in the case of adoption of a child whose parentage is not known

we should really say not "family of its birth" but "family or place where he has been brought up". Sir, I put in this requisition now so that when we come to consider the Bill clause by clause this may be taken up as a new clause to be inserted as a consequential amendment.

Sir, these are my submission and I hope that the House will accept these amendments.

Shri Kashi Ram Gupta: What about the question of legitimate and illegitimate children? Who is going to decide this at the time of adoption? How can the question be raised at the time of adoption as to whether the child is legitimate or illegitimate?

Shri A. K. Sen: I am afraid the purpose of this amendment has not been appreciated by the hon. Member. There is no question of any inquisition about the question of legitimacy. It is an enabling provision so that any child may be adopted. That is the whole point.

Shri Kashi Ram Gupta: If the words are not there, will there be any difficulty?

Shri A. K. Sen: Why create the difficulty? Then a child may be regarded as only a 'legitimate child'.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Hindu Adoptions and Maintenance Act, 1956 be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: We shall now take the Bill clause by clause. Does any hon. Member want to move any amendment? I find that Shri P. R. Patel and Shri U. M. Trivedi are not in the House. The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

New Clause 4 (Amendment of Section 11)

Mr. Deputy-Speaker: The hon. Law Minister has sent in a new amendment.

Shri A. K. Sen: Sir, I beg to move:

Page 2,—

after line 22, insert—

4. Amendment of section 11.—

In section 11 of the principle Act, in clause (vi), after the words "from the family of its birth", the words "or in the case of an abandoned child or a child whose parentage is not known, from the place or family where he has been brought up" shall be inserted.' (6).

Mr. Deputy-Speaker: It is a consequential amendment. I hope the House will agree. The question is:

Page 2,—

after line 22, insert—

4. Amendment of section 11.—

In section 11 of the principle Act, in clause (vi), after the words "from the family of its birth", the words "or in the case of an abandoned child or a child whose parentage is not known, from the place or family where he has been brought up" shall be inserted.' (6).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That Clause 4 be added to the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Shri Vidya Charan Shukla (Mahasamund): Sir, you expressed the hope that the House would agree with the amendment of the Law Minister. Is it in order for the Chair to express any hope of that kind?

Shri A. K. Sen: Where it is consequential, it is in order. It is for the guidance of the Members.

Mr. Deputy-Speaker: I am taking the House into confidence.

The question is:

"That clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

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

Shri A. K. Sen: Sir, I beg to move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

15.07 hrs.

CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL

Mr. Deputy-Speaker: The hon. Law Minister may move his motion for reference to a Joint Committee.

Shrimati Renu Chakravartty (Barrackpore): Sir, I would like to make one submission. Many of us have been put on the Joint Committee. Just as in the Hindu Code Bill where some of us were permitted to speak in the first reading of the Bill even though we were put on the Select Committee, this being a social measure of some controversy, would it not be possible for you to allow some of us to participate in the first reading of this Bill?