



**PARLIAMENT OF INDIA  
RAJYA SABHA**

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**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON  
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

**FORTIETH REPORT**

**ON**

**THE PERSONAL LAWS (AMENDMENT) BILL, 2010**

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**(PRESENTED TO THE RAJYA SABHA ON 4<sup>th</sup> AUGUST, 2010)  
(LAID ON THE TABLE OF THE LOK SABHA ON 4<sup>th</sup> AUGUST, 2010)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI  
AUGUST, 2010 / SHRAVANA 1932 (SAKA)**

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\* To be appended at the printing stage.

## COMPOSITION OF THE COMMITTEE

1. Smt. Jayanthi Natarajan — *Chairperson*

### **RAJYA SABHA**

2. Dr. Abhishek Manu Singhvi
3. Shri Shantaram Laxman Naik
4. Shri Balavant *alias* Bal Apte
5. Shri Parshottam Khodabhai Rupala
6. Shri Tiruchi Siva
7. Sardar Tarlochan Singh
8. Shri Parimal Nathwani
9. Shri H.K. Dua
10. Vacant

### **LOK SABHA**

11. Shri Bhajan Lal
12. Shri N.S.V. Chitthan
13. Smt. Deepa Dasmunsi
14. Smt. Jyoti Dhurve
15. Shri D.B. Chandre Gowda
16. Dr. Monazir Hassan
17. Shri Syed Shahnawaz Hussain
18. Smt. Chandresh Kumari
19. Shri Lalu Prasad
20. Dr. Kirodi Lal Meena
21. Kumari Meenakshi Natrajan
22. Shri Devji M. Patel
23. Shri Harin Pathak
24. Shri S. Semmalai
25. Shri Shailendra Kumar
26. Shri Vijay Bahadur Singh
27. Dr. (Smt.) Prabha Kishor Taviad
28. Shri Manish Tewari
29. Shri R. Thamaraiselvan
30. Adv. P.T. Thomas (Idukki)
31. Vacant

### **SECRETARIAT**

Shri Deepak Goyal, Joint Secretary  
Shri K.P. Singh, Director  
Shri K.N. Earendra Kumar, Joint Director  
Smt Niangkhannem Guite, Assistant Director  
Smt. Catherine John L., Committee Officer

## INTRODUCTION

I, the Chairperson of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Fortieth Report on The Personal Laws (Amendment) Bill, 2010. The Bill seeks to amend the Guardians and Wards Act, 1890 so as to include the mother along with the father as a fit person to be appointed as guardian; and to amend the Hindu Adoption and Maintenance Act, 1956 so as to remove the incapacity of a married woman to take in adoption and so as to provide that the mother, with the consent of father and vice versa, shall have equal right to give in adoption of their children.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred\* the Bill, as introduced in the Rajya Sabha on the 22<sup>nd</sup> April, 2010 and pending therein, to this Committee on the 23<sup>rd</sup> April, 2010 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations/individuals experts, by the Committee.

4. The Committee heard the oral evidence of the Secretary, Legislative Department, Ministry of Law and Justice on the provisions of the Bill in its meeting held on 6<sup>th</sup> May, 2010.

5. The Committee, during its study visits to Mumbai, Bengaluru and Chennai from 13<sup>th</sup> to 19<sup>th</sup> June, 2010, heard the views of the State Governments of Maharashtra,

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\* Rajya Sabha Parliamentary Bulletin Part-II (No.47173) dated the 23<sup>rd</sup> April, 2010.

Karnataka and Tamil Nadu and other stakeholders such as Bar Associations, Employees' Associations, individuals and institutions on the Bill.

6. While considering the Bill, the Committee took note of the following documents/information placed before it : -

- (i) Background note on the Bill submitted by the Ministry of Law and Justice (Legislative Department);
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Legislative Department thereon;
- (iii) Views expressed during the oral evidence tendered before the Committee by the stakeholders such as representatives of the Governments of the State, Bar Associations, State Bar Councils, Judicial officers/Employees Associations, practising Advocates etc.; and
- (iv) Other research material/ documents related to the Bill.

7. The Committee adopted the Report in its meeting held on the 29<sup>th</sup> July, 2010.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**New Delhi;**  
*29<sup>th</sup> July, 2010*

**JAYANTHI NATARAJAN**  
*Chairperson,*  
*Committee on Personnel,*  
*Public Grievances, Law and Justice*

# REPORT

1. The Personal Laws (Amendment) Bill, 2010 (Annexure-A) seeks to amend certain personal laws, namely, the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956, so as to bring in gender equality therein in our society.
2. The Statement of Objects and Reasons, appended to the Bill reads as under:-

"As per the census held in 2001, the female population in India constitutes about 48.26 percent of the total population of the country. The empowerment of women by various legislative as well as other measures is an avowed policy of the Government and bringing complete equality for them in all spheres of life is, therefore, a matter of utmost concern. This objective and policy of the Government have also been reiterated in the President's Address to the first session of both Houses of Parliament held on the 4<sup>th</sup> June, 2009. The National Common Minimum Programme of the then Government (2004-09) also enunciated that complete legal equality for women in

all spheres of life will be made a practical reality, especially by removing discriminatory legislative and by enacting new legislation that gives women, for instance, equal rights of ownership of assets like houses and land.

The Constitution of India guarantees equality of status and equality of opportunity to all citizens, irrespective of the fact, whether they are men and women. It provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and prohibits discrimination solely on the ground of sex. There is a growing demand for making laws free from gender bias and to provide legal equality to women in all spheres of life. It directs that women shall have equal rights and privileges along with men and that the State may make special provision for the welfare of women.

With the above objectives in view it is proposed to amend certain personal laws, namely, the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956, so as to bring in gender equality therein. Accordingly, it is proposed to make the following amendments, namely:-

(a) to amend clause (b) of section 19 of the Guardians and Wards Act, 1890 so as to include the mother along with the father as a fit person to be appointed as guardian so that courts shall not appoint any other person as a guardian of minor if either of the parents is fit to be the guardian of such minor;

(b) to amend section 8 of the Hindu Adoptions and Maintenance Act, 1956 so as to remove the incapacity of a married woman to take in adoption of a son or daughter merely on the basis of her marital status; and

(c) to amend section 9 of the Hindu Adoptions and Maintenance Act, 1956 so as to provide that the mother with the consent of the father and the father with the consent of the mother, shall have equal right to give in adoption of their children.

The Bill seeks to achieve the above objects.

3. The Personal Laws (Amendment) Bill, 2010 was introduced\* in the Rajya Sabha on the 22<sup>nd</sup> April, 2010. It was referred\* by the Hon'ble

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\* Published in Gazette of India (Extraordinary) Part-II Section 2 dated the 22<sup>nd</sup> April, 2010.

\* Rajya Sabha Parliamentary Bulletin Part-II (No.47173) dated the 23<sup>rd</sup> April, 2010.

Chairman, Rajya Sabha to this Committee on 23<sup>rd</sup> April, 2010 for examination and report.

4. In the background note furnished by the Ministry of Law and Justice, it has been stated that after preliminary examination, it was observed that the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956 require amendments to remove the element of gender discrimination. The Law Commission of India, in its 83<sup>rd</sup> Report, has also made recommendations for such amendments in the Guardians and Wards Act, 1890.

5. It has further been stated that the Eighty-third Report on the Guardians and Wards Act, 1890 of the Law Commission of India vide paragraph 6.83 has recommended amendments in clause (b) of section 19 of the said Act to include mother along with the father for the purpose of removing the gender inequality. The said Report of the Law Commission of India was circulated to all the States and Union Territories of the Indian Union and comments from 32 States and Union Territories were received. They all have agreed to the recommendations of the Law Commission of India.

6. The Committee heard the presentation of the Secretary, Legislative Department of the Ministry of Law and Justice on the Bill on 6<sup>th</sup> May, 2010.

7. In order to have a broader view on the Bill, the Committee decided to invite views/suggestions from desirous individuals/organisations on the Bill. Accordingly, a press release was issued inviting views/suggestions. In response to the press release published in major English and Hindi dailies and newspapers all over India on 10<sup>th</sup> May, 2010, a number of representations/memoranda were received.

7.1. The Committee forwarded the memoranda so received from the individuals and organisations to the Ministry of Law and Justice (Legislative Department) for their comments thereon. The list of these memoranda alongwith the gist of views and suggestions of the Ministry of Law & Justice is placed at Annexure- B.

7.2. The major points raised in the memoranda are summarized as follows:

- (i) This Bill is a most welcome step as such amendment in Personal Laws was long overdue. Considering the Constitutional commitment of the Government towards right to equality to both the sexes, the provisions of Sec. 19 (b) of Guardians and Wards Act, 1890 and Sec. 8 and 9 of Hindu Adoptions and Maintenance Act, 1956 are obviously and patently gender discriminatory and hence against the spirit of Constitution. It was high time that such discrimination should

be removed. The proposed Amendment Bill does exactly that. It helps to make the law gender neutral and equal to both the sexes.

- (ii) The genesis of this Bill is right of equality among the sexes. In the Guardians and Wards Act, 1890, in certain circumstances, the Court is empowered to appoint guardians. A certain inequality was found and this Bill tries to address that. The father's name was mentioned, but the mother's name was not there. This Bill is including the mother's name too.
- (iii) In the Hindu Adoptions and Maintenance Act, 1956, there are two provisions where we find that the rights of the husband and wife, mother and father, were unequal. One was in the case of adopting a child and the other was in the case of giving the child for adoption. The crux is that mother is being discriminated on the basis of the marital status. If she wants to give child for adoption, the father should not be alive, should be of unsound mind and should cease to be a Hindu. Similarly, if she wants to adopt a child, she should be a divorcee, or widowed. Such conditions are there. This Bill is trying to give the mother equal rights similar of the father.

- (iv) Section 4(2) of the Guardians and Wards Act, 1890 should read that “guardian” means a person having the care of the person of a minor or of his property or of both his person and property and includes both a man or a woman”.
- (v) An Explanation should be inserted to in the Guardians and Wards Act, to provide that “property” includes hereditary trusteeship. A new sub-section should be inserted to ensure that "the Court can make an appointment of a guardian conditional on the performance of a condition by the guardian.”
- (vi) Every adoption, whether it is a boy or girl, must have Court sanction at least of Civil Judge (Junior) Rank.
- (vii) There must be a clause/provision for the child in the interest of justice that he/she must have a right to ratify and confirm what has been done in his/her interest and accept and/or reject on attaining the age of puberty and till then status quo be maintained with regard to the property brought to the notice of the Court by any person having interest in the welfare of the child.
- (viii) In view of removing ‘Gender Equality’ (Article 14 of our Constitution), stepping up to amend Sec 8 of Hindu Adoption

and Maintenance Act 1956 is highly appreciable and commendable.

- (ix) Section 19(b) of the Guardians and Wards Act are violative of the equality clause of the Constitution, in as much as the mother of the minor is relegated to an inferior position on ground of sex alone since her right, as a natural guardian of the minor, is made cognizable only 'after' the father. Hence, the Section must be struck down as unconstitutional.

## **CHAPTER II**

### **Observations/Recommendations of the Committee on various provisions of the Bill**

1. The principle of gender equality is enshrined in the Constitution of India in its fundamental rights. The Constitution not only grants equality to women, but also empowers the State to make special provisions for women.
2. The Committee is aware that in the past few decades, women have changed traditional assumptions about their roles and capabilities. In tune with this, it is necessary that the laws should also be dynamic in order to address the concerns and rights of women.
3. The Committee takes note of the majority view expressed in the memoranda received by the Committee, that this Bill is a major step towards the empowerment of the women which is an avowed policy of the Government and which is also a fulfillment of Constitutional mandate of equality to both the sexes.
4. The Committee notes that in the recent times, there has been a sustained appeal for empowerment of women, with special emphasis on her right to equal treatment by law. The Committee feels that it is inevitable that the State should ensure that women are accorded an equal status by law.

5. During the deliberations on the various provisions of the Bill, the Members of the Committee emphasized upon the need for affirmative statutory measures granting equal status to women by law in every sphere of life.

**6. Therefore, the Committee is of the considered opinion that this Bill is an important legislation introduced for strengthening women's rights. It feels that women have been deprived of equal rights especially in the area of personal law, even though, Constitutionally women are bestowed with equal rights. It is also of the view that with the emancipation of women in all fields and women attaining a great deal of financial independence, it is high time that women are given equal rights in the public as well as personal domain. The Committee strongly feels that personal laws cannot be excluded from the principles of gender equality and gender justice.**

### **Clause-by-clause consideration of the Bill**

7. Clause 2 of the Bill seeks to substitute clause (b) of Section 19 of the Guardians and Wards Act, 1890 with the following clause :-

"(b) of a minor, other than a married female, whose father or mother is living and is not, in the opinion of the court, unfit to be guardian of the person of the minor, or".

7.1. As per Clause (b) of Section 19 of the abovementioned Act, in the case of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, the Court cannot appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or appoint or declare a guardian of the person. Thus it can be seen that there is no mention of the mother here.

**7.2. The Committee is of the considered view that the mother should also be placed on an equal footing with the father in this regard i.e., in the right of guardianship.**

**7.3. The Committee notes that the proposed amendment will rectify this anomaly.**

**7.4. Clause 2 was adopted without suggesting any changes.**

8. Clause 3 of the Bill seeks to substitute Section 8 of the Hindu Adoptions and Maintenance Act, 1956 with the following Section :-

"8. Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a

Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind."

8.1. Section 8 of the Hindu Adoptions and Maintenance Act, 1956 read with Section 7 of the Act would mean that a major, sound and married Hindu man can adopt a son or daughter with the consent of his wife; while a major, sound and married Hindu woman can adopt a son or daughter, only if, her marriage has been dissolved or her husband is dead or he has renounced the world or has ceased to be a Hindu or is of unsound mind.

**8.2. The Committee is of the strong view that the existing provision incapacitates a married woman from taking in adoption merely on the basis of her marital status, by rendering her right of adoption highly limited. She cannot exercise her right to take in adoption, even with the consent of her husband.**

**8.3. The Committee feels that the proposed amendment will give the married Hindu woman the same legal capacity as that of the man, to take in adoption.**

**8.4. Clause 3 was adopted without suggesting any changes.**

9. Clause 4 of the Bill seeks to substitute sub-section (2) of Section 9 of the Hindu Adoptions and Maintenance Act, 1956 with the following Section :-

"(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind."

9.1. As per sub section 2 of Section 9 of the Hindu Adoptions and Maintenance Act, 1956, the father, if alive, shall alone have the right to give in adoption and he shall exercise this right with the consent of the mother unless she has renounced the world or has ceased to be a Hindu or is of unsound mind.

9.2. The Committee notes that this Section allows the father to give in adoption with the consent of mother, whereas the mother cannot do so, even with the consent of father.

**9.3. The Committee feels that the proposed amendment will negate the discriminatory nature of the existing provision, by giving the right to give in adoption to the mother, on the same terms as the father.**

10. Clause 4 further seeks to omit sub-section (3) of Section 9 of the Hindu Adoptions and Maintenance Act, 1956.

**10.1. Clause 4 was adopted without suggesting any changes.**

**Long Title**

**11. The Long Title of the Bill was adopted without suggesting any changes.**

**Enacting Formula**

**12. The Enacting Formula of the Bill was adopted without suggesting any changes.**

**Short Title**

**13. The Short Title of the Bill was adopted without suggesting any changes.**

**14. The Committee unanimously recommends that the Bill be passed in its present form.**

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