

Bill No. XXV of 2010

THE PERSONAL LAWS (AMENDMENT) BILL, 2010

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BILL

further to amend the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Personal Laws (Amendment) Act, 2010.

Short title.

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CHAPTER II

AMENDMENT TO THE GUARDIANS AND WARDS ACT, 1890

2. In section 19 of the Guardians and Wards Act, 1890, for clause (b), the following clause shall be substituted, namely:—

Amendment of section 19 of Act 8 of 1890.

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"(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".

CHAPTER III

AMENDMENTS TO THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

- Substitution of new section for section 8. **3.** In the Hindu Adoptions and Maintenance Act, 1956 (hereafter in this Chapter referred to as the Hindu Adoptions and Maintenance Act), for section 8, the following section shall be substituted, namely:— 78 of 1956. 5
- Capacity of a female Hindu to take in adoption. "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." 10
- Amendment of section 9. **4.** In the Hindu Adoptions and Maintenance Act, in section 9,—
 (i) for sub-section (2), the following sub-section shall be substituted, namely:—
 "(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: 15
 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."; 20
 (ii) sub-section (3) shall be omitted. 20

STATEMENT OF OBJECTS AND REASONS

As per the census held in 2001, the female population in India constitutes about 48.26 per cent. 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 4th June, 2009. The National Common Minimum Programme of the then Government (2004-2009) also enunciated that complete legal equality for women in all spheres of life will be made a practical reality, especially by removing discriminatory legislation and by enacting new legislation that gives women, for instance, equal rights of ownership of assets like houses and land.

2. 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.

3. 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 on the basis of the recommendation of the Law Commission of India contained in paragraph 6.83 of its Eighty-third Report on 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;

(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.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 16th April, 2010.

M. VEERAPPA MOILY.

ANNEXURE

EXTRACT FROM THE GUARDIANS AND WARDS ACT, 1890

(8 OF 1890)

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Guardian not to be appointed by the Court in certain cases.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

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(b) 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, or

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EXTRACTS FROM THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

(78 OF 1956)

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Capacity of a female Hindu to take in adoption

8. Any female Hindu—

(a) who is of sound mind,

(b) who is not a minor, and

(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or 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,

has the capacity to take a son or daughter in adoption.

Persons capable of giving in adoptions.

9. (1) * * * * *

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother 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.

(3) The mother may give the child in adoption if the father is dead or 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.

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RAJYA SABHA

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further to amend the Guardians and Wards Act, 1890 and the Hindu
Adoptions and Maintenance Act, 1956.

(Shri M. Veerappa Moily, Minister of Law and Justice)