

NOES

Vaishya, Shri M. B.
Varma, Shri B. R.
Venkataraman, Shri
Wilson, Shri J. N.
Amjad Ali, Shri
Begdi, Shri Magan Lal
Banerjee, Shri
Basu, Shri, K. K.
Chakravarty, Shrimati Renu
Chatterjee, Shri Tushar
Chatterjee, Shri N. C.
Chowdhary, Shri C. R.

Chowdhury, Shri N. B.
Das, Shri B. C.
Dasaretha Deb, Shri
Deogam, Shri
Deshpande, Shri V. G.
Gadilingana Gowd, Shri
Gidwani, Shri
Gurupadaswamy, Shri M. S.
Kripalani, Shrimati Sucheta
More, Shri S. S.
Mukerjee, Shri H. N.
Nayar, Shri V. P.

Raghavachari, Shri
Rannarayan Singh, Babu
Randaman Singh, Shri
Rao, Dr. Rama
Rao, Shri P. Subba
Rao, Shri T. B. Vittal
Reddi, Shri Ramachandra
Singh, Shri R. N.
Veeraswamy, Shri
Velayudhan, Shri
Verma, Shri Ramji

**The motion was adopted.*

HINDU MINORITY AND
GUARDIANSHIP BILL

The Minister in the Ministry of
Law (Shri Pataskar): I beg to move:

"That this House while concurring in the recommendation of the Rajya Sabha that the House do join in the Joint Committee of the House on the Bill to amend and codify certain parts of law relating to minority and guardianship among Hindus made in the motion adopted by the Rajya Sabha at its sitting held on the 25th August, 1954 and communicated to this House on the 27th August, 1954:—

(a) recommends to the Rajya Sabha that the Joint Committee be instructed to report on or before the 31st March, 1955; and

(b) resolves that the following Members of the Lok Sabha be nominated to serve on the said Joint Committee, namely; Shri Narendra P. Nathwani, Shri Moreshwar Dinkar Joshi, Shri Badshah Gupta, Shri Sohan Lal Dhusiya, Shri P. Ramaswamy, Shri B. L. Chandak, Shri Liladhar Joshi, Shri Mathura Prasad Mishra, Shri Mahendra Nath Singh, Shri Bheekha Bhai, Pandit Thakur Das Bhargava, Shri Raghubar Dayal Misra, Shri M. L. Dwivedi, Dr. M. V. Gangadhara Siva, Shri C. R. Narasimhan, Shri P. Siddananjappa, Shrimati Subhokra Joshi, Shrimati Ila Palchoudhuri, Shri Kanhu Charan Jena,

Shri Bimalaprosad Chaliha. Shri Bhola Raut, Shri N. C. Chatterjee, Sardar Hukam Singh, Shri S. V. L. Narasimham, Shrimati Renu Chakravarty, Shri Anandchand, Shri Shankar Shantaram More, Shri Jaswantraj Mehta, Shri K. S. Raghavachari, Shri Bhawani Singh and the mover".

This is a motion to associate thirty Members of our House with the Joint Committee in respect of the Hindu Minority and Guardianship Bill which was considered in the Rajya Sabha. This is a simple measure and forms part of the old Hindu Code Bill which was brought forward in the Assembly in the year 1947. This relates only to one part, the question of providing for the guardianship of minors so far as the Hindus are concerned. As I said it is a part of the original Hindu Code Bill.

This Bill was first introduced in the Council of States in March 1953. Then, on 24th April, 1953, a motion was passed there that the Bill be circulated for eliciting public opinion by August 1954. After the receipt of those opinions, the Bill again was taken up in that House and the formation of the Joint Committee by both the Houses was decided upon so far as the Rajya Sabha was concerned. For the information of the House, I might state that with respect to this measure, so far as the different States in our country are concerned, 19 States have expressed their opinion in favour of such legislation. Seven have expressed no opinion; that means,

at any rate, they have not opposed; and there is only one State, the State of Ajmer, which has given its opinion against the present measure.

3 P.M.

This is a matter which is, in some form or other, being considered by the present House and its predecessor, the Central Assembly, almost from the year 1941. Some Bills for the modification of Hindu law were introduced in the Central Assembly from the years 1937 to 1941. This Government, with the consent of the then Central Assembly, decided and appointed what was known as the Rau Committee in the year 1941. That Committee submitted an interim report in June 1941. Somehow or other, probably on account of the political conditions then existing in the country, nothing happened. But the same Committee was again revived in the year 1944. In 1947 that Committee submitted its report which, I think, so far as the Members of this House are concerned, they are aware of. Then the Hindu Code Bill was introduced in the Constituent Assembly (Legislative) in 1947 by the then Law Minister, Dr. Ambedkar, and it contained provisions with some slight modifications, almost similar to the provisions contained in this Bill. Subsequently, the Bill was referred to a Select Committee of the then Assembly and then in 1948 that Select Committee submitted its report. The point to which I would like to draw the attention of hon. Members is that at that time in 1948 the Select Committee also reported so far as the present measure is concerned without any large difference as to what is now being provided for in this Bill. Sometime in 1952, a reference was made to it in the speech of the President to this House that it was proposed to take up the Hindu Code in parts, because by experience they found that it was very difficult that the whole of the law could be passed at one stage and that the House would not have sufficient time to devote to these things. Now, the first part of it is with regard to marriage and

divorce amongst Hindus. That Bill is much more ahead so far as progress is concerned than this Bill, because there was a Joint Select Committee upon it. That Select Committee submitted its report and the matter is being considered in the other House—the Rajya Sabha—and I hope at least during the next session that part of the Hindu Code which is waiting for sanction from this House since the year 1941 will be probably passed into law.

The next part is the minority and guardianship part and so far as this Bill is concerned, I think it is a simple measure which provides or practically codifies the law relating to the guardianship of minors so far as Hindus are concerned. As you all know, in the year 1875 the Indian Majority Act was passed and the age of majority was fixed at 18. We have also fixed in this Bill the age of majority at 18. We do not propose to make any alterations in that respect, nor to my mind is it necessary to do so. This Bill recognises natural guardians which are already recognised so far as the Hindu law is concerned. We look to the Hindu law as is now in existence on account of several rulings and decisions of the different courts.

Shri R. K. Chaudhuri (Gauhati): How can the question of minority of children and other things come on account of Hindu law, before the marriage laws are actually passed?

An Hon. Member: It is a defect.

Shri Pataskar: It is a slight diversion, nothing more.

Shri R. K. Chaudhuri: It is an Act. You are going to have a Hindu Marriage Law. You are now having a Hindu Minority Law before it.

Mr. Deputy-Speaker: My ruling is, both these things will go on concurrently.

Shri R. K. Chaudhuri: This means that we shall have children first before marriage.

Mr. Deputy-Speaker: Order, order. There are certain matters which should not be pursued.

Shri Pataskar: This is a simple measure which is intended to supplement the provisions of the Guardians and Wards Act and it is intended to serve a specific purpose, namely, to codify the law so far as minority and guardianship among Hindus are concerned. That is the limited object with which this Bill is brought.

I would point to the hon. Members of this House that this matter is very simple compared to the matter of succession, marriage, divorce, etc. Those are very exciting things. So far as the question of minority and guardianship is concerned it is a comparatively simple matter. We are trying to follow, as far as possible, the report of the Rau Committee. The Select Committee which was appointed and which had gone through these provisions of the Hindu Code Bill thought that certain modifications had become necessary on account of the change in the circumstances.

Shri S. S. More (Sholapur): What are these modifications?

Shri Pataskar: There is a specific provision regarding *de facto* guardians whom we do not want to recognise. *De facto* guardians are recognised under Hindu Law. This Bill tries to do away with *de facto* guardians and I think it is a very right thing. One can understand so far as the natural guardians are concerned. Well, it is open to argument as to whether there are only two categories, two relations, which are now mentioned in the Bills or whether there should be some addition. But, I think it is wrong in principle to say that the *de facto* guardians should continue to be there, because experience has shown in many cases when an unfortunate minor loses his parents, the *de facto* guardians are not likely to take care of him properly. There may be exceptional cases. That is the only thing which might raise some controversy or discussion in this House.

With respect to natural guardians, another important provision which is made in this Bill is that the natural guardian shall not, without the pre-

vious permission of the Court mortgage or transfer by exchange or otherwise any part of the immovable property of the minor. This is in clause 7. This has been introduced because it is not desirable that natural guardians should be allowed to alienate the property of the minors without the sanction of any Court, because under the Guardian and Wards Act, if a man is declared a guardian or appointed a guardian naturally he can do so only with the permission of the Court; and we have thought it better that, by enacting this measure, it is necessary and desirable in the interests of minors that even in the case of natural guardians, there should be some provision by which they could not alienate the property of their wards without taking the permission of the Court. There is a provision in the present Court of Wards Act which is almost similar to the provision in clause 9.

So far as joint family is concerned, in order to clear misgivings in certain quarters, we have not tried to change the law. We have suggested that if there is a joint family and there is a manager, naturally in that case, a different provision has been made. I will try to mention it at a later stage, if at all a reference is made.

Then, Sir, we have also made provisions for testamentary guardians being appointed by the father if he so decides. So, I believe this is a simple measure which has been brought forward. It is in conformity with the existing law in many respects, though with slight variations. It also is in conformity with Rau Committee's Report. Other codes and the Select Committee's reports which have been considered from time to time by several committees, by the Central Assembly and this House ever since the year 1941.

It may be argued—some of them are very stock arguments—“Why is this Bill confined only to Hindus?”

Shri N. C. Chatterjee (Hooghly): It is a cogent argument.

Shri Pataskar: Why should it not apply to all. A common uniform code is no doubt our objective and if I can say so, this is a step in the right direction. Let us try to have one common uniform code for the Hindus themselves. What is the state of things so far as the minority and guardianship is concerned? At present there are so many rules and so many Acts. We want now, as far as possible to create a sort of codification of the existing provisions regarding this matter and I should say again that this is a step in the right direction. If we once get along with this, I think it would be easier to proceed with the other parts of the Hindu Code which are still left undecided.

Another argument that is advanced is: "Why have you started with the wrong end?" because we have only started with the Marriage and Divorce Bill and now we are coming to minority and guardianship. My friend Shri R. K. Chaudhuri is nodding his head.

Shri R. K. Chaudhuri: I am quite satisfied that this is the new order of things and it should happen like that.

Shri Pataskar: My point, therefore is—let not the House have any suspicions—that we are taking up the other parts of the Hindu Code. As a matter of fact, I may inform the House that the other part regarding succession will shortly come up before the House. I hope those Members who are interested in the Hindu Code reform will know it. It is for them to avoid any discussion. It is not the intention of Government to leave out those parts. They want, as far as possible, to have all the parts of the former Hindu Code before the House as early as they can.

Shri S. S. More: How many parts are we going to get?

Shri Pataskar: If my information is correct, there are four to five parts, but the most important will be that of succession after this. Then there are some minor things. But, regarding this succession, I hope it will be

shortly introduced in the Rajya Sabha and it will also be brought before this House.

Shri S. S. More: Hindu Code is split up into half a dozen parts.

Shri Pataskar: As I said in the beginning, in the year 1952, with the previous experience that we had, we were all in favour of having a Hindu Code, but they found out a device by which they could see that such a Code at one stage will never be passed.

Shri S. S. More: Why? With this Majority.

Shri Pataskar: It is no question of majority.

Therefore, I think, at least those hon. Members who are really enthusiastic about getting the Hindu Code Bill passed in the form in which it has been possible with our common efforts to improve, will support this Bill. It may not satisfy every section of the House, but an earnest attempt is being made to see that at an early date, at least before our present House is dissolved, we finish all the parts of the Hindu Code.

I would, therefore, appeal to Members that this is a very simple innocuous measure and those that are interested in the reform of the Hindu society will all support this. I think we should try to see that this is passed as early as possible because I went through the history and find that already from March 1953 till today nearly more than a year and six months have elapsed and we have come only to the stage of appointing a Joint Committee which will take some time more. At least it should be in the interest of those who earnestly desire that there should be some reform on the Hindu Law, that they should co-operate and see that this Bill is passed as early as possible. It will also help in fulfilling the task which has been undertaken.

With these words I commend this motion to the House.

Mr. Deputy-Speaker: Now, I will place the motion before the House. But, I have got a small difficulty. It appears in the other House, it was said that 30 Members of the Lok Sabha should be added those 30 names are already there in the list and the hon. Minister's name is now 31st. Therefore, if one Member is dropped out that will solve my difficulty.

Shri V. P. Nayyar (Chirayinkil): Drop out whichever is the last name.

Pandit Thakur Das Bhargava (Gurgaon): You may drop out my name.

Several Hon. Members: No, no.

Shri S. S. More: On a point of order, Sir. Supposing that House has prescribed a limit of membership, is it absolutely binding on us?

Mr. Deputy-Speaker: Yes. The convention is that half the number or one-third of the number of the total Members shall belong to that House and the rest, that is two-thirds of the total will belong to this House. Now, there are 15 Members of the Rajya Sabha and they have said 30 Members of this House. If you modify this, they will have to accept it once again and possibly it will come to 31.

Dr. Ram Subhag Singh (Shahabad South): If the Minister's name was not included in the Rajya Sabha, include Shri Pataskar's name there.

Shri S. S. More: The name of Shri Biswas is there.

Mr. Deputy-Speaker: Now, I leave it to the Mover to suggest.

Shri Pataskar: Pandit Thakur Das Bhargava says that he is not willing.

Pandit Thakur Das Bhargava: I want that my name should be taken away.

Mr. Deputy-Speaker: It is for the Mover to suggest what I should do.

Shri Pataskar: I would be quite happy if Pandit Thakur Das Bhargava is there, but he has explicitly told me

that he should not be there. Therefore, there should be no difficulty now.

Shri Venkataraman (Tanjore): Sir, if a Member does not want to serve on the Committee for any reason whatsoever, then he has the option of staying out. Now Pandit Thakur Das Bhargava....

Several Hon. Members: No, no.

Shri Venkataraman: Sir, that is a well established procedure in this House and if Pandit Thakur Das Bhargava does not want to serve on the Committee, let him be dropped. It is not for others to say "No". He is the man to work. There is no order of performance of any contract in this respect.

The Minister of Defence Organisation (Shri Tyagi): All the Members of the House are great. I wonder if any Member can refuse to work.

Pandit Thakur Das Bhargava: Sir, the rule is that a Member must give his consent if he is to be put on the Committee. This is the rule which you have been pleased to establish. Whenever we moved a motion to that effect you required us to give the names of those who had consented. Because this motion comes from the Government, they did not ask our consent. At the same time, it is not that I am not willing to work on any Committee as my friend says. I would be too willing to become a member of any Committee and do my little bit like others. But in this case, I am desirous that my name may be scored out.

Shri K. K. Basu (Diamond Harbour): If he was not willing, he should have objected at the time of making the motion.

Shri S. S. More: Sir, we object to this because the Opposition can only be effective through Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: That is putting me in the wrong and I will have to cry "Protect me from my friends".

Mr. Deputy-Speaker: I have not placed the motion before the House. If the hon. Minister says, I will score out the name of Pandit Thakur Das Bhargava.

Shri Pataskar: I think Pandit Thakur Das Bhargava's name may be deleted from that list which I gave and my name included.

Mr. Deputy-Speaker: Motion moved:

"That this House while concurring in the recommendation of the Rajya Sabha that the House do join in the Joint Committee of the Houses on the Bill to amend and codify certain parts of law relating to minority and guardianship among Hindus made in the motion adopted by the Rajya Sabha at its sitting held on the 25th August, 1954 and communicated to this House on the 27th August, 1954:—

(a) recommends to the Rajya Sabha that the Joint Committee be instructed to report on or before the 31st March, 1955; and

(b) resolves that the following members of the Lok Sabha be nominated to serve on the said Joint Committee, namely:

Shri Narendra P. Nathwani, Shri Moreshwar Dinkar Joshi, Shri Badshah Gupta, Shri Sohan Lal Dhushiya, Shri P. Ramaswamy, Shri B. L. Chandak, Shri Liladhar Joshi, Shri Mathura Prasad Mishra, Shri Mahendra Nath Singh, Shri Bheekha Bhai, Shri Raghubar Dayal Misra, Shri M. L. Dwivedi, Dr. M. V. Gangadhara Siva, Shri C. R. Narasimhan, Shri H. Siddananjappa, Shrimati Subhadra Joshi, Shrimati Ila Palchoudhuri, Shri Kanhu Charan Jena, Shri Bimalaprosad Chaliha, Shri Bhola Raut, Shri N. C. Chatterjee, Sardar Hukam Singh, Shri S. V. L. Narasimham, Shrimati Renu Chakravartty, Shri Anandehand, Shri Shankar Shantaram More,....."

He said that Pandit Thakur Das Bhargava was indispensable and if

the hon. Member thinks so, there is already an option:

"Shri Jaswantraj Mehta, Shri K. S. Raghavachari, Shri Bhawani Singh and Shri H. V. Pataskar (the Mover)."

श्री श्री जी० देसायडे (गुना) इस विषयक का विरोध करने के लिये आज मैं बड़ा दुःखी हूँ.....

Shri N. C. Chatterjee: I would not like to serve on this Committee because I have a fundamental objection. Kindly remove my name. I did not know earlier that my name was included here.

Mr. Deputy-Speaker: Has not his consent been taken?

Shri N. C. Chatterjee: I hope Pandit Thakur Das Bhargava's name could be restored.

Mr. Deputy-Speaker: Am I to score out Shri Chatterjee's name? Pandit Thakur Dasji goes out on account of the Minister and Shri Chatterjee goes out on his own account.

Shri Pataskar: I would say that that is not correct. I am quite willing and I would very much welcome Pandit Thakur Das Bhargava or anybody else, and even if you have two more, I have absolutely no objection. I do not want anybody's name to be scored out.

Mr. Deputy-Speaker: The rest of the names stand. One more name may be filled in and I would leave it for the Minister to consider.

Shri Raghavachari (Penukonda): At the time when the number was in excess, Pandit Thakur Das Bhargava wanted to avoid the trouble and so he stated that he would be very happy to serve and do his little bit on any Committee but this time he would request his name to be omitted. Now that Shri Chatterjee's name goes out, we may include Pandit Thakur Das Bhargava's name.

Pandit Thakur Das Bhargava: My name is already scored out by you.

Shri Pataskar: I had better keep myself out. Supposing there are sixteen....

Shr. S. S. More: Shri Biswas's name is already there.

Mr. Deputy-Speaker: What shall I do?

Shri K. K. Basu: Let the decision stand over.

Mr. Deputy-Speaker: I give time to the House to consider. In the meantime, discussion may go on.

Shri Pataskar: Meanwhile I shall try and induce my friend Shri Chatterjee or Pandit Thakur Das Bhargava to accept it.

Shr. V. G. Deshpande: I rise to oppose the Hindu Minority and Guardianship Bill, which has been moved by our newly appointed Law Minister. His maiden speech as a Minister has not convinced us about the necessity of this measure. He has tried to anticipate a number of arguments which are likely to come from the opposers of the Bill. The first thing he advanced was that it is hackneyed argument that this Bill is restricted to Hindus. My answer to him is that it is not a hackneyed argument, but it is a very cogent argument to which the Government Party has no answer. I have always thought about the point as to why we oppose the Hindu Code Bill. My objection is not mainly because it is a communal Bill. When I try to understand the meaning of the Hindu Code Bill, has it anything to do with the name "Hindu"? Does it signify that it is based on Hindu traditions, Hindu ideas, personal law and values and the great culture which the Hindu society or the Hindu nation has created during the last so many centuries. When I try to think again and again this occurs to me, namely, that Government is going to introduce certain mischievous principles which it dare not apply to the Muslims, Christians, Parsis or Jews. Hindus are the only community to whom the Bill is restricted. The Law Minister has not cared to inform us or acquaint the

House how all the provisions given in the Bill are based upon Hindu customs, Hindu legal traditions, etc. If he had shown to us that, as he has said, there are certain conflicting decisions of different High Courts and that this is an attempt to codify them, it is some-thing. He has not done that here. He has not shown that here a new Manu, a new Yagnavalkya or a new Vijnaneshwar has come in, who has studied and digested all the old laws of Hindus regarding minority and guardianship, and compiled them, and this is the law which we are going to introduce based upon the hoary traditions of Hindus. Had he got that much courage, had he got that much intellectual calibre, we would have considered this Bill as coming from those who believe in Hindu laws. Had he even come forward and said that "we are introducing certain reforms", then also he should have stated that "These are the Hindu principles, those are the laws which apply to Hindus from times immemorial and now these are the innovations and we want to introduce them." He should have made out a case that this is only in the case of Hindus and that these innovations are necessary only in their case. As in the case of marriage, he should have come forward and told us that polygamy is very good among the Muslims but polygamy is very bad among the Hindus, and divorce is very bad among Roman Catholics but it is very beneficial to Hindus. In that way, why should that discrimination be made? That point he should have come forward to explain with cogent arguments and then we could have understood all these modern Yagnavalkyas and Manus coming forward and telling us that Hindu law is antiquated, reactionary, out-of-date law and now we are making laws about the alienation of property for a very democratic society and progressive society where, if these laws are made, Hindu society will improve. I am not a lawyer. I have tried to read all the sections and therefore, with all humility, I approached many lawyer-friends of mine and I asked them

[Shri V. G. Deshpande.]

whether this law is based upon the Hindu principles to which this name is given. Many attempts have been made to define the word 'Hindu' and with all these, they said that this has nothing to do with Hinduism and the codification is also wrong from the point of view of jurisprudence or legalistic consideration. Apart from that, this is a direct attack on the Hindu system of law. As a law also, it is very defective, and there are many grounds on which I would like to oppose it. The first ground on which I oppose the Bill is this. The clause 4. It reads thus:

"(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

I am not so much against clause (b), but I certainly oppose this sub-clause (a) in clause 4. Up to this time, Hindu law was based upon texts, rules, interpretation of Hindu law and custom and usage. I know that up to this time, if a lawyer could go before the Supreme Court and convince them that the decision of the High Court is opposed to the text in the Vedas or is opposed to any Smriti or any of those Nibhandas or prabhandas, he could get a judgement from the Supreme Court to the effect that anything inconsistent with Vedas or Smritis is *ultra vires*. Now, after passing clause 4, the result would be this: that all the text, will have no binding force on the personal laws of the Hindus. Hereafter, the law introduced by Shri Pataskar and supported by others will have the sanctity of Vedic scriptures and all other holy and sacred texts in which we have

been believing. I could have accepted and I can understand that if Vedas can be correct Shri Pataskar also has equal right to be correct, but if the need for this law is so very great, he should make out a case and show in what respect the minors are likely to be supported. In this country I find a tendency amongst people that whenever the Hindu Code Bill comes, everybody becomes very enthusiastic and says that now we are starting a crusade against everything that is old, everything that is reactionary, everything that is feudal, and so progress will come; El Dorado will set in this world and in the 20th century we cannot accept a law which was passed in medieval ages. I want to know what is the revolutionary or progressive thing in this Hindu Minority and Guardianship Bill. Are women becoming emancipated? Are children being deserted? Are marriages being broken? What is the progressive thing, I do not know. May be some marriage laws might have some effect, some home life may be broken, but here, what is given in this Bill? I do not understand. There are many persons who have come forward to support it, because they say it is an assault and an aggression against Hindu law and that alone is the consolation to most of them. As a lawyer, I have consulted many of my friends and they have said, "Look at the provisions of this Bill." For example, according to clause 7(2):

"The natural guardian shall not, without the previous permission of the Court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor;"

I have gone through the opinions expressed by different lawyers and many other organizations in the country. It is not clear that if a natural guardian is a member of the *mitakshara* joint family and if that minor has an interest in that joint family property, that man would not be able to mortgage, charge or transfer by sale, gift, exchange or otherwise, any

property. Even for legal necessity, even for the education of the boy, even for the marriage of the daughter, he would not be able to sell or mortgage that property. Then, this may lead to many litigations and when we had bargained for some great progress....

Pandit Thakur Das Bhargava: May I point out to the hon. Member that in so far as the undivided interests of a minor is concerned in the Hindu joint family, this was specially excluded from clause 5.

Some Hon. Members: Clause 12.

Shri Raghavachari: May I invite your attention to clause 12? That provides for jurisdiction.

Shri V. G. Deshpande: I do not know whether I should believe in our great lawyer Pandit Thakur Das Bhargava or the other friend of mine, Shri Raghavachari. I am finding that this Hindu Minority and Guardianship Bill is making confusion worse confounded. At least among two eminent lawyers there is a difference of opinion. The point is this. We find that even if it is not a joint family property, if it is the separate interest of the minor, we feel that the permission of the Court ought not to be necessary.

Now, let us go clause by clause. In the first place, they have tried to define the persons to whom this Act applies. In this, they have said:

"This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj."

My objection to this is that this definition is defective from all points of view. In the first place, Buddhists, Jains, and Sikhs have been distinguished or separated from the rest. Secondly, I know for certain that Arya Samajists and Prarthana Samajists and similar sects mentioned in

clause (b) do not regard themselves as separate from the Hindus. Under these circumstances, I do not understand the idea behind this classification under separate heads.

Acharya Kripalani (Bhagalpur cum Purnea): They may become separate.

Shri V. G. Deshpande: They may become separate. Tomorrow there may be separate laws.

Then, sub-clause (c) excludes only four religions. If you are a Muslim, if you are a Christian, if you are a Parsi, if you are a Jew, then, our great and progressive Government would not legislate in the sphere of their personal laws.

Shri Pataskar: May I say for the information of the hon. Member that there are no natural guardians among the Christians and Muslims. It is there only in the case of Hindus.

Shri S. S. More: Then, why not create for them also?

Shri U. M. Trivedi (Chitto): There should be something like evolution.

Shri V. G. Deshpande: In the Statement of Objects and Reasons, it is stated that this Bill is another instalment of the Hindu Code and that it deals with the law relating to minority and guardianship. The Hindu Code Bill is a big conspiracy to encroach upon the personal laws of the Hindus and they are trying to defend the Hindus to whom this Bill will apply! I know this is going to be repeated in every instalment. The Hindus are the persons who are the objects of special favour from our great Congress Government! All these progressive measures should be first applied only to the Hindus and then they will be applied to others! When we come to oppose it, we are called communalists and reactionaries or reactionary communalists, and those who support it are the secularists, non-communalists and the nationalistic legislators. They are enacting law after law, restricted to particular communities. In the defi-

[Shri V. G. Deshpande.]

dition, it has been stated that these four communities, or religious faiths, will be excluded from the operation of the Bill. As I have said in the beginning, my main opposition is, why this personal law of the Hindus alone is being interfered with in this secular State? The Constitution has installed solemnly, guaranteed the fundamental rights to us and that no one would be discriminated on account of birth or the profession of any religion. The first great thing that is being done by our State, by the so-called progressive elements in this country is, when the unemployment in this country growing acute, months and months, and days after days are being wasted on these matters concerning vested interests, propertied interests. These are the things for which all these laws are brought in great solemnity.

Shri V. P. Nayar: The hon. Member contributes his quota to this wastage.

Shri V. G. Deshpande: All Members have got that right. That right is not restricted to some people who think that it is their monopoly and competitors are coming up to waste the time.

My contention is this. In the first place my opposition to this Bill is on principle, on the very basic principle on which these instalments are being catered to this House so liberally. We are afraid that when these two instalments have come and they are threatening us with more instalments to follow, at this very stage we must raise our voice of protest as to why they are choosing the Hindu community for this?

Acharya Kripalant: India belongs to them.

Shri V. G. Deshpande: Yes; that is my contention. Those who are moving this Bill are opposed to anything that is Hindu. I have heard it said, why do you call this Hindustan, do not call it Hindustan, you may call it Bharat or India, at least a foreign word; but not Hindustan. Attempts are made to shun everything that is

Hindu except in the case of interfering with the personal laws of the Hindus. Therefore, my first objection is that the State which professes to be a secular State, a non-communal State which is making a fetish of it, is almost obsessed with the idea of starting a crusade against communalism, is itself indulging in communalism. I would not have minded even if it had communalism of the right type, if they had wanted to give good laws to the Hindus. Here, their tirade against communalism is doing injustice to a particular community.

My second objection is this. The Hindus have developed a great system of law, not only about marriage and other things; but also property; The Minority and Guardianship Act is very intimately connected with our conception of the joint family system. If Hinduism and India have any contribution to make to the economic system of the world, it is the undivided Hindu family system. When I looked at who are the guardians to be appointed, I was rather shocked. There is only the father and then the mother. Then, the whole world dies. No third relation exists. That is not my conception of my family, I fortunately belong to a family in which 96 members form an undivided Hindu family. It may become a century. It is a very common saying that time and tide and progeny stops for none. Therefore, it will become a hundred in no time.

Shri S. S. More: Does he guarantee that in one year the number will be completed.

Mr. Deputy-Speaker: The proverb may be applicable to time and tide.

Shri V. G. Deshpande: My point is, why not paternal uncle be the guardian, why not maternal uncle, why not maternal grandfather? We have been brought up in a tradition where even more than the mother, the elder brother can be the guardian. Particularly, he is looking to my property interests, and other interests. We have looked to our elder brother as

our father and they have treated us with the same affection. I know, certain safeguards may be needed. But, when you think of riding rough shod over all our conceptions which we have cherished for centuries, I must rise here and record my protest.

Thirdly, why I oppose this Bill is for this reason. We are not going to tolerate this kind of interference with our personal laws in such a light manner. It is no use saying that it has been before us for the last 6 or 7 or 10 years. The Rau Committee was appointed and it collected opinions. Then it came to Parliament. The Government could not pilot it because there was opposition, as some people say, even from within the Congress itself. I think that it is both a tribute and an abuse to the Congress Party. It is a tribute in this sense that in spite of their belonging to the Congress Party, there are many Members who see reason and stand by good principles. But, it is an abuse to the Party that when they feel so keenly against injustice being done to the Hindu society, they have not the courage to rise and oppose this Bill. Even when they rise, they have not got the courage to vote against the Bill. They may manoeuvre it by indirect methods, but they do not come forward directly to oppose it. Sometimes I feel that their opposition is also based on the tempo and mood of the constituencies. When they go to their constituencies, they find that the people are opposed to this Bill. In the last Parliamentary elections, I must state it again—I know some Members have challenged me—I will ask them to refer to the newspaper reports—this was not made a specific issue. At least in the Prime Minister's constituency, Shri Prabhu Datt Brahmachari stood as a candidate and I remember very well....

Pandit Munishwar Datt Upadhyay (Pratapgarh Distt.-East): With what result?

Shri U. M. Trivedi: Seventy thousand votes against the Prime Minister is a shame. (*Interruptions*).

Shri V. G. Deshpande: No question of votes. He could have got 10 votes. My charge against the Congress Party is that they have not got the mandate from the electorate on this issue of Marriage Bill. They should have made it a specific issue in the election propaganda. They should have included it in the election manifesto and fought the elections. Not only have they failed to do so, but Shri Jawaharlal Nehru said in his speech, that the Bill is there before Parliament, it may be passed, it may not be passed; if Parliament accepts it, it may be passed, we do not know; it may not come at all before Parliament. With all his popularity,—I think there is nobody who has more popularity than him—in spite of all his popularity, what was the necessity for Shri Jawaharlal Nehru to state before his voters....

Pandit Munishwar Datt Upadhyay: That is not correct. He asserted....

Shri V. G. Deshpande: I do not yield. I am sure about what I say.

Shri Pataskar: What has this got to do with the Bill?

Shri N. C. Chatterjee: It is quite relevant.

Shri V. G. Deshpande: Here, we are representatives of the people. What is the opinion of the electorate, of the masses of this country on this piece of legislation of such far reacting importance? When the Prime Minister and Leader of the Party fights shy to make the Hindu Code Bill an issue in the elections, to say....

Pandit Munishwar Datt Upadhyay: He asserted that he was for the Bill.

Shri V. G. Deshpande: He said, I am not so keen an enthusiast....

Shri Pataskar: What has this to do.....

Pandit Munishwar Datt Upadhyay: Your statement is wrong. His Allahabad statement is different from what you are saying.

Mr. Deputy-Speaker: Order, order. Let us hear the Law Minister.

Shri Pataskar: This is a social measure and it should be looked at from that point of view. It may be criticised. Bringing in the elections and what the Prime Minister said, or what somebody said is not relevant.

Pandit Munishwar Datt Upadhyay: What the Prime Minister said is quite clear.

Shri V. G. Deshpande: The Prime Minister of India when he was facing the elections in Allahabad....

Mr. Deputy-Speaker: It is said that that statement is not correct.

Shri V. G. Deshpande: I am prepared to substantiate my statement. I will tomorrow bring a copy of the papers....

Pandit Munishwar Datt Upadhyay: That is not correct.

Mr. Deputy-Speaker: The hon. Member will have a chance to speak.

Shri V. G. Deshpande: I say that it is quite correct. I am quite confident about my facts. Others may say that it is not correct. The electorate has been misled. I say these are measures which are of such far-reaching importance that they will affect the whole of our social fabric.

And under these circumstances I want to challenge today in this House all these instalments of this Hindu Code Bill which you are passing here after the elections are over. Some people say that they did not move it because there was reaction in the party, but my case is they suspended it because the elections were coming near. After the elections are over, they are in a hurry to pass it, because they do not want to pass it when again the next elections come near. They want to pass it in between the two. After two years, when the third year is approaching they want to pass it, and they think that after two years people may forget it. They will say: "We have made some mistakes. What can be done. Now, very

important problems are approaching, and there is no other leader to whom you can go. Kindly vote for us." That is the strategy. That is the reason why in such a hurry these Bills are being passed. Proper scope is not being given for discussion.

My contention in the beginning was this, that even if this Bill is for ten years before the public, no proper mind has been applied to this social legislation. You want to change the laws which existed in this country for thousands of years, you were bold enough to come forward and say that you want to change the law. I can understand that people have a perfect right to say that they want to change the law, even though I do not believe that there are any laws which ought to be changed, because my own feeling is....

Mr. Deputy-Speaker: Order, order. I would like to say one word. Five hours have been fixed for the consideration of this motion. At the rate at which the hon. Member is taking, I may not be able to call upon a number of hon. Members. Therefore, with the consent of the House, I purpose to fix the maximum of half an hour for any hon. Member. But I would ordinarily expect him....

Pandit Munishwar Datt Upadhyay: Half an hour would be very long.

Mr. Deputy-Speaker: That will be for the representatives or the leaders of groups. The others may have 15 to 20 minutes at the most. And if hon. Members are willing to finish in ten minutes, the other hon. Members will have an opportunity.

Pandit Munishwar Datt Upadhyay: I think it should not be more than 15 minutes in any case.

Mr. Deputy-Speaker: The hon. Member may continue till 4 O' clock. I had to intervene as I did not tell him earlier.

Shri V. G. Deshpande: My proposal regarding all these social measures is this. For ten years lawyers have discussed it, or political parties

have discussed it. That would not be enough. If there is a large volume of opinion in this country in favour of this Bill, we have seen that much more over-whelming opinion in this country is against this Bill also. We have never counted the votes. We have never gone to the electorate with this Bill. We have not taken a plebiscite or a referendum on this issue. But my approach to this problem is not only to count the votes or count the heads. When you undertake any social legislation, you have to make out a case that necessity for such social legislation exists, and for that, my main charge against this Government is this, that we have already wasted ten years in again and again bringing the same Bill and having talks about progressiveness, but we have never cared to take and collect statistics in this country. Say, for example on the question of polygamy we have not got the figures. Even though our census report says that polygamy hardly exists in this country, here we are wasting so much time as if polygamy is a great evil and a danger in this country. The reports tell us that there is hardly any polygamy in this country. In a similar manner, on every problem like this there should be some experiments, some collection of statistics, and when all the statistics are collected and some research in sociological matters is made and when a case is made out, the great sociologists the great religious pandits....

An Hon. Member: Like you.

Shri V. G. Deshpande: ... should come together and after coming together in a *parishad*, they should sit and then decide after looking to the different conditions prevailing in the country in different provinces. Without going through the conditions, without knowing the actual state of affairs in the country, we are going on enacting laws just because they are on the model of the Western countries.

Many people have talked of social reform and progress, but my view is

this, that in this Hindu Minority and Guardianship Bill perhaps some of the provisions may not be so bad, but some provisions are positively dangerous; and my objection is not only to the dangerous provisions, because the hon. Minister may come and say that the Select Committee can improve if there are any reasonable suggestions, and the Law Minister would be prepared to accept them. I say if you are prepared to accept them, what are you insisting upon? My feeling is that he is insisting upon one thing, that the personal laws of Hindus have to be completely eliminated. Hereafter, nobody would talk of Vidyaneshwar, nobody would talk of Manu, nobody would think of the *Vedas*, *Smritis* or *Grihya sutras*. Hereafter, the only thing to be considered will be the debates in Parliament, without making any experiments, without collecting any statistics, without studying any of the sociological problems. I say if you really believe that any social legislation is needed, I may accept it for argument's sake, though I have got full faith that all our laws are based upon an appreciation of the fundamental human nature. And I do not think that within 2,000 or 3,000 years or even 10,000 years human nature has so fundamentally changed that if the wife could be satisfied before 4,000 years, she would be at once discontented now because it is now 1954 or so. My feeling is that the same love, same affection, same jealousy, same hatred and the same qualities....

Mr. Deputy-Speaker: This is a Minority Bill, not on marriage.

Shri V. G. Deshpande: I am talking about the instalments of the Hindu Code Bill. I was saying there are certain fundamental human instincts on which our laws have been based. But accepting for the sake of argument that there is a case that the *Vedas* may be wrong, the *Smritis* may be wrong, our old laws may be wrong accepting it for argument's sake—I have no faith in this kind of contention—even then, if you legislate, my main charge is that all this social legislation is being taken very lightly

[Shri V. G. Deshpande] and frivolously and with a sense of bravado to carry on a crusade against everything that is Hindu religion or what they call communal. And therefore I record my protest here that if you hurry through this kind of legislation, then within five years all the edifice built up in this country for thousands of years, the great and the beautiful institutions of the joint and undivided Hindu family.....

Shri Pataskar: This does not touch the joint Hindu family at all.

Shri V. G. Deshpande: No, but by appointing guardians and restricting them to mother and father, you are attacking our notions and conceptions about the joint Hindu family. A day will come and you will create a situation when all the legislators who, for sake of looking fashionable and progressive, supported the Bill, will repent.

Shri Tek Chand (Ambala-Simla): Eschewing the vigour and the vehemence of the last speaker, this Bill deserves to be examined with closer scrutiny. Though in its ideology it may be very desirable the Bill contains certain defects which appear to my mind to be fairly patent on the record.

4 P.M.

There is clause 3 which introduces a certain departure, viz, that the *de facto* guardians are abolished. Now, the guardians are divided into four categories: the natural guardians, which means father and mother only, then the testamentary guardian, then the court guardian and fourthly, the Court of Wards as the guardian.

[SHRIMATI KHONGMEN in the Chair]

I wish that the law had recognised *de facto* guardians because that, to my mind is very important. Natural guardians are either father or, failing father, mother. But you do not treat the grandfather, whose son has died in his life time, as the natural guardians of his minor grandson. There are quite a number of cases where the son is predeceased and the only persons alive are the grand-

father and the grandchild. The former is excluded. Again, there are the examples of the uncles and the elder brothers. There is no reason why they should not be able to fit in somewhere in the scheme of guardians. If you had permitted the *de facto* guardians to be recognised in law, they could be treated as such where they had been *de facto* guardians. But now, as a result of the exclusion of the *de facto* guardians, the difficulty is that very near relations have no say in the matter, unless they approach the appropriate Court of law and get themselves appointed as guardians. That, to my mind, is a very serious defect.

Then quod 'strangers' it may be a dangerous institution, I am willing to confess, but there are kindly people, generous-hearted people who like to bring up orphaned children, though not directly related to them.

Shri Pataskar: There will be no difficulty in getting themselves appointed under the Guardians and Wards Act.

Shri Tek Chand: True. If a child has been brought up by a *de facto* guardian who has been lavishing all the affection that is due to such a child, *de facto* guardianship being unknown to law, as we are going to have it, there will be some difficulty. But apart from strangers, I do contend that *de facto* guardianship should be recognised in cases of which I have already given illustrations.

Then I feel that clause 7 is open to very serious objection from the point of view of the minor. If the hon. the new Minister will read clause 7 with me and examine my comments, it may be that he may be persuaded to recast clause 7, if not altogether to delete it. Now, in sub-clause (2), the rights of the natural guardian have been taken away to alienate the property of the minor, except when he has obtained the previous permission of the Court. In the case of a lease, again, it is confined to a lease for five years at the most. Now, the position is that there are so many reasons why a

minor needs, and has a pressing need for, money. In the case of a minor girl, it may be the question of her marriage. In the case of a minor boy, it may be the question of the boy's education. It may even be that the boy is a debtor and there are pressing necessities and there is the risk of the property losing value where the rights of the decree holder being vested, and the property is likely to be sold for a song. There it becomes necessary to sell a portion of the property in order to meet certain exigencies of the moment. You are taking away even the powers of the natural guardian. Clause 7 confines itself to the powers of the natural guardian. That is to say, you are enacting a law whereby the father is a suspect, whereby the mother is a suspect, and you will not allow the father of the minor boy to part with the property even if there is an imminent necessity, unless an application is made to the Court. The Court, which is already busy, fixes the case for hearing six months hence. It may take a year, it may take more time or it may take a little less, to dispose of the matter, whereas the pressing necessity cannot brook delay. In other words, the father is a suspect, mother is a suspect, but not the Court which is so busy and which has so much work to do. There you say that previous consent has to be obtained first, and previous consent may take a long time in coming.

Then in (b), you say that neither the father of the boy nor the mother of the boy can lease out the property for a period exceeding five years. Now I put it to you; suppose a minor has a good property that is likely to bring in good rent in a town like Delhi, but the lessee says: 'I am willing to give you all this rent provided I get some security of tenure—may be 10 years, may be 15 years—and I am willing to pay to the ward a tempting rent'. The father says: 'Much as I would like it, much as I find it to the advantage of my son, whose guardian I happen to be, the law prevents me, and I have to go to the Court in order to get the permission! Within this time the

prospective lessee may not be able to wait; he may turn to some other property where he can secure a longer period of lease and pay rent.

Therefore, in these two provisions that you are enacting, you are getting unnecessarily suspicious of the father and mother; you are enacting them not to the advantage of the minor but to this detriment. Detriment will follow because of the delay in obtaining permission of the Court. If this restriction had been put on guardians other than the father and the mother, on the guardian who may be a stranger or on a testamentary guardian, I might have been persuaded to accept that proposition, but when you are preventing the father and when you are preventing the mother from disposing of the property, despite pressure on the estate, despite the urgency of the need of the minor, I do not think that you are trying to pass a law which is to the behoof and advantage of the minor.

Then you will kindly see in sub-clause (4) to clause 7 another error has crept in,—but I think that is a terminological error—wherein you say:

"No Court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in case of necessity or for an evident advantage to the minor".

I object to the word 'evident'.

Shri Pataskar: Any suitable word may be considered.

Shri Tek Chand: It should be sufficient 'if it is to the advantage of the minor'—whether the advantage is patent or the advantage is latent. You cannot say that though it is to the advantage of the minor, in so far as the advantage is not evident, the advantage is not visible, the advantage is not apparent, therefore, though principally for the...

Shri Pataskar: The hon. Member is a lawyer. I would say that looking to the provision, he would concede that if it is to be an advantage, then the advantage must be evident and not latent.

Shri Tek Chand: Advantage is an advantage. Therefore, to say that there is an advantage on the face of it, but if you go deeper and then discover the advantage, then that advantage ceases to be an advantage, is not proper. I respectfully submit that you should confine your definition to the expression 'advantage'. You leave it to the Court, you confide in your Courts; let the Court be the judge of what is advantageous. Do not insist that that advantage is only acceptable as an advantage if it is a patent advantage and not if it is a latent advantage.

Then coming to clause 9, I think you have introduced an innovation which on the face of it looks very equitable. I hope the hon. lady Members will not mind it when I subject it to criticism. You say, in the case of a testamentary guardian, he has the permission to appoint anybody as a guardian to his will, but not so if the mother of the child is alive, during her life-time. Kindly remember this. Take into consideration the illustration which I am placing for consideration of the hon. the new Minister. It is this. If the mother of the child is divorced, becomes a widow, re-marries or is divorced and then re-marries, you want her to retain her as the guardian of the minor son from the previous husband to the exclusion of any other relation living. That is to say, you would prefer her to be the guardian of her minor child from her previous husband in preference to the child's grandfather, or in preference to the child's elder brother. In fettering the powers of the testamentary guardian, you may be inflicting in certain cases upon the minor a guardian who will not look after the interests of her ward. For instance, A has a minor son and he leaves lots of properties. Mrs. A becomes a widow and re-marries a pauper—may be because of a love affair or for any other consideration—and she gives birth to three other children from the second husband. There will be an irresistible tendency on the part of this lady who has her own children from the

second husband to give to her children from the second husband something out of the property of the first husband which did not belong to those children. Therefore, this provision requires very careful circumspection before you make it into law.

Then, Sir, whereas you say you are abolishing *de facto* guardians, your clause 11 when juxtaposed with clause 3 presents a conflict. Clause 3 recognises four classes of specified guardians and *de facto* guardians are excluded. Whereas clause 11 recognises *de facto* guardian as a guardian of the person, his meddling with the estate of the minor is excluded. If you are going to accept my suggestion, retain *de facto* guardians. Then this presents no difficulty. But if you are going to abolish the *de facto* guardian, then you have got to revise clause 11 so to prevent any recognition of him.

Shri Pataskar: That is the idea underlying clause 11. If it requires any change in language, we will look into it.

Shri Tek Chand: Clause 11 excludes any interference of a *de facto* guardian with respect to a minor's property. Therefore, you are, by contrast, recognising his status with respect to the person of the *de facto* guardian. This is a matter which requires a careful review and a careful re-examination.

The last thing I wish to submit is with respect to clause 2, not from the same point of view as of the previous speaker, but from a similar point. You are defining Hindus in a very curious manner. There are three classes of Hindus who are going to be governed. I was not aware of any class of Hindus except one. In (a) you say, "This Act applies to any person who is a Hindu by religion in any of its forms or developments". Put a full stop here and I am content. But then, you say, "including Lingayats, Brahmos, Prathanasamajists or Arya Samajists." As Arya Samajist, we would like to be treated as Hindus, not as Hindus by inclusion only. In other words, when you are including

somebody, you are suggesting he may or may not be a Hindu; but in order to apply to him, you propose to stretch the law so as to include him. Speaking of Arya Samajists, as such, you have no right to say they are not really Hindus, but only by stretching the law a little. This clause must go.

In the case of (b), if you are going to have them nominally, then you have got to put them in clause (a). You say, Buddhists, Jains or Sikhs by religion. In other words, you are contemplating two classes in (a) and (b). In (a) you say Hindus as such and Hindus by inclusion. In (b) you say, not Hindus, but persons governed by Hindu law. I am sure a Jaina or a Buddhist will be proud of the fact that he is a Hindu and he likes to be classed among them. My suggestion is that if you could delete clauses (a) and (b) and retain (c) wherein you define a Hindu as any person who would have been governed by Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed, this would serve your purpose completely and wholly without bringing in clauses (a) and (b). This is a suggestion which I commend to the Hon. Minister in all humility, but with all the emphasis at my command.

Then, you have created another difficulty in part (b) of the explanation. You say, the following persons are Hindus by religion within the meaning of this Act (b) says,

"any child, legitimate or illegitimate, one of whose parents is a Hindu and who is brought up as a member of the tribe, community group or family to which such parent belongs or belonged".

No doubt it is seemingly just and appropriate. But you exclude the case of a child with respect to whose upbringing you cannot say whether it is a Hindu upbringing or a non-Hindu upbringing. There is bound to be a natural conflict in the case of a child, especially when he has been living away from his parents and has

been, let us say, in a public school. His upbringing is like that of any other school-fellow or class-mate of his, whether he comes from Hindu parents or Muslim parents. Therefore, this is a matter which also requires a certain amount of re-ve-ting and recasting.

With these observations, I hope that the Select Committee, when they send their report, will be in a position to eliminate the objectionable features.

Shri B. C. Das (Ganjam South): The proclaimed purpose of this Bill is found in clause 13. It is mentioned there that "Welfare of the minor should be the paramount consideration". I would like to examine this Bill in the light of this declaration and see how far this salutary provision is being adhered to in the clauses of the Bill. We should find that out.

The welfare of the children of the minor cannot be considered apart from considering the position of the parents, especially the position of the mother. We should like to get answer to certain salient questions which should form the basis of any important social legislation especially in cases of appointing guardians. We should like to find out answers to some of these questions. Who should be the natural guardian of the minor? Who is best suited to become the natural guardian? Who can, with tenderness and with full devotion bestow care on the minor children? Who can selflessly work for the development of the minor? We require answers to these questions. Whether we are prepared to concede the fact that a woman is competent to manage property; whether a woman can take care of the property of her children, is also a question that has to be answered. The right answers to these questions will lead to right solutions. If, we, like our forefathers of the feudal past, believe that women have no equality with men, that they have not the intellect nor the capacity to manage affairs, that they have not

[Shri B. C. Das]

the wisdom to know what is good even for themselves, then, naturally, we will not find fault with certain provisions of this Bill. But, if we think that women also are endowed with intelligence; women also have the same capacity as men; that they can manage the affairs of the household; that they can also manage matters pertaining to economy and management of estates, then, I am sure, we will not agree with some of the provisions of this Bill. If we believe that "The hand that rocks the cradle rules the world". If we believe that the mother is the real and natural guardian; if we believe that the mother is the only one person who can sacrifice herself completely for the children, who can devote all her time and energy selflessly for the development of her children; if we believe that the child requires sympathetic, tender and loving atmosphere for its development, then, surely, we will agree that the mother should be given a higher position than the father. I think those friends of ours who swear by our *Shastras* also should remember that in the Hindu *Shastras* also the mother has been given a higher position. When we offer *pindas* we offer more *pindas*—two or three—to the mother while we offer only one to the father. The mother is given a higher status than the father because it is the mother who can sustain the children. Of course, this Bill tacitly makes an admission that the mother is more important than the father. In this case there is a provision that till completion of the age of three a child should be under the care of the mother. Why? Because you tacitly admit that the mother alone can bestow more tenderness and more care on the development of the children than the father. But, when the question of grown-up children comes, the masculine superiority complex overpowers reason. You consider that a woman cannot manage the affairs of the son, cannot look after the interests of the minor and she is

incompetent. This is something of the 18th century mind which can befit the members of the Hindu Mahasabha but cannot befit those who swear by progress; those who stand for advancement of society.

I need not go into those facts to prove that a woman deserves equal status with men. All the myth of masculine superiority has been long since exploded. Therefore, I need not go into that aspect of the question now.

In the other House, as also here, it has been admitted that this Bill is a modest attempt at codification of the existing Hindu law. There is nothing very much important or new in it. The same Hindu law that exists today is sought to be codified. Therefore, I do not think why our friends of the Hindu Mahasabha should get so much upset. There is nothing here to upset the apple-cart of orthodoxy.

Only on two points some improvement is sought to be made. One is: *de facto* guardians are sought to be abolished. The second is, the Hindu father who has now the right of excluding the mother from guardianship of the person of the minor after the death of the father will forfeit that right. But, side by side with these modest provisions we find certain retrograde provisions also introduced. One is: the father or the natural guardian when he ceases to be a Hindu will cease to be the natural guardian. According to the existing law, as has been admitted by the Law Minister in the other House, if a person ceases to be a Hindu or he changes religion, the factor of his changing religion will not be considered in his functioning as the guardian of the minor.

An Hon. Member: That is Hindu Law.

Shri B. C. Das: That is Hindu law where in practice we find persons who are not Hindus acting as guardians of Hindus.

Shri Tek Chand: How many?

Shri B. C. Das: As a compromise with reaction, getting panicky at the

threats of my friends like Shri V. G. Deshpande, the Law Ministry has introduced a retrograde provision and has added that the mere fact of changing religion will automatically deprive the father of functioning as guardian, as if the only purpose of the minor is to develop as a Hindu and not as a citizen of India or as a man developed to full stature. In the existing law there is no stipulation laid down which establishes the duty of the guardian of a Hindu minor to bring up minors as Hindus. But this clause has been introduced now. These are the two provisions, retrograde provisions, now introduced in this year of grace 1954. Unfortunately, what was not there in 1920, what was not there in 1930, and what was not there even in 1940 is sought to be introduced today to placate orthodoxy and satiate reaction.

That is the unfortunate thing. So what we find ourselves is, when a social measure is introduced by the Government, we will have to welcome it, but we cannot whole-heartedly welcome it because it comes limping on crutches and loses all its grace. That is the unfortunate aspect of it. Unfortunately, because the framers of the Bill lack the social perspective, by adding certain extraneous factors, forget the main purpose of the Bill. The main purpose of the Bill, as I said, is proclaimed in clause 13, that the welfare of the children or the minor should have paramount consideration. But, here we do not see it. You are bringing in two factors irrelevant to the main purpose. Prejudice against women is brought to the fore while drafting the Bill. Your anxiety to placate reactionary forces is brought into the fore when you draft the Bill. That is why the main purpose, the paramount purpose of safeguarding the welfare of the minor is relegated to the background.

I would like to examine some of these clauses to prove my contention. Clause 5 lays down that the father, and the mother after the death of the father, should be the guardian of the minor. But, the mother can only be

the guardian of the person of the minor. The mother cannot be the guardian of the property of the minor; that is the provision there. She cannot appoint a testamentary guardian for the property of the minor. If the father has already appointed a testamentary guardian even for the person of the minor she cannot appoint a testamentary guardian. These are the provisions you find in the Bill. Because you consider women to be inferior to men, you have added these provisions. Let us be realists; let us have a scientific outlook when we introduce social measures; let us not be swayed away by prejudices, by obscurantist ideas, by the fear of reaction which may threaten to scare away voters; let us try to view things from a scientific perspective. Is not the mother more solicitous, more sympathetic and more devoted than the father? Whom would the child prefer? If the child is asked this question, the child will naturally and certainly prefer the mother to the father. Why? Because the mother bestows her tender care and loving affection on the child. Why do you allow a child under three to the care of the mother? It is because you admit that the mother alone can bestow tenderness, love, sympathy, consideration and affection on the child and can help the growth of the child.

Mr. Chairman: Will the hon. Member avoid repetition?

Shri B. C. Das: I am avoiding it.

Shri P. Subba Rao (Nowrangpur): There seems to be no quorum in the House.

Mr. Chairman: Let the bell be rung. The hon. Member may now proceed.

Shri B. C. Das: If we give up our idea or sense of superiority of the masculine sex, then we will really find the right solution as to who should be appointed the guardian. Because of this compromising attitude of Government to reaction, they are landing themselves in a ludicrous position. In certain other measures there are property rights given to women, daughters, wives, etc., but as if in the

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same breath they say here that the person—mother, daughter or wife—who will be able to manage her own property, is not able to manage the property of the child. Is there any logic in it? Is it because the mother is less conscientious and less solicitous than the father that she cannot have the right to manage the property of the child? The person who can manage her own property can also manage the property of the child, and especially the mother would be a more conscientious person than the father so far as guardianship of the property is concerned. I can quote instances of women being more capable of managing economic affairs than men. We also know that in many cases where the estates were on the brink of bankruptcy by the thoughtless actions of the husband, under the management of women they were restored back to prosperity. We also know that women are better house-keepers; they know how to manage the household; they have a sense of frugality and it is the men who squander away property. That is why a great thinker of our age, George Bernard Shaw, when he wanted to address intelligent people, found only women as intelligent persons who can understand the difficulties of society. As you know, in Kerala, Manipur and other places it is women who manage property with credit. We should not forget the masculine indifference. Suppose a person gets married a second time and he has a son already, what happens? He neglects the son and leaves him to the tender mercies of the step-mother, but you will find that a woman will never leave her son, even when she is married a second time, to the tender mercies of the second husband, and for the sake of the child she will even be prepared to desert her second husband.

Another aspect I want to emphasise is this. Why should we introduce a retrograde provision by asking the father to remain a Hindu? If he changes his religion, why deprive him of his right to become the guardian

of the child? Does he cease to be a father? Does he cease to be a natural guardian? According to the present law, a person even if he changes his religion, he can continue to be the guardian. What do you require? A Hindu or a citizen? What is the purpose of the Bill? If you require the healthy development of a minor into a good citizen, and if your idea is only to bring about this development, even the fact of the change of religion should not be an impediment to his or her discharging the responsibilities of natural guardian. Why have you brought this in 1954? From the middle of the nineteenth century the practice is in vogue that even after a change of religion the person continues to be the guardian and his right has never been challenged. Today, why is this change brought about? It should not be done.

You are against change of religion, what does it mean? Supposing a person ceases to believe in the Hindu religion, he ceases to have faith in the Hindu religion, becomes an atheist or a rationalist, will he cease to be a Hindu? This has not been defined. Suppose a man develops a scientific outlook and does not believe in any religious practice, will it deprive him of his right to function as a guardian? Secondly, you want that the child should be brought up as a Hindu. What do you mean by 'bringing up the child as a Hindu'? Do you want that the father or the mother should every day take the child to the temple and teach him to make obeisance to the deity and chant *mantrams* there? Do you want that the child should be brought up like an orthodox Hindu? Today we all know that those who are educated very rarely go to temples or pay homage to deities. Will they be disqualified by this provision for discharging the duties of a guardian? If a particular son develops rational outlook or scientific outlook, will the father be branded as one who has discharged the responsibility of developing the child as a Hindu?

One thing of course I can concede: that a father who has changed his religion will have no right to force his own son to change his religion. The child, after he develops into a major, after he attains age and uses his own power of discretion and manages his own affairs, can change his religion. He cannot change his religion during his minority even though his father or his guardian changes his or her religion. This can be sensible and reasonable, but if you say that the mere fact of the guardian changing the religion will deprive him of his right to become the guardian of the minor it means that you are really not in earnest about the welfare of the child but merely in your confused outlook, you want to say that the child should develop into an orthodox obscuratist, paying homage to reaction, revivalism or reactionary revivalism in the land. That is the worst aspect of this Bill. I should say that the Government, when they introduce social measures, should not be timid, should not be afraid. They should be bold, they should have a clear perspective of what they intend to do. Our friends of the Hindu Mahasabha might cry hoarse and say that religion is going to pieces. Religion can take care of itself. No religion can sustain itself if it remains stuck up in the mud, if it cannot move with the people, if it cannot keep pace with the times, and a religion which cannot keep pace with the times is dead; it means its death. But if a religion can grow and flourish and change and modulate itself with the changing rhythm of the times then it can serve the people.

With these observations, I would like to say that I support this Bill, though it has defects—and I hope the Select Committee will look into the social aspect of the Bill with a clear social perspective and will analyse every clause and give the mother her rightful place and also get rid of the obscuratist provisions that are sought to be introduced to placate reaction today.

Shrimati Jayashri (Bombay-Suburban): I am thankful to you for giving me this opportunity to express my views on this measure. I congratulate the Minister for bringing in this legislation which is in line with the other progressive measures. This Bill has come to recognise the right of mother as the natural guardian of the child. However, I think that the paramount and important consideration should be given to the interests and welfare of the child rather than to the rights of the parents. In modern times, in most of the cases in courts, we find the courts recognise the mother's right and give the custody of the child to the mother. I should like to mention a few cases in which the custody of the child was given to the mother till the child attained 18 years. This case has been cited in *Kaliappa Goundan vs. Valliammal* in *Madras in the Indian Law Reports* 83, of 1950. Now, in clause 5, I would like to suggest an amendment. The amendment that I suggest is to clause 5(a). After these words, "(a) in the case of a boy or unmarried girl—the father," occurring in clause 5, I would like to suggest this: "and in case the father, though living, is unfit or unwilling or incapable,—the mother: provided that the custody of the minor who has not completed the age of fourteen years" etc. 14 years, especially for the girl, is the right age. Till that time, she should be with the mother. You are aware that the Mus'im law allows the custody to the mother of her son until the age of seven and the girl till she attains the age of puberty. So, I would suggest that we could also introduce this measure in our legislation. Even Parsi and Christian laws follow the laws similar to the English law. There also, the age-limit is higher than what we have in our present legislation.

The other thing that I would like to suggest is with regard to the proviso under clause 9: "Provided that, nothing in this section shall be deemed to authorise any person to act as the guardian" etc. I should say that

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this is a welcome measure, because till now, the father can deprive the mother by will and I am glad that we have got this provision so that the father cannot deprive the mother by will. I welcome this as a progressive measure.

I would next like to mention a case, *Saraswathibai Shripad vs. Shripad Vasanji*, Bombay 1941, reported in *Indian Law Reports* 455. It was held that the "father is the natural guardian of a Hindu child; if the mother is suitable and living, it is impossible to find an adequate substitute for the custody of a child of tender years and that it is in the interests of the child whose interest should be the paramount consideration with the courts, that the mother should have the custody." So all these things show that the mother is, for her love and care, the best guardian of the child. I am glad that this measure has given the right to the mother also. I hope that the Select Committee will also continue this right and raise the age-limit of the minor child.

Shri D. C. Sharma (Hosharpur): Some speeches have already been made on this Bill and all those speeches have struck very different notes. I have listened to the voice of Hinduism with which I have not been familiar all these years. I have listened to the voice of extreme legalism which does not suit a person like me who is at best a layman in these matters. I have also listened to the voice of extreme "progressivism" which I believe exists only in the Utopias written by some writers of very high merit. I want to bring to bear upon this Bill a modicum of commonsense.

I want to judge the Bill only on three counts. This Bill is called the Hindu Minority and Guardianship Bill. Evidently, it has three main pillars. First of all, there is the word Hindu in it. Then, there is the word minority. Then, there is the word guardianship. I would like to confine

my remarks to these three words which are the basic words in this Bill.

It has been said that this Bill is a great onslaught on Hinduism. What is Hinduism in the eyes of those who think that this Bill is going to be disruptive of Hinduism? A very narrow, limited, circumscribed Hinduism; Hinduism which may have stood the test of social forces a thousand years ago, but a Hinduism which cannot stand the social and economic and moral challenge of society today. If I have understood Hinduism rightly, I can say that Hinduism is a very comprehensive word. It is an all-inclusive term. Just now, an hon. Member was saying, what happens if he becomes an atheist. I tell you, in the Hinduism which I know, there is room for atheists; there is room for rationalists there is room for all kinds of people. Hinduism is not a religion of the closed door; it is a religion of the open door. It is a way of life. It is not confined to dogmas and all that kind of things, to which some of my hon. friends are bound hand and foot. I congratulate the hon. Minister for making the definition of Hinduism as wide as possible and as comprehensive as possible. I think I know why these words, a Lingayat or a follower of the Brahma, Prarthana or Arya Samaj have been included in this Bill, I think I am not giving away a secret when I say that there was a time when the Arya Samajists wanted a Special Marriage Act for themselves. There was a time when the Brahma Samajists had a Special Marriage Act for themselves. Of course, I am not an authority on Lingayats and other castes. But I can say that there are some persons who think that the followers of these isms are not true followers of Hinduisms. The orthodox people think like that. According to this measure, all these persons have been brought within the fold of Hinduism: of course, Hinduism in a social sense. I would therefore say that this Bill has done a distinct service to Hinduism by making the fold of Hinduism as wide as possible.

Again, it has been said that Hinduism is a religion where you cannot have any conversion or re-conversion. Of course, there are some reformist organisations which believe in that. I see even these have been considered in clause (c). I would therefore say that so far as the Hindus are concerned, this Bill is not going to hurt their susceptibilities in any sense of the word. No Hindu is going to think that a blow has been made on his religion. I think that all Hindus who believe in reforms of the modern age will know that in this Bill a great service has been done in the sense that the definition of 'Hindu' has been made as wide as possible in the context of the present age.

A distinct service has been done to the minors by defining the three classes of guardians. It is said that the *de facto* guardians have not been recognised. The *de facto* guardians may have their champions. But, I must say that if a survey is made in terms of this Bill in any village or town, it will show that these *de facto* guardians have sinned very often against the interests of the minors. I do not want to enumerate the relationships which exist among the Hindus. I do not say that a joint family which consists of 100 members consists of the true followers of Shri Ramachandra and that they are going to do only those things which are enjoined by our Rishis and Philosophers and prophets. It may be possible. But, my own experience and the experience of any one who walks with his eyes and ears open in any village or town will prove to him that the only real guardians of a minor in terms of relationship are his father

and mother. I do not want to say anything about the paternal uncle, of grandfathers, maternal, or paternal. Very often, minors have suffered at the hands of the *de facto* guardians. Therefore, this law has done well in limiting the scope of these guardians. At the same time, I would say that the three classes of guardians that have been given here are the proper kind of natural guardians, father, mother and testamentary guardian. A person who is going to make a testament knows who is his friend and who is going to look after his relations after he has gone.

Then, there are the guardians who are appointed in the Courts. They are there under oath to behave and if they do not behave, the arm of the law is there to catch hold of them. In the same way, where there are testamentary guardians, the social consciences of the people who live around are there and they will catch hold of them. The natural guardians are there, and the blood in their veins is there to curb any tendency on their part to treat the minor in a very adverse manner. The other kinds of guardians are not going to act in the best interest of the minors.

Mr. Chairman: The hon. Member has spoken for about ten minutes. I think he can continue for five minutes tomorrow.

In the motion already placed before the House, the thirtieth Member on the Joint Select Committee will be Shri P. R. Kanavade Patil in the place of Shri N. C. Chatterjee.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 9th December, 1954.