LOK SABHA

Tuesday, 17th July, 1956

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(*See* Part I)

12 NOON.

PAPER LAID ON THE TABLE

REPORT OF INDIAN DELEGATION TO NINTH WORLD HEALTH ASSEMBLY

The Deputy Minister of Health (Shrimati Chandrasekhar): I beg to lay on the Table a copy of the Report of the Indian Delegation to the Ninth World Health Assembly, held in Geneva in May, 1955 [*Placed in Library See No.* S-240/56]

PETITION RE: STATES REORGANISATION BILL

Shri Sivamurthi Swamy (Kushtagi) I beg to present a petition signed by 6668 petitioners relating to the States Reorganisation Bill, 1956.

HNDU MINORITY AND GUARDIANSHIP BILL—*Concld.*

Mr. Speaker: The House will now take up further consideration of the motion for consideration of the Hindu Minority and Guardianship Bill as passed by Rajya Sabha.

I may inform the House that the Business Advisory Committee at its sitting held on the 5th September 1955, during the Tenth Session had recommended three hours for this Bill. The time allocation was not, however, reported to the House as the Committee had further recommended that the Bill might not be taken up during that session.

I take it that House agrees with recommendations of the Business Advisory Committee in respect of this Bill, namely, that three hours may be allotted for this Bill.

Shri N. C. Chatterjee (Hooghly): We have already saved about 2¼ hours yesterday. We finished one Bill very quickly. I am suggesting that a little extension of time may be allowed for this Bill, as it is an important Bill. There are some clauses which require very careful attention. I hope the House will agree that we should extend the time by 1 or 1½ hours.

Shri Raghavachari (Penukonda): I also want an extension of time, excluding the half hour already spent.

The Minister of Legal Affairs (Shri Pataskar): I have no objection.

Mr. Speaker: We had put down 3 hours. We will allot 4 hours now.

Shrimati Renu Chakravartty (Basirhat): There are a number of amendments. Therefore, 4 hours will be the minimum that will be required, because the second reading should be taken clause by clause.

Shri N. C. Chatterjee: Even if we extend it by 1½ hours, we shall have saved 1 hour, because we saved more than 2½ hours yesterday.

Mr. Speaker: I take it that the House is agreeable to extension of the time from 3 to 4½ hours. We spent half an hour yesterday. How long will the general consideration take and how much time should be devoted to clause by clause discussion?

Shri U. M. Trivedi (Chittor): Three hours for general consideration.

Mr. Speaker: That means 1½ hours for the clauses. Whatever time remains will be for the third reading.

Shri Pataskar: There should be more time for the clauses than for the general consideration, because so far as the general consideration is concerned, there are only two points of considerable importance.

Sardar Hukum Singh (Kapurthala-Bhatinda): I may point out that yesterday there was not much willingness on the part of hon. Members to take part in the general discussion. So perhaps they might reconsider the time allotment.

Mr. Speaker: How many hon. Members like to take part in the general discussion?

Some Hon. Members— stood up.

Mr. Speaker: Let us have 1½ or 2 hours for general discussion and 2 hours for the clause by clause consideration. If we are able to save any time in the clause by clause consideration, it will be devoted to the third reading.

Shri N. C. Chatterjee: Yesterday, I was making some submissions on clause 6. Clause 6 says:

> "The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property, are—
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> (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
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> (b) in the case of an illegitimate boy or an illegitimate unmarried girl the mother and after her, the father;
>
> (c) in the case of a married girl—the husband:"

There is a serious lacuna which I shall ask the hon. Minister to consider. Supposing a young girl is married, automatically the husband becomes the guardian. But supposing she becomes a widow—the husband dies—there is no provision. So something has got to be done there. because if you look at clause 6(a), only in the case of an unmarried girl, the father, and after him, the mother, will come in. Sub-clause (c) says that the husband shall be the natural guardian in the case of a married girl. Therefore, there must be some provision in the case of a girl who is married but who is widowed later. There are many such cases, as you know, in this country,

There is one other clause which makes me thoroughly unhappy, namely, clause II. It makes a serious departure from the present law.

> "After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor."

Therefore, we are saying that only the father and the mother shall be the natural guardians and they shall have certain rights, but apart from them, we practically put out of the pale of guardianship anybody else.

First of all, I will deal with the guardianship of wife. I am reading from Mayne's *Hindu Law and Usage*, 11th edition. According to it, the husband is the lawful guardian of his minor wife and is entitled to require her to live with him, however young she may be, unless there is a custom

enabling the wife to live with him until she has attained the age of puberty. After the husband's death, the guardianship of the wife, if she is a minor, devolves on the husband's relations in preference to the paternal relations. You know that has been the Hindu law and it has been settled by a number of cases. I think it was decided in the year 1889 in 16 Calcutta 584. Since then, for the last 70 years, this has been the law in India, that if a girl becomes a widow and if she is a minor, then the guardianship of that wife will develop on the husband's relations. Generally it devolves on the *sapinda* relations. This is a very important point, and I shall ask the hon. House to consider this matter. Specially in unfortunate cases of kidnapping and abduction, this point comes up. I am reading one judgment delivered by Mr. Justice Rattigan, who was a judge of great experience. He held in AIR 1915 Lahore 390(2) that the husband's relations, if any, exist within the degree of a *sapinda*, are the guardians of a minor widow in preference to her father and his relations. This is from the Lahore High Court. If you go to Calcutta, it is given in 16 Cal. 584. This point becomes very pertinent in the case of molestation of women. Unfortunately, such cases happen sometimes.

> "Where a minor Hindu widow takes up her residence with her deceased husband's mother with the consent, express or implied, of her husband's brother, the husband's mother is the lawful guardian of the girl for the purpose of section 361 of the Indian Penal Code." 1915 Lah. 301).

I would like the House to consider that as this law stands, if you pass it in this form, the position will be that all these unfortunate girl widows will have no guardian. Will it be said from tomorrow or from the date of commencement of the Act that if there is any case of kidnapping, then the accused will be at liberty to say that there is no lawful guardian? Because you are saying here that there is no question of any other guardian at all. I am submitting that there is a lacuna which requires careful consideration.

Shrimati Renu Chakravartty has made a suggestion in respect of sub-clause (a) by means of her amendment. Sub-clause (a) of clause 6 says:

> "in the case of a boy or an unmarried girl the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."

She has recommended, and there is something in her point of view which merits consideration, that this age ought to be raised because 5 years seems to be too low.

There is one other point affecting which I want the hon. Minister to consider and that is this. Should not there be some expansion of the list of natural guardians if you shut out completely the de *facto* guardians?

Mr. Speaker: What happens if there is a joint Hindu family and the father is there and the son has died just leaving his widow and children?

Shri N. C. Chatterjee: The Bill as passed by the Rajya Sabha, in clause 6 says:

> "The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property)....."

Therefore this Act would not operate in regard to coparcenary or joint family property. At least so far as property is concerned, it would not come within the purview of clause 6.

Shri Patnaik: At this stage may I point out to the hon. Member that we are all interested in seeing that there is no lacuna? The hon. Member is aware that under the existing law, only parents are the natural guardians. In the case that was just now referred to, it was held that in the case of a minor widow her

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mother-in-law was her *de facto* guardian. What does clause say? It says:

> "After the commencement of this Act, no person shall be entitled to dispose of, deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor."

So far as such cases are concerned, I do not think the wording of clause 11 will stand in the way at all. What is said is that *de facto* guardians shall not automatically be entitled to dispose of the property of the minor on the ground that he or she is the *de facto* guardian.

Mr. Speaker: What about personal guardian? What he means is that if a kidnapping case arises, who will be the personal guardian.

Shri Pataskar: Under the present law the natural guardians are the parents. This clause only says that after the commencement of this Act nobody shall be able to say that he can dispose of the property on the ground that he or she is a de *facto* guardian.

Shri Altekar (North Satara): Also deal with.

Shri Pataskar: We are on quite a different point now.

Mr. Speaker: What about the personal guardian?

Shri U. M. Trivedi: The point put by the hon. Speaker is, what about the guardian to the person of the minor.

Shri Pataskar: Supposing there is no natural guardian and there is no court guardian; is there anything to say that anybody is prevented from being the guardian of the person of the minor or from taking care of the minor? Let that ruling be carefully looked into. I believe there would be no difficulty.

Shri N. C. Chatterjee: I am asking the hon. Minister to carefully remember these difficulties which may arise and I am quite sure that he will give some thought to it. Kindly see clause 11. It says:

> "After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor."

The present law is that a de *facto* guardian of an infant's estate has, in case of necessity or benefit to the minor, power to sell or mortgage his property. This was laid down in that famous case of Hunooman Persaud *v.* Mussummat Babooee in 1856. From that date up till today this has held the field. Otherwise what happens? Supposing the father is dead and the mother is dead and there is the grandfather. The grandfather is a man who has got no property but there is ample property of the minor. Supposing the son had left property which has devolved upon the minor and then a daughter has to be married or some money has to be paid for some purpose or for educating the son or for sending him for foreign studies, then he has got no power to raise money or do anything of the kind. What I am saying is, either extend the list of natural guardians or you do some thing for the purpose of recognising this point of Hindu law. It is quite fair that a *de facto* guardian should have that power in case of necessity. These are generally the cases of the grandfather or the grandmother when the parents are dead or the case of an elder brother or of a paternal uncle who is the *karta* of the family. In such cases, it will be desirable for the House to consider whether it should completely do away with the present law.

In a recent Federal Court judgement, Chief Justice Kania said that the expression de *facto* guardian was

not quite proper. But, we know what a *de facto* guardian is. In the case of absence of the natural legal guardians, when you have got the grandmother or the grandfather of a minor or an elder brother, then, he or she is the person to deal with it. That is all right. You know this point came up some years ago and was considered at great length by the Madras High Court, by Justice Odgers and Justice Viswanatha Sastri. It was held:

> "An alienation by a de *jure* guardian or a *statu* guardian is voidable and as the powers of natural and *de facto* guardians are similar, a transaction entered into by a *de facto* guardian not for necessity is only voidable at the option of the minor on attaining his age. But an alienation for necessity is binding."

The other point is a little more serious. Kindly see what you are doing Clause 8 deals with the powers of the natural guardian. You say that from tomorrow there will be no *de facto* guardian. In clause 8, you say that even a father and a mother can not do anything with regard to the property of the minor. Supposing the son or the daughter has got some property from the grandfather or grandmother—may be a maternal grandfather or grandmother. Suppose for the girl's marriage or for the boy's education some mortgage has got to be created, then the natural guardian, according to sub-clause (1) of clause 8, has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benfit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant. So far as it goes, it is consonant with our concepts of Hindu law. But, look at sub-clause (2). It says:

> "The natural guardian shall not, without the previous permission of the court,—
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> mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the movable property of the minor."

It also says:

> "or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority."

I am appealing to your experience and to the experience of lawyer members of this House. You know what happens in these guardianship proceedings. When an application is made, it is referred to some officer, generally, the Nazir of the District Court and certain investigations or enquiries start. If you are actually confining natural guardianship only to the father and the mother and do not allow anybody else to function, is there any necessity for actually asking them to get the imprimatur of the court for the purpose of raising some money for necessity, for education and other things which are absolutely beneficial and for the welfare of the minor? I submit that you should not drive the parents to a court of law.

Mr. Speaker: Does the hon. Member suggest that the natural guardian may dispose of the private property of the minor without the permission of the court? Under the existing Guardians and Wards Act a court can appoint a guardian for the private property of the minor.

Shri N. C. Chatterjee: Today the father and mother have got certain rights. You say that nobody except the father and mother, shall be one natural guardian clothed with certain powers. The grandparents or the paternal uncle or an elder brother who is there will be incapacitated from dealing with the property. But if you confine it purely to the parents, then I submit with great respect that it is not necessary to drive them to courts of law. It may be that somebody will put in an objection and whenever

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there is an objection, it means a protected area. I respectfully submit that the Hindu law is perfectly clear in this respect. I am not trying to expand that thing. What I am saying is that the natural guardian of a Hindu minor has power to sell or mortgage any part of the property in case of necessity or benefit of the minor and that is a settled law from Hunooman Persaud case up till today. All High Courts are following it not because it is a Privy Council decision but because it is a beneficial provision. Of course, Hndu law as it stands gives the *de facto* guardian also the same power. Assuming that you eliminate the *de facto* guardian from having that power and that you incapacitate him completely, then I submit that there is no object in driving the parents to the courts of law for the purpose of getting the sanction. As you know, the sanction is more or less a formality and sometimes a costly formality, and I do not know what benefit it will do. I do not think any judicial authority or any court authority can be more solicitous of the real welfare of the infant than the father or the mother. I submit, therefore, that this point should be carefully considered, that is, whether it would be desirable to put them on the footing of certificated guardians under the Guardians and Wards Act. There may be also cases of dissipation of the minor's property, but I do not think that it is the case when the guardians are the father and the mother. Generally in cases where there has been dissipation of property or misappropriation of assets or diversion of usufructs, it has been done by people other than the father and the mother or by *de facto* guardians. If in its wisdom Parliament wants to have a clause like clause 11, then I submit that there is no necessity for clause 8. You should not make the father and the mother suffer from the same disabilities from which every certificated guardian under the Guardians and Wards Act suffers. There is no necessity for reducing them to that position and there is, therefore, no need for having clause 8. Clause 8 can, therefore, be deleted. Of course, if you expand the category of natural guardians, then that is a different point. I would refer you to some of the dissenting minutes and they have also been saying that this will be operating very harshly. I think, there is some force in that observation. Therefore, the House should be perfectly careful before it allows this thing to be done because it means more litigation and more cost.

I was reading this morning a book recently published by Sir Ivor Jennings containing the lectures delivered as Alladi Krishnaswami Lecturer in the University of Madras. Sir Ivor Jennings has said that he finds that a major industry in this country is litigation and it is so because the Constitution of India is so voluminous. It is on account of that constitution that this industry will thrive. He has said that he had been a Vice-Chancellor and a Professor for many years and that his only satisfaction is that due to the Constitution being very big and voluminous, the longest and the biggest in the world, some of his students are getting something out of this industry. I submit that industry should not flourish under clause 8 at the cost of the Hindu minor. Therefore, you should not drive every father and mother even for the purpose of raising money for marriage or for education of the minor. That should be left to their discretion and it should not be made compulsory for them to go to court. This invocation of the jurisdiction of the court should not be made compulsory and it really does not mean much. Therefore, I submit that it is not fair to have this compulsory access to court.

Shrimati Renu Chakravartty: This matter is the least controversial of the Hindu Code, and it deals with the Hindu minority and guardianship. This is a very important Bill because it deals with the upbringing of young

minors at their most impressionable age, and hence we are to give great thought to it. Not only have we to see to the protection of the material interests of the minor but also we have to ensure that we give to him an environment of affection, understanding and well being in which he or she can flourish into a useful citizen of this country. As such, it is a very important Bill.

I would, however, have liked that the Adoption Bill which is to be introduced had also been there before us because I would like this House to remember that up till now, no female child can be adopted according to Hindu law. Up till now only a male child can be adopted, and as such, over here the guardianship clause naturally deals with the guardianship of an adopted child only if it is a male child. Therefore, I feel that if the Adoption Bill also had been passed or been there for us to consider, we would also have been able to include the case of the female adopted child, and its guardianship could have been included over here.

After the Bill had gone to the Joint Committee, there were certain very welcome provisions included in the Bill and I personally am in favour of having done away with the *de facto* guardianship. Some pertinent questions have been raised regarding the case of minors who have neither father nor mother. What will happen to them? This is a very pertinent question. There is, of course, the testamentary guardianship, and I am glad that the Joint Committee has given in clause 9 the right to the mother also to appoint a guardian. The Bill has ensured that the mother's right of becoming a guardian cannot be taken away by the father by appointing a guardian by will. This, I think, is a good point. I am also glad that Joint Committee and Rajya Sabha have also given the right to the mother both over the person of the minor as well as the property, under clause 9. This, I think, is also something that had been propounded by many of us in the stage when the Bill was referred to the Joint Committee.

There is also court guardianship, but my point is that in most cases, people will not like to go to court. In such cases, what will happen? Normally what happens is this. Whether the list of natural guardians is expanded or not, the ties of natural affection lead the relations to look after the child—it may be the maternal grandfather or paternal grandfather or the uncles. The ties of affection are the ties which really bind the family of those who are nearest to them to look after the child. If there is no tie of natural affection, making a legal provision and forcing them to take up guardianship, I think, does not improve matters because we have seen the cases of unwanted children. Therefore, these are unfortunate cases, and I think that expanding the list of natural guardians will not improve matters very materially in these unfortunate cases.

What is important, however, is this and it is a point on which I want to dilate and request the House to consider it very seriously. The one point on which I would like this Bill to be changed is the question of the custody of the minor child. This is a point which I emphasised even during the Hindu Marriage Bill. It is very important that a minor child should remain in the custody of the mother. Shri Chatterjee has differed from me on many other points but he has on this point felt the same way. This Bill seeks to give to the mother the custody of a minor till the age of five. Whether the father is the guardian or not, the custody of the child should always be with the mother till a much later age—I should say, till the child becomes a major. But if the House feels that a boy of sixteen or seventeen could not so well be controlled by the mother and that it is better to have a man to look after him, I would agree to the amendment of Shrimati Jayashri to the effect that the custody of a minor who has not completed the age of 14 years shall normally be with the mother. The

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influence of the mother is very important. I know certain cases. Often the court decides correctly and gives the child to the mother. But, there have been cases where it has decided otherwise because a mother happens to be poorer than the father and he argues that the child would not be brought up according to the status to which he belonged, in such cases the child was given over to the father though he was a totally bad person and was unfit to bring up the child in the proper manner. That is why I feel that clause 6(a) should be changed and I would urge the House to consider this point very seriously.

Then, there is the case of the married girl whose natural guardian is the husband according to this Bill. Many speeches have been made in both the Houses pointing out that in most cases the age of the daughter, when she is married, is about fourteen. That is the law also.

Mr. Speaker: Fifteen is the age.

Shrimati Renu Chakravartty: It strengthens my contention. In this two or three years' period, if she is in a position to indicate her mind whether she wants her father to continue to be her guardian during this period, she should be able to do so. I feel there should be some sort of an amendment that in the case of a married girl the husband and the father should jointly look after the property of a married minor girl unless specifically desired by the minor girl that the father should remain the sole guardian of her property till she becomes a major. This would meet the objections raised by the various speeches in both Houses.

In clause 6 it is said that no person shall be entitled to act as the natural guardian of a minor under the provisions of this Bill if be ceased to be a Hindu. The natural guardians are the father and mother. Nobody else is included here. I cannot understand why a person who changes his religion is automatically supposed to change his attitude or affection towards his child. After all thereare the natural ties of blood, birth affection and it transcends those of the religion. Religion deals with one's relation with God but the relation between a father and his children is something that cannot be transcended by a change of religion. I may become a Christian but yet I may continue to love my children with the same affection as I did when I was a Hindu. When we are accepting more and more the secular idea, this clause should not be allowed to stand. Similarly it is one of the duties which have been laid down by this Bill that a guardian must bring up the minor as a Hindu. That may be all right. If he is born a Hindu, until such time as he is able to make up his mind as to what religion he should belong, he should be in that fold. But we should also enjoin that he should also be brought up physically and morally healthy.

According to clause 8, the natural guardian cannot, without the previous permission of the court, mortgage or transfer or sell the immovable property of the minor. Many speeches have been made that the movable and immovable property should be brought within the scope of this clause. After hearing Shri Chatterjee I see that there is some logic in not including the movable property. The natural guardians have been restricted. We do not expect them to fritter away the money that is there. For the education of the child or for the marriage of a daughter, the mother or father will have to go to the court and get the permission. Of course there are exceptions and there may be fathers who squander away the money of the children. But generally, it is not so and it should not be necessary that he or she should take the previous permission of the court provided the disposal of immovable property should not only be voidable but it should be void if it contravenes sub-clause (i). The controlling factor should be that if there is a

contravention of sub-clause (i) then the transaction becomes void if the minor or any person claiming interest thereof makes an application to the court and shows that it contravenes the provision here. The parents should be able to incur expenditure for certain justifiable causes such as the upbringing of the child or the marriage of the daughter. There is also one other case which is a little complicated. There may be a case of a father who may have minor children by his first wife and he may marry again. Yet, according to this Bill, the father is the natural guardian. It often happens, in the presence of the step-mother, one is not able to do the justice which is due to the child. In such cases it often happens that a much better guardian would be the maternal grand parents. In actual life also we find that this is so. So I feel that in this case some sort of a right of appeal should be given for a court to appoint a natural guardian. If they think that the children are being neglected then they may decide that the maternal grand parents or the maternal uncle may become the natural guardian of the children even when the father is living.

Shri Pataskar: In such cases the maternal grandfather can easily apply under the Guardians and Wards Act and get himself appointed as the guardian. There is a clause for that. This is only about the natural guardian and anybody can be appointed in the best interests of the minors.

Shrimati Renu Chakravartty: If that is so, then of course I have no objection. I was feeling, in the case of the father marrying again or the mother marrying again, the children may be neglected even under the father or the mother and as such some sort of a way out should be there. If it is already there in the law, then it is all right.

Also, I had been suggesting—I do not know what is actually there in the Guardians and Wards Act—that children over the age of 10 should have the right, if the father marries again, to choose their guardian. Some such sort of thing should be there so that in such cases the children could be saved from being ill-treated even if they were under the guardianship of their father.

With these few words, Sir, I hope that this House will consider this very important Bill in the light of the suggestions that I have made. I again want to place before this House the question of considering the custody of the children remaining with the mother ordinarily up to at least the age of 14, which is the amendment that has been proposed by my hon. friend, Shrimati Jayashri. It is a very important thing, very important for the well-being of the children and the natural course of affection between the mother and her children.

Shri Raghavachari: Mr. Speaker, Sir, I feel that the general prejudice against the way in which the minors' properties have been dealt with so far under the existing law, often leaving very little to the minors and wasting away much of the property, has led to be the basis of this legislation. But one should naturally feel that this suspicion or dissatisfaction of the existing state of affairs must not lead us to go to the other extreme and provide safeguards which practically make the life of the minors very difficult. In fact, the existing system now provides natural guardians, *de facto* guardians, court guardians and testamentary guardians. These are the four types of guardians that now exist. The present Bill does away with *de facto* guardians, and all those who are interested in the welfare of the minor in the absence of natural guardians, which list included not only the father and mother but a few more under the existing law.

Mr. Speaker: It does not prevent the existence of a de *facto* guardian, but only says that a de *facto* guardian shall not sell or deal with the property. A de *facto* guardian can be there and apply to the court for permission to sell or deal with the property.

Shri Raghavachari: What I say is this. The difference is like this. A de *facto* guardian could deal with the property under the existing law and when the question arises as to whether he has dealt with it legally and in a way binding on the minor, the question whether he has done it in the interest of the minor also arises. Now the Bill says that he—the *de facto*—cannot deal with the property at all. That is one thing. If you examine the provisions, you will see that even the natural guardian, who also under the existing law could deal with the property—and the question whether it is binding or not came up mostly when the minor attained majority,—cannot deal with the property unless he goes to a court under this Bill. In other words, as I said to begin with, this Bill is based on the prejudice and experience that the guardians have not always dealt with the property safely and well. We have gone to the other extreme and said that everything is to be done only through the court even by the father and the mother. I am perfectly aware that under the existing law, if the natural guardianship is confined only to father and mother, and husband in some cases, the other guardians who were acting so far under the existing law can all come up and be appointed by the court. It is open to all the maternal relations and others to go to the court, urge their preferential claims and get appointed as guardians. But the question in most of these cases will be, when you want to limit the powers of guardianship only to the father and the mother, we do not ordinarily expect anybody to take the risk of trying to protect the minor. In fact, under the existing law the dealings of *de facto* guardians were mostly questioned though they were *bona fide* cases. It is generally done by the minors when they attain majority. Now he cannot at all deal with the property. Therefore, it really acts as a kind of prejudice against the interests of minors. But, whether we must permit the unsatisfactory state of affairs that now exists is another matter—I am sure the tilting to the other extreme by insisting upon even the natural guardians to obtain permission of the court for every little act is really going to be not only inconvenient to interests of the minor but, I am afraid, will practically compel wasting of his property. Under clause 8 you will see it is provided that the permission of the court has to be obtained for any disposal of property. So for every little thing even the father or the mother has to go to a court.

That is what is provided under the Bill. We know that if a man has to go to a court of law it means a lot of money. Even for a formal application has to leave his place and go to a distant court, engage a lawyer and then attend the court though it may be an *ex parte* proceeding. It all means a lot of money for each matter. The property may be under jurisdiction of various courts and he will have to file applications in the respective courts when he has to deal with the properties concerning them.

Shri Barman (North Bengal—Reserved—Sch. Castes): Sir, I rise on a point of order. Shri Raghavachari was a member of the Joint Committee. From the report submitted to this House we do not find that he has raised any of the objections, that he is now raising, in the Joint Committee. In the absence of any dissenting note on these points, the House is entitled to think that Shri Raghavachari agrees with the majority report. He is now making new points on which he has not submitted any dissenting note. If that is the case how are we to take the views of the members of a select committee?

Shri Raghavachari: I have appended a note of dissent upon some particular points that arose then. But these are matters that arise out of the subject for general consideration and amendment. I have also moved some amendments about that matter. Anyhow a member of a Select Committee is not prohibited from talking on a

thing which comes from that committee

Mr. Speaker: I think the object of a Bill being sent to a Select Committee is for the purpose of having the considered opinion of its members. Whoever has got a difference of opinion on material points like this must state it to influence the Members here. Hon. Members come to the House under the impression that the hon. Member is also a party to what has been recommended in the report. Now for the first time to say something quite contrary to what has been said in the report, or something which he has not mentioned earlier, is not the way to lead the House. Members of a Select Committee are expected to give a lead to the House, either they agree with the report or they do not agree. If every member of a Select Committee, by passes the report of that Committee. what is the object of having sent the Bill to a Select Committee? Whose opinions are we considering here? Therefore, it is proper that any Member who differs from the majority reports must append a note of dissent. Unless it is an extraordinary thing which he contemplated only now and which he did not contemplate earlier and which nobody could have contemplated, such points ought not to be made now, at this stage. I was under the impression that the hon. Member was not a Member of the Joint Committee and that what he has been saying thus far are his first impressions. But having been a party to the Joint Committee, I expect him and all Members who were members of the Joint Committee to stand by the report. Otherwise, the whole thing will be a waste and it will result in a false impression being given to this House. I do not say they are debarred from expressing their views now. They may say by announcing that "I am very sorry; I am not aware of it and I did not see it earlier and so I would like to place those views now," in which case, there is no objection. Of course, there is nothing legally barring a member of the Joint Committee from changing his views. But to say things as if he has not been a party to the Joint Committee at all would be giving a wrong impression or lead to this House.

Pandit Thakur Das Bhargava (Gurgaon): So far as this Bill is concerned, it has been passed by the Rajya Sabha. Therefore, no question of Select Committee or Joint Committee arises. When a Bill comes here from the Rajya Sabha, then we are at perfect liberty to say what we like to say on the Bill. The motion is: "That the Bi ...as passed by Rajya Sabha, be taken into consideration." The consideration there and the consideration here are quite different. This is a Bill which comes here from the other House. So, everything that one wants to say on this Bill can be said now. Supposing there is no change, even then, when the Bill comes here from the other House, it is perfectly open to any Member here to say what he is pleased to say. There is no question of a Select Committee or a Joint Committee, Member being bound by what he has said in the Select Committee or the Joint Committee. Even in the case of a Select Committee or a Joint Committee, the person may vote there differently and he may not put in a minute of dissent in regard to every point. In many cases the question is settled there by votes, and it is not in every matter that a minute of dissent is appended. Therefore, my submission is that there is no strict rule saying that if a minute of dissent is not given or if a minute of dissent is not given on every point, no contrary opinion on those points should be expressed now. If that were the rule, it would be very difficult to agree to it.

Mr. Speaker: I do not agree that an hon. Member who has not given a minute of dissent or who has not expressed any disagreement with the important provisions of the Bill in the course of the discussion at the Joint Committee, should speak contrary to the report of the Joint Committee. He is entitled to stand by the report of the Joint Committee and he cannot just go on saying things as if he had

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nothing to do with the Joint Committee. If he does so, he puts the whole House in a wrong position and gives the House a wrong impression. If he does not contribute the amount of lead that is expected of him as a Member of a Joint Committee, he might as well be not a Member of the Joint Committee. As a Member of the Joint Committee, he is expected to look into the matter and give his views, as he is considered to be an expert. Because the whole House cannot go into the matter deeply, it is entrusted to some selected Members so that they can deal with the provisions in detail. It is not right that a Member of the Joint Committee, not having made the point in the Joint Committee, should say the point differently here and not even prefacing his remarks at least by saying "Though I was a Member of the Joint Committee, this escaped my notice; it was not brought to my notice earlier and so I have to give a different opinion upon it now" and so on. So, normally, an hon. Member of a Select Committee or a Joint Committee, unless he has appended a dissenting note on the points that he wished to say here, ought not raise a matter which is controversial and which is opposed to the report of the Select Committee or the Joint Committee to which he had been a party. Otherwise, there is no purpose in referring a matter to the Joint Committee, and every hon. Member can rise up and say something different from the report of the Joint Committee, in which case the Select Committee or the Joint Committee has to be scrapped.

So far as this matter is concerned, it is true that there was a Joint Committee of both the Houses and the Bill was initiated in the other House. Therefore, the Joint Committee's report is naturally placed before the other House. We agreed on a prior occasion that if a Bill is initiated in one House and the motion for reference to the Joint Committee is agreed to by the other House, the latter is not committed to the provisions of the Bill because the Bill has not been introduced in that House. That is for the Members in general. But if an hon. Member agrees to be a Member of the Joint Committee and takes part in the proceedings of the Joint Committee, he continues to be a party to the report of the Joint Committee. We have not evolved a rule by which a Bill can be introduced simultaneously in both the Houses. It can be introduced only in one House. Whoever is a Member of the Joint Committee, even though the Bill in question might have been considered in the House to which the Member does not belong, having been a Member of the Joint Committee, he is a party to the report of the Joint Committee. It is this House that recommended the inclusion of the hon. Member's name in the Joint Committee and he sits in the Joint Committee in the place of the whole House. He is a representative of this House on the Joint Committee and as such, he must say why he differs from the report of the Joint Committee and why he could not include the point in the minute of dissent. The hon. Member cannot choose to apply his mind differently at the present stage and suddenly get up and say something different from what the report of the Joint Committee may contain and something which he has not included in his minute of dissent. Even if a Bill is introduced in the other House, having been a Member of the Joint Committee, the Member has the responsibility to stick on to what he had said in the Joint Committee, unless he has the leave of this House to say something specially which he could not point out in the Joint Committee. In just formal and trivial matters, what I said does not apply, but in matters of major importance like the present one, where the provision says that a natural guardian should not be allowed to deal with the minor's property—a fundamental or radical change from the existing law on the subject—the points made by the hon. Member of the Joint Committee must be what he had already mentioned in the Joint Committee. That, I think, should be the

proper course to be adopted so far as a Member of the Joint Committee of this House or of the other House is concerned, and whether the Bill is initiated in this House or in the other House.

Shri U. M. Trivedi: I want to make a suggestion. The Members of the Joint Committee get an opportunity of presenting their views in the Joint Committee. Then, when the debate starts here, they again repeat the same views here. The other Members are precluded from participating in the debate, owing to lack of time or some other reason, and expressing their views. While I do not object to the Members of the Joint Committee taking part in the debate, I suggest that they must be left over at least till such time as the other Members have spoken so that the other Members might express their views.

Mr. Speaker: I have been adopting that rule. The Members of the Joint Committee or the Select Committee will be kept in reserve. Other hon. Members who may not agree with the report of the Joint Committee or the Select Committee will have an earlier opportunity and the Members of the Joint Committee or the Select Committee will have an opportunity to explain their position and satisfy the House as to why their recommendations ought to be accepted. I used to adopt that course and I still adopt that course, and I would advise whoever sits in the Chair to adopt that course. Because Shri Raghavachari felt a personal inconvenience and requested me to give him an earlier chance. I allowed him to speak earlier.

Shri U. M. Trivedi: I do not object to that.

Shri A. M. Thomas (Ernakulam): In view of what the hon. Speaker has said on this question, I should like to have a clarification. As you mentioned, it is a question of propriety, but, due to various circumstances, as mentioned by Pandit Thakur Das Bhargava, a Member might not have appended a dissenting note. Does your ruling extend to putting an absolute bar on moving any amendment to the Bill as reported by the Joint Committee and also speaking against the provisions?

Mr. Speaker: The whole conception with regard to this matter must be divided into two categories. One is of major importance pertaining to substantial portions of the Bill, the principles of the Bill, the clauses of the Bill, etc. The other concerns the formal amendments to the Bill. In major matters, I feel that if an hon Member who had a particular view in the Joint Committee and who had not appended a minute of dissent speaks here on the Bill, he ought not to change the provisions differently, unless he explains to the House in detail the new ideas that have compelled him to plead for a change. Normally, he ought not to move an amendment to that effect. Otherwise, the whole thing will be a waste. But every Member of the Joint Committee will have an opportunity to say that what he said in the Joint Committee was not accepted that he could not give a minute of dissent, and that therefore he wishes to move an amendment.

श्रीमती शिवराजवती नेहरू (जिला लखनऊ मध्य) : क्या मैं पूछ सकती हूं कि सेलेक्ट कमेटी बनाने से क्या फायदा हुआ अगर वहां पर एक राय दें और यहां पर आ कर दूसरी राय दें ?

Mr. Speaker: Sbri Raghavachari will continue his speech now.

Shri Raghavachari: I am as far as possible guided by the almost moderate aspects towards a measure. I was only pointing out that the way of approach to the existing affairs has led to too much of a shift on to the other side and that it is inconvenient. I started that way. The point is, if in the process so much restrictions are placed upon the exercise of those powers, we defeat the purpose for which the Bill is brought forward. That was the point which I was making. I had also added

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a note of dissent on one or two matters I shall now explain those points.

1 P.M.

So far as natural guardianship is concerned, they want the father and the mother to be the natural guardians in the case of an unmarried girl and the husband in the case of a married girl. Other members have already referred to it and I do not wish to dilate on it. I am also aware that the Law Minister might say, "any other guardian can be appointed by the court; where is the inconvenience?". When the girl is married, the guardianship of the parents ceases and passes over completely to the husband. Once that is done, if the girl becomes a widow, she is left without a guardian. Until another guardian is appointed by the court, there is no guardian for her. Therefore, I have proposed that in the case of any unmarried daughter and also in the case of the widowed daughter, the parents must be the guardians.

Mr. Speaker: Who is the guardian today?

Shri Raghavachari: Under the law, the guardian is the husband's relation.

Mr. Speaker: Husband's relations are not the natural guardians. Even under the existing Hindu Law, except the husband in the case of a married girl and the parents in the case of an unmarried girl, none other can be a natural guardian.

Shri Raghavachari: They are only *de facto* guardians.

Mr. Speaker: Nobody exercises a *de facto* right.

Shri Raghavachari: It is perfectly open to anybody to say that any other man can get himself appointed as guardian by the court. The difficulty will be....

Shri Patnaik: The point is this. Supposing there is a child who has neither father nor mother, there is nothing to prevent anybody else acting as the guardian of the person of the minor and even of the property. What is prevented by clause 11 is the alienation of that right.

Mr. Speaker: The hon. Minister may consider the words "deal with."

Shri Raghavachari: I would request the hon. Minister to consider the combined effect of clause 8 (1) and clause 11. Clause 8 (1) says:

> "The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate...."

The word "estate" is there; this clause seems to cover both movable and immovable property. But, according to sub-clause (3), the disposal of immovable property must be only with the court's permission. Clause 11 says that even the powers of the natural guardian are confined to certain things. Anyway, that is only a point of digression. My simple point is that in the case of a minor widowed girl, some natural guardian must be fixed immediately. It should not be a dilatory process, later on somebody being appointed and so on. Immediately she becomes a widow, some natural guardian must be provided lest she may be kidnapped.

My other amendment relates to proviso (a) to clause 6. It is provided there that if the father changes his religion from Hinduism, because this is Hindu Minority and Guardianship Bill, he is not competent to be the guardian. But I say that the mother also has the right to change her religion. Therefore, I want the word "she" to be added there. A clause was specifically provided by the Joint Committee that guardianship must cease if there is a change in the religion of the parent. But that clause was omitted by the Rajya Sabha; advanced notions must have pursuaded

them to omit it. Nevertheless, clause 6 is there and my amendment seeking to add the words "or she" after the word "he" may be accepted.

Mr. Speaker: Can the guardian change the religion of the boy?

Shri Raghavachari: No; the courts will take care to see that a proper guardian is appointed so as not to prejudice the religious sentiments.

The other point is this. Clause 8(4) reads;

> "(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor."

I want the words "or his estate" to be added at the end, because the benefit of the minor may not necessarily be the benefit of the estate also. Some kind of difference can be made. My personal feeling is this. The phrase "evident advantage to the minor" is capable of expansion. Originally the word "benefit" was there and that has been changed into "evident advantage". I submit "evident advantage" is a phrase which is capable of expansion and all kinds of things being brought there. It is necessary to consider this question because it is only any act which is not permitted by a court that can be questioned later. When permission of the court is sought, generally the proceedings are *ex parte*, because the minor is not there. Sub-clause (3) of clause 8 reads as follows:

> "(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person claiming under him."

The other things are not. Therefore, by an *ex parte* earlier order obtained later on, a minor may be prevented from questioning it, particularly so when the phrase is 'evident advantage', which is rubber-like expanding. More harm may be done by this phrase. Will the guardian do all this and will the court make an order without much consideration? Almost every Hindu minor's property will have to go to court. Probably we will have to establish more courts or the courts will be overcrowded with applications and the attention given would be very little. In the *ex parte* proceedings, if some permission is granted, the minor is barred. We want to protect the minor from what might turn out to be a danger and obstacle.

Some Hon. Members rose.

Mr. Speaker: Whoever was not a Member of the Joint Committee may.....

Shri Bagawat (Ahmednagar South): I was not a Member of the Committee.

Pandit Thakar Das Bhargava: I was not only not a Member, but I was sought to be appointed one and I declined to be a Member as I thought then and think now that this law is not necessary.

Mr. Speaker: I will call him next.

Hon. Members will go on with the general discussion till 2 o'clock. We started at 12 o'clock. Thereafter, we will take up clause-by-clause consideration.

Shri Achuthan (Crangannur): Then, there must be some time limit.

Mr. Speaker: Therefore. I am asking hon. Members to confine their remarks to 10 minutes. In proper cases. I will give more time.

Shri Bogawat: This Bill has not been properly thought of so far as some clauses are concerned. We have passed the Hindu Succession Bill and we have allowed inheritance to daughters and sons of pre-deceased daughters and pre-deceased sons and widows of pre-deceased sons, etc., up to the third generation. The cases of many minors would come up now. We must have provisions in this Bill in the light of the Hindu Succession Bill. If such provisions are not there, matters would become more complicated and it would be confusion worse confounded. Formerly, there

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was a law under which, if there was legal necessity, the natural guardian was allowed to deal with the property. Under this Bill, it is very strange that even the father or mother, who are the only guardians of the minor, are not allowed to deal with the property in case of necessity or emergency. In the case of business matters, this would be a great obstruction against the interests of the minor. The present Bill is not a good law. It must be changed. If it is not changed, there would be difficulties in the day-to-day transactions. I only submit that the Minister of Legal Affairs would give deep thought to these very important matters. If it is desired that all should be driven to the courts, there would be no justice. It would be sheer injustice to the minors. I say that in the interests of the minors, at least this clause 8, which is a bad clause, should be deleted and nobody should be asked to go to court in cases of necessity. There is a very good law, the law of legal necessity. Persons who take a mortgage of the property or take a sale of the minor's property think ten times before entering into the transaction. These transactions can always be questioned in a court of law if they were not for legal necessity. The former law was good. Under the present law, the father, the natural guardian who is the best judge, who knows the interests of the minor even better than the court, is asked to go to a court and seek the permission of the court to deal with the property. There may be important business matters which may suffer on account of this. I have very strong objection to clause 8 of this Bill which must be deleted. Otherwise, there would be difficulties. A number of minors would be getting properties according to the new Hindu Succession Act.

My second objection is this. The only natural guardians mentioned in this Bill are the father and mother. What about other guardians? Take the paternal grandfather or grandmother. Will they do anything against the interests of the minor? If the father or mother is not there, is any person to go to the court and seek guardianship of the minor? This is not proper. The grandfather or grandmother will always act in the interests of the minor. The minor's interest will be protected by them. I think that the list of natural guardians should be expanded. At least the elder brother paternal grandfather and grandmother should be included in the list of natural guardians.

Thirdly, there is no provision in the case of a minor widow. Of course, it may be argued that such marriages will be very few. Even if there are only a few cases, there would be very great difficulty if no natural guardian is mentioned. I think that in the case of a widow, the natural guardianship must go to her father or mother who have the best interests of the minor at heart. That must be mentioned, and not the *de facto* guardian such as the father-in-law or mother-in-law. In this respect also, there must be an amendment to clause 6.

Then, I come to clause 11. Clause 11 says:

> "After the commencement of this Act, no person shall be entitled to dispose of, or deal with the property of a Hindu minor merely on the ground of his or her being the de *facto* guardian of the minor."

Why not? The de *facto* guardians are bound to take care of the interests of minor. In a very few cases, there may be exceptions. If the existing law is left as such, the interests of the minor will be protected. Unless there is legal necessity or the transaction is in the interests of the minor or it is for the benefit of the estate of the minor, no transaction would be upheld by a court. It would be set aside. Again, there is a provision that the minor, after he comes of age, he can question these transactions. They are all voidable. A minor is not bound by all these transactions. He can bring a suit and if there was no necessity, all

the transactions entered into by either the natural guardians or the de facto guardians will be set aside. There have been hundreds and thousands of cases where there was no proper proof of necessity, or the mortgagee or the purchaser was not able to produce proper proof, and the transactions have been set aside. This is a good provision. Why should there be a change which would only be an impediment or obstruction in the way of the minor? My humble submission is that we should not be hard and harsh to the minors. At least in the case of persons who are doing business or where big companies are concerned, there would be so many difficulties created. So many minors would be inheriting property and there would be difficulties in the day to day transactions. All these things must be considered before making any amendments.

There are also some minor amendments which are needed. For instance, in clause 6, only 'he' is mentioned: ".....if he has ceased to be a Hindu". I submit that "she" also ought to be mentioned. Shri Raghavachari has given an amendment that "she" also ought to be mentioned.

Shri U. M. Trivedi: Mr. Speaker, "He" will include "she".

Shri Pataskar: There is the General Clauses Act.

Mr. Speaker: How can it apply when "mother" has been mentioned here separately?

Shri U. M. Trivedi: The proviso is very clear.

Shri Bogawat: If there is no difficulty, I have nothing to say. But if there is difficulty because we have separately mentioned "father" and "mother", then these words must be there.

My main objection is that there is no uniform civil law. I have said that formerly also. What harm is there if we have a uniform law with regard to minors so far as Muslims, Christians, Parsis and Jews are also concerned? In respect of all the communities we can mention particular persons as natural guardians. We are a secular Government. We do not observe anything religious so far as the property of the minors is concerned. That also must be considered and these words Muslim, Christian, Parsi etc. should be deleted and changes should be made. After all, this is a Bill which must be thought over and the important suggestions that I have made should be brought into effect.

पंडित ठाकुर दास भार्गव : जनाब स्पीकर साहब, जब यह बिल हाउस के सामने आया और सिलेक्ट कमेटी की मोशन हुई उस वक्त मेरा नाम भी सिलेक्ट कमेटी में दर्ज किया गया था, और मैंने यह कह कर इन्कार कर दिया था कि मैं सिलेक्ट कमेटी में .....

Shri N. R. Muniswamy (Wandiwash): He may speak in English so that we may also follow.

Pandit Thakur Das Bhargava: When this Bill was brought before the House for reference to the Select Committee, my name was also included as one of the Members to serve on the Select Committee, but I declined to accept it on the ground that in my humble opinion this Bill was quite unnecessary and that the introduction and passage of this Bill by the House were not justified. I would like to mention one of the main reasons that I advanced then, with your permission.

Our Constitution enjoins upon us to have a civil code for all the communities in India, and if there is any matter in which we can have a uniform civil code applicable to all the communities in India, it is guardianship and minority. So far as the Mohammedan and Hindu minors are concerned, their personal laws have been abrogated so far as age is concerned. According to the Hindu law, a person becomes a major at 16, and

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according to the Muslim law also the age of majority is not 18. The law already stands changed for the better. Today, the Guardians and Wards Act is in vogue and it has got provisions which are of a very salutary character and they deal with the situation in the country very well. Nobody has ever complained since 1890 that that act has not worked well. And I would like to know from the hon. Minister why this Bill is necessary. Hindus, Muslims, Parsis, all are governed by the Guardians and Wards Act. There is no difficulty whatsoever. Therefore to my mind this is an absolutely unnecessary Bill, and it also goes against the principle of a common civil code for the whole country. For other matters like marriage, succession etc., I can understand the necessity for having a Hindu code, but for this matter, to say the least it was not at all necessary that we should have a separate Hindu Minority and Guardianship Bill. Therefore, my first objection is that this is unnecessary and uncalled for and at the same time we shall have to introduce similar Bills for Muslims, Christians etc., if we proceed on the lines on which we are proceeding in this matter. Therefore, not only is it unnecessary, but this is a mischievous Bill in so far as the provisions of the Guardians and Wards Act will not apply uniformly to all the nationals of this country and will introduce some kind of discrimination as I am going to point out.

Firstly, I would bring it to the notice of the House that a "minor" has been defined in this Bill as follows:

> '"minor" means a person who has not completed the age of eighteen years;'

In the Guardians and Wards Act it has been defined otherwise. We know under the Majority Act a person does not become a major if a guardian has been appointed for him till 21 so far as his property is concerned. According to this Bill, every person will cease to remain a minor at the age of 18. What would happen to the provision of the Majority Act between the ages of 18 and 21. A Hindu will become a major at 18 whereas a Muslim similarly circumstanced will become a major at 21 for the purposes of his property.

Mr. Speaker: In clause 2 it is said.

> "The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1899."

Shri U. M. Trivedi: But clause 5 cancels that.

Mr. Speaker: The whole thing is subject to the Guardians and Wards Act.

Pandit Thakur Das Bhargava: Kindly see clause 5. It is not saved. It is inconsistent.

Mr. Speaker: This and clause 2 have to be read together.

Shri U. M. Trivedi: Sub-clause (b) of clause 5 reads:

> "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 made in this Act."

Mr. Speaker: But clause 2 is there saying that this is in addition to and not, save as expressly provided, in derogation of the Guardians and Wards Act.

Pandit Thakur Das Bhargava: That will only create a conflict. It will mean clauses 2 and 5 are inconsistent provisions in this Bill.

Mr. Speaker: That has to be modified to some extent.

Pandit Thakur Das Bhargava: Either clause 5 may be modified or, if it is intended...

Mr. Speaker: I will ask the hon. Minister to consider it. I am also of the same opinion. Clause 2 says:

> "The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Guardians and Wards Act, 1899."

Sub-clause (b) of clause 5 expressly makes a provision in derogation of the provisions of the Guardians and Wards Act.

Shri Pataskar: I see the force of that argument that sub-clause (b) of clause 5 may have to be examined, but the whole basis of this legislation is, I may make it clear, that so far as the Guardians and Wards Act is concerned, which is applicable to all classes of people throughout India, we do not propose in any way to abrogate any of its provisions. If there is any chance of its being misinterpreted, I shall see what I can do.

Pandit Thakur Das Bhargava: There are other sections also in which what is expressly provided in this Bill is contrary to the provisions in the Guardians and Wards Act.

Mr. Speaker: We are discussing that. Therefore, he has got opportunities of looking into that.

Pandit Thakur Das Bhargava: I am only submitting for his consideration.

Shri U. M. Trivedi: Before the amendments to the clauses are taken up, we may be given an opportunity to bring them to his notice.

Mr. Speaker: He is listening. They may be taken up when the clauses come up.

Shri U. M. Trivedi: When the clauses are reached, the whole thing gets shut out.

[MR. DEPUTY-SPEAKER *in the Chair*]

Pandit Thakur Das Bhargava: I was submitting that this Bill as it has emerged from the Rajya Sabha does derogate from many of the provisions of the Guardians and Wards Act. Clause 2 clearly says that the provisions of this Act shall be in addition, and not, save as hereinafter expressly provided, in derogation of the Guardians and Wards Act, 1899, so that if there is no provision in this Bill, the Guardians and Wards Act shall apply, but if there is a provision in this Bill which goes counter to the provisions of the Guardians and Wards Act, this Bill shall have preference.

Shri Pataskar: In so far as it recognises natural guardians.

Pandit Thakur Das Bhargava: Where is it said? Where is this distinction?

Shri Pataskar: You can point out in what way it derogates.

Pandit Thakur Das Bhargava: Whether natural or unnatural, even in this Bill you have provided that this Bill shall have force and not the Guardians and Wards Act. Whether it is in regard to a natural guardian or a guardian other than a natural guardian is provided for. Then, it means that the Minister has a mental reservation, he has got at the back of his mind the words 'so far as the natural guardian is concerned' and he wants to add these in clause 2.

Shri Pataskar: It is not only that. I only pointed out one instance. I shall hear you and then reply.

Pandit Thakur Das Bhargava: The first point that I would like to submit is that in so far as the definition of 'guardian' is concerned, the definition is really opposed to the definition given in the Guardians and Wards Act, provided it is read with clause 5(b). Then, it would mean that there will be several kinds of minors in this country now. According to the Guardians and Wards Act, there is only one kind of minor known to the law, and all the nationals of this country, who are minors, until they come within the definition of the Indian Majority Act, are under the Guardians and Wards Act. Now a Hindu minor will be quite different from a Muslim minor and a Christian minor. Therefore, my submission is that it creates more distinctions than

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are there in the present law. Therefore, my submission is that this Bill should not be taken into consideration and should not be passed by this House. That is my humble submission, because I do not find in any particular that this Bill improves the position, so far as the position under the Hindu law is concerned.

You know that in our country the people in general live in the villages and are quite illiterate. This Bill applies as much to those who live in the cities as to those who live in the villages. May I humbly enquire from the Minister the number of wills, which appoint guardians, and which are made by fathers and mothers in this country, so far as guardianship is concerned? My humble submission is that if the cities are taken away from the list, and we go to the villages where eighty or eighty-three per cent. of our population lives, we shall find that only in very few cases the parents appoint guardians by will. I should say, their number must be negligible.

According to this Bill, there are four kinds of guardians, natural guardian, guardian appointed by the will of the minor's father or mother, guardian appointed or declared by court, and guardian appointed under the Guardians and Wards Act. So far as the Guardians and Wards Act is concerned, we know that very few persons are appointed under that Act; their number is extremely negligible, I should say; only persons with very big properties come under this. So far as guardians appointed by the will of the minor's father and mother are concerned, as I have submitted already, leaving aside big cities, they are very few in number. The question now remains of natural guardian or a guardian appointed or declared by the court.

So far as natural guardian is concerned, I fail to see how the Joint Committee thought that the father and mother only are the natural guardians, and a grandfather who supports the father also in some cases is not a natural guardian. I do not understand how they have thought like this.

Shri Pataskar: But is he now a natural guardian under the Hindu law?

Pandit Thakur Das Bhargava: Under the Hindu law, there is nothing like a natural guardian, if you would ask me, in the sense in which you have meant it here. As a matter of fact, you have taken away the naturalness of the guardianship. Every person is a good guardian to a minor under the Hindu law. He is a *de facto* guardian, and he brings up the child and nurtures it up, and he saves the property. Every de *facto* guardian is a good guardian. But now, according to you, the father and the mother alone are the only persons who can look after the children in the family. You have thought that India has developed to that extent that in this country, there is no relationship except that of the father and the mother. But there is also the grandfather, the maternal uncle and so on, and there are many others who are interested in the child, who bring up the child after the father and mother are dead, and look after the property. It is a question of fact. I do agree that there are cases in which property of the minor is taken over, tampered with, destroyed or even taken away by some persons, but those are very rare cases, and even then the minor has got the remedy under the law.

But now in a country in which the will habit has not developed to a very large extent, in which nearly eighty per cent. of the people do not know what a will is, and many people are illiterate, do you want to say that in every case in which the father and the mother are not there, the minors cases must go to court and get a guardian appointed? How many guardians are there even now in the whole of India? Their number is infinitesimal. You would remember, any person who has practised in these

courts knows fully well that these guardianship applications are treated with contempt. They do not count appreciably towards the quota of work done by judges which is expected from senior sub-judges or district judges, and thus they are not properly looked after. For years, the matter goes on. If you grease the palm of some *nazir*, permission is granted; otherwise, it will go on for years and years, and there is almost endless litigation. It is not as if we are belonging to a country in which the Attorney-General or the entire government is anxious to act as the guardian of the child.

Who would apply for the guardianship of the child, after the father and the mother are dead? What would happen to the property? Is there any provision here to the effect that every collector is bound to apply for the guardianship of the child after the father and mother are dead, so that in every case, there may be a guardian? There is no such provision in this Bill. Who would apply for guardianship in that case? Who is interested in the child? If the grandfather and others are not natural guardians, then who would apply?

Shri N. R. Muniswamy: The *de facto* guardian would apply for it.

Pandit Thakur Das Bhargava: The *de facto* argument does not even exist in the imagination of the Minister. Where is the *de facto* guardian? The Minister has taken him away. He is not there at all.

Shri Pataskar: I have not taken him away. He is quite safe.

Pandit Thakur Das Bhargava: If he has not taken him away, then he has substituted him in this way that he wants....

Shri Pataskar: I would have prevented him from doing wrong.

Pandit Thakur Das Bhargava: So far as that goes, I congratulate you. If you have succeeded there, you have done a very wonderful thing, because we all want this. By doing that, you have only effectuated our intention. But my difficulty is that in your noble efforts to effectuate your intention, you have also eliminated the *de facto* guardian, who used to do all kinds of work for the child, and who used to nurture him and do everything else for him. Now, may I enquire who will apply for guardianship? Who is interested in the child? At least, you have to make a provision that in every case when the father and the mother are dead, the collector of the district or some officer appointed by you will look after the boy, will go to the court and get a guardian appointed so that the guardian appointed by the court will work. And how will that guardian work? He will work under section 22 of the Guardians and Wards Act, which you say you still keep. Under that section, every guardian is entitled to get some fees. Even if a court officer is apointed as the guardian, he also gets appointed as the guardian, he also gets minor's property, because the guardian is supposed to benefit for his labours. But in the case of a *de facto* guardian, such as a grandparent with whom the young boy lives, he is not supposed to get anything out of the minor's property, though you say under section 22 of that Act that every guardian shall ask for fees by way of remuneration. I suppose you will make it the rule that from the government treasury, every guardian of a minor will be given these fees etc.; I shall be very happy if that is done.

But there is one other point in regard to the Guardians and Warda Act. According to section 28 of that Act, if a father and mother appoint a person to be a guardian after their death, then the powers of the guardian are regulated by the instrument of the will. If the father wants to give some powers to a guardian, then that guardian will exercise those powers in the interests of the minor he can mortgage, sell or do anything else with the property, which a father could do, provided the father is armed with those powers. Now, when you take away the father's power

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even, and you say that even a father and a mother cannot mortgage or sell or do anything else with the minor's property, how can the person appointed by will do any of those things? So, the position now is that any person appointed by will, will not be able to exercise those powers which were previously exercised by him under the provisions of the Guardians and Wards Act.

Again, there is a conflict between this Bill and the Guardians and Wards Act. My hon. friend was saying that the Guardians and Wards Act will be there in addition to this. I would like to tell him that it is not in addition to, but in derogation of this Bill. It means that those powers also are taken away.

Let me examine this question now in a little greater detail. I was submitting that in our country, in the conditions as they exist now, either when the parents are dead or even when the parents are there, a child is supposed to be a person whose interests are to be looked after by a large number of people. It is particularly so, in the case of the joint family system. I find here that so far as the Hindu joint family is concerned, so far as the undivided interest in the joint family is concerned, it is specifically referred to in clause 6, and clause 12 and a guardian need not be appointed so far as that interest is concerned. So far, it is safe yet. But at the same time, in regard to other interests, a de *facto* guardian, that is, any person who acted as a guardian, was a good guardian in the eye of the law. For instance, supposing a person was abducted or kidnapped from custody, according to the present law, because it has been regarded as a valid guardianship, I think the provisions of the criminal law would have been enforced, as if he was a good guardian. Now, he is not a good guardian, since there are only four types of guardians under this Bill. Clause 4 of the Bill defines who are the guardians and there de *facto* guardians are not included. In spite of what my hon. friend says, I take it that if clause 4 is to be enforced, de *facto* guardianship will not be known to the law, which would mean that any person could abduct or kidnap any minor, if there was nobody appointed by the court. I know that in spite of this Act, in lakhs of cases there will be no guardians appointed by the court. In fact, this Bill just gives us an example of the manner in which, though present conditions do not justify a law, yet you impose a law and there will be nothing but confusion in this country. We do not want this law at all, because conditions are such that nobody has ever complained that such a law was wanting.

Mr. Deputy-Speaker: Is this not in consonance with the changes we have made in other portions of the Hindu Code?

Pandit Thakur Das Bhargava: As a matter of fact, when this Bill was originally brought, I said the same thing. Why do you have a separate law for the Hindus? We are also for reform, but so far as the Indian guardianship law is concerned, it was the Guardianship and Minority Act which held the sway. This applies equally to all communities. There was no necessity for any such denominational law or Hindu law. I submit that in a matter like this, at least we should not have a separate law, and we would have been justified in having a general law of the country enacted.

I said this then and I am repeating it now. In all humility, I submit to the hon. Minister kindly to consider this from another standpoint. I know he is committed to every provision of the Constitution. I know his mentality. He really wants to enact a general law for the whole of India. But in so far as that is concerned, he is unconsciously giving away his point. If he has certain laws for certain aspects of a case which apply to the whole of India, we are on solid ground and we have got a basis on which we can evolve a general law

for the whole country. For instance, take the Sarda Act, the Majority Act or even the Guardianship Act.

This is against the Muslim law and aganist the original Hindu law. In so far as we make those principles, when we by-passed the Hindu and Muslim law, we are really preparing the ground for a general civil code for this country. But the present Bill takes that attempt away and places us in a worse position.

We find that for the rest of India there is a general law. *De facto* guardianship is there, but for Hindus there will be no de *facto* guardianship. This is entirely wrong.

Even apart from this argument, taken as it is, my submission is that a de *facto* guardian is necessary in this country for a very long time because the country is illiterate, we do not want to have recourse to law in every case. In a matter of this nature, only lawyers know that the attempt is a futile one. I have seen some guardianship cases and I know how the court works. To force the people to have recourse to law in a matter of this nature is to deal with them in a very heartless and very tyrannical way. Who will go to court?

I find there is an amendment also to cover movable and immovable property. Whenever a person deals with a property—and the word 'deals' is much wider than the word 'transfers'—if a person deals with any person's property, he must go to court first and get himself appointed as a guardian. This is too much. I should say this will only remain on paper and will never be effectuated.

Mr. Deputy-Speaker: I do not want to interrupt the hon. Member. But I am told that the Speaker fixed some time also for this discussion.

Pandit Thakur Das Bhargava: He did. He said that ten minutes would ordinarily be allowed to a Member. I do not want to make a trespass on the time of other people, but in a matter of this nature, I must submit for your consideration that Members must have their full say.

Shri U. M. Trivedi: The time may be extended further by half an hour. We saved 2½ hours yesterday.

Mr. Deputy-Speaker: I have no objection, if that is the wish of the House....

Some Hon. Members: Yes.

Shri Nand Lal Sharma (Sikar): So many Members want to speak.

Mr. Deputy-Speaker: Even if there is a half-hour extension, so many people will not able to speak.

Pandit Thakur Das Bhargava: I am bound by your order and the order of the Speaker. But at the same time, there is a rule made by this House which says that when the bills are for consideration, nobody should be debarred from expressing his views and there is no time limit.

Mr. Deputy-Speaker: I am putting it to the House. It is no order of mine. The House itself had put a limit that we would finish this by 4 O'clock. If the House wants to take more time, I would have no objection. The hon. Member may continue now for some more time.

Pandit Thakur Das Bhargava: I was submitting that the question of de *facto* guardianship is important in many other ways. We find that so far as the question of the powers of the parents are also concerned, they stand curtailed. This is a great innovation again, After all, we want that in this country, the general powers of the parents must be of the same nature. Can you find a better guardian than the father or mother? Is it contended that the parents, from whom the minor usually gets property, will not look after his interests more than the court will look after his interests? The court is not going to administer the property. The court will appoint a person, possibly a nazir, possibly some other person. Here parents are not to be trusted more than those persons! The manner in

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which the things are done is perhaps known more to you than to me. The judge may be sleeping and the *nazir* gets his orders.

My submission is that nothing has been placed before us, no evidence has been adduced to show that parents are not taking care of the minors and they are not behaving properly. If that were so, I would have agreed to the country's Government being the guardian of the minors even as opposed to the parents. But there is no evidence to the effect that the parents are not looking after minors. In the absence of such evidence, I should think it is wrong to suggest that parents should not be allowed to look after the property of minors.

It may be that when the property is there, the minor's property may be sold and another property bought for his advantage. But then he cannot do that. No parent should do it when this provision exists, because ultimately he may be brought to book. But the remedy suggested is not very rigorous. He can bring in a case under the Guardianship Act, but if it is proved justified by legal necessity or otherwise, nothing will happen.

My humble submission is that these powers are too drastic. With these powers being taken and the *de facto* guardian not being there, I should think such a position will arise as will make the Bill absolutely unworkable. It will not only be unworkable but it will work mischief. It will produce confusion and at the same time, the property of the minor will not be looked after. Rightly, my hon. friend wants that all property of the minor should be looked after. But I submit that the remedy that he proposes is worse than the disease, and in many cases the property of the minor will not be looked after at all.

Then there is the question of the custody of the minor, married woman, the male child and widowed girl also. In our country, it is very unfortunate that there are widows even of the age of 1 and there are a large number of widows upto the age of 18. What would happen to them? There is an amendment of Shri Raghavachari in which he says widows also may be included along with unmarried girls. I do not know. The disparity is there, as Shri Bogawat said. We have changed the law so far as succession is concerned and now the son's widow or the son's son's widow is also an heir and she gets property from the grandfather and she is supposed to live in the grandfather's family when she gets the property. Still they want the guardianship to go to the father and mother. I do not know how this will work. Ordinarily, when the previous succession law was there I could understand it easily. The husband and the husband's father are the proper guardians. I do not know to whom her guardianship should be given. I think that in cases of this nature, it should be as some of my friends want it to be. I would rather like that if she belongs to the husband's family and the husband's father is there, and she is a proper heir to the husband's father and grandfather, the property should be properly looked after by the elder members of that family rather than by the father and mother.

Then, again, there is a provision in the Guardians and Wards Act that a minor can also be the guardian of a minor and the property of the minor. Under section 21, it is so provided. But this says that a minor shall be incompetent to act as guardian of the property of another minor. I will read clause 10 of the bill.

> "A minor shall be incompetent to act as guardian of the property of any minor."

In this country, minors have children. Lakhs of minors have got children. (*Interruption*). From 1928 this has been said. Now, my friend does not know that even after the Sarda Act there are lakhs of people who are married at the age of 5, 9 and 10.

An Hon. Member: When do they have children?

Pandit Thakur Das Bhargava: There are many such husbands beneath the age of 18 who have got children. Section 21 of the Guardians and Wards Act says:

> "A minor is incompetent to act as guardian of any minor except his own wife and children or where he is the managing member of a Hindu undivided family, the wife and children of any other minor member of the family."

According to this, a boy of 18, if he is unfortunate to lose his parents etc., can be the guardian of the property of the other members of that family if he is the *karta* of that family. He is also the guardian of his own wife and children and their property. But, now, I do not know whether this section 21 or the new law that we are passing will have application. If clause 5(b) remains as it is, then this Bill shall hold the sway. Under these circumstances, I would ask the hon. Law Minister to say what he has to say about section 21 of the Guardians and Wards Act. How does he reconcile both? This is a thing which ought to be lookd into.

I have taken more time of the House than I intended to and I must thank you for your indulgence. I may submit that there are some amendments which may improve the Bill to some extent. Still, I submit that this is an unnecessary Bill and should be withdrawn. This has got so many lacunae and it will create havoc in the country and great mischief also. Uitimately, in spite of the best of motives of the hon. Law Minister, the country will not congratulate him if he succeeds in enacting this measure.

Shri U. M. Trivedi: I would also request the hon. Minister to withdraw the Bill. I will try to be brief and will not overstep the limitations. (*Interruption*).

The difficulty about this Bill is this. Once you go through it, you will find that it creates conflict of laws at every point. Its application is limited to India and it does not apply to Jammu and Kashmir and yet it is said that it applies also to Hindus domiciled in the territories to which this Act extends. That is to say, Hindus born here in the States other than Jammu and Kashmir, if they go and live in Jammu and Kashmir, this will apply to them. If Hindus born in Jammu and Kashmir come here and get themselves domiciled here, to them also this will apply. Then, why is it that it is not being applied to Jammu and Kashmir? You are creating unnecessary litigation and conflict of laws when a person dies there. I cannot understand the reasoning behind all this. Once you have made it an extra-territorial law, certainly, it must include a territory which is included in India, which is defined in the Constitution as part and parcel of India. There is no reason why that area should be kept out.

Shri Sinhasan Singh (Gorakhpur Distt.—South): So long as article 390 is there.

Shri U. M. Trivedi: I am sorry that my hon. friend has not followed the argument. You yourself say that it is going to apply to persons domiciled in the territories outside the whole area and then you are going to apply it to all the Hindus who are born and bred up in India, who are citizens of India by birth and who go over there to that territory. Then, why keep this out?

A very important point has been made by my predecessor Pandit Thakur Das Bhargava. There may not be any idea of having different types of minors. The equality article will apply in all cases. Such a provision of a discriminatory nature is made only for women and children. You cannot discriminate between a Hindu woman and a Muslim woman, similarly, you cannot discriminate between

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a Hindu child and a Muslim child. In the case of a Hindu child you say that he is a minor as long as he does not attain the age of 18 years. But a Muslim boy under the provisions of the Guardians and Wards Act will remain a minor upto the age of 21. It would have been something had you said by one stroke of the pen that a minor means a person who has not completed the age of 21 years. Certainly, it will be in consonance with the laws obtaining in other countries. In the United Kingdom they have not got two ages of majority. A boy or girl attains majority only at the age of 21. The same provision must have been made in this as in the Guardians and Wards Act. Even then it would have created other difficulties. In one breath it has been suggested that the provisions contained herein shall be in addition to those already in the Guardians and Wards Act. You say:

> "The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890."

The express provision is:

> "any othr 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 made in this Act."

In this Act, you have made the provision that a Hindu boy will become a major at the age of 18. This is certainly an express provision and therefore this provision of the Guardians and Wards Act, 1890, shall not apply. I am at one with the demand that has been made by my hon. friend Pandit Thakur Das Bhargava that there ought to have been a general law, a common Guardians and Wards Act. Here there is no question of religion; here it is merely a question of dealing with children below the age of eighteen. It makes no difference whatsoever that the child is a Christian or a Muslim or a Hindu or a Jew. Therefore, if a common law had been made it would have been an achievement for us. But this Government has always fought shy of making any law for Muslims. Christians and Jews are not to be counted. They do not count for anything. You make any law and they will swallow it. But to offend against the law of Muslims is beyond the power of this Government. They get funky when it comes to a question of touching the Mohammadan law. Therefore, they have made this discrimination between an ordinary Muslim boy and a Hindu boy. Why this difference is called for, it passes my comprehension.

2 P.M.

Now this provision made in clause 8 is a slur on the national character of every Indian and I should say it hits every Hindu with any self-respect. Does it lie in the mouth of anybody to say that a judge sitting in court will look after the interests of children more than their parents themselves? That the father and mother are not capable of looking after the interests of their children, and it would be a judge who would be able to look after their interests better, is beyond my comprehension. What is the necessity of making this provision. Whosoever wants an order from the court will go before the court and make an application. And who is there to contest? Which other party will go to contest the application? The application will certainly be granted. Why should you make such a provision and create litigation where no litigation ought to arise at all. You know how lawyers will take advantage of the situation. From where will the money necessary for the litigation come? That money will be a charge on the property of the minor. Why this money is to be spent on behalf of this minor, I do not know. I do not know why the natural guardians are not to be trusted in this respect. It is therefore high time that we relied more on our

own national character that we are also capable of doing things prudently. In one breath you say that he shall not do certain things; in another breath you say that it is voidable at the instance of the minor. You create an illegality to begin with and then you make a provision to wipe it out. Whoseever reads this will be prepared to act more according to his own wish, as he knows that nobody is going to make an application. But this measure is bound to lead to litigation.

If you read all these measures you find a subconscious mind working. As you, Mr. Deputy Speaker, observed that this is in consonance with the law that bas been previously made, the Hindu Succession Bill, which has created the greatest mischief in this country. According to the provisions of that law the daughter will go out, go into the hands of another man and then he will make the application upsetting what the natural guardian has done. It is this thing that is the root cause of this provision. That means you are trying to bring about factions in the Hindu community by the back-door. I say that this law ought not to have been made. I still implore you to reconsider the matter. You in your personal capacity are wise. I would request you to apply your mind to this subject and rectify a mistake which has been committed and withdraw this measure altogether.

Mr. Deputy-Speaker: The hon. Member must now conclude.

Shri U. M. Trivedi: I would ask for some more time.

Mr. Deputy-Speaker: My concern is that we may not be able to dispose of this Bill in time.

Shri U. M. Trivedi: I would request you to extend the time by half-an-hour.

Mr. Deputy-Speaker: It is not in my power. The decision has already been taken by the House with the Speaker in the Chair.

Shri U. M. Trivedi: Then I shall be brief and conclude shortly. Now sub-clause (4) of clause 8 says that a court shall not grant permission to a guardian to do a thing mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor. Can this 'evident advantage' not be decided by anybody who is a sort of a trustee? Anybody who becomes a trustee is governed by the ordinary principles of the laws of a trustee. Even a bailee of a certain property will protect its property as a prudent man will.

Supposing for some reason there are some shares standing in the name of a child; there are some ornaments standing in the name of the child and the father finds that the value of gold or silver is going down. Should he rush to the court from his village and get the order of the court? It cannot be granted in a day, which any practising lawyer knows. Should he wait for ten or fifteen days by which time the value of gold or silver would have fallen so low that it would not be worthwhile selling it.

Shri Pataskar: We are told that the villagers have not got so much gold.

Shri U. M. Trivedi: We know that the villagers do not go to court.....

Shri Pataskar: I said they have not so much gold.

Mr. Deputy-Speaker: Order, order, there should not be cross argument by Members.

Shri U. M. Trivedi: I am not arguing with the Minister; I am only replying to the points that he raised.

Mr. Deputy-Speaker: It would have been better if he had addressed the Chair.

Shri U. M. Trivedi: But the villagers now have more gold than we possess. Therefore this difficulty is bound to arise. Whatever it may be, you are creating difficulties for the Hindu society where none existed and the whole thing could have been allowed to rest where it was under the Guardians and Wards Act of 1890.

[Shri U. M. Trivedi]

At any rate this Bill is not going to serve the purpose you have in view, and it ought to be withdrawn. As was very aptly pointed out by my hon. friend Shri N. C. Chatterjee the very fact that it contains 13 clauses shows its ominous character; better make it 14 or 15 and what is more important agree to certain of our amendments which will do away with certain vicious things that are there.

Mr. Deputy-Speaker: I find that there are some Members who are anxious to speak.

Shri Pataskar: I have no objection. I understand the idea is to conclude this by 2.30 and I would require at least 15 or 20 munites, if I am to answer the points raised by hon. Members.

Mr. Deputy-Speaker: The hon. Minister will no doubt get 15 or 20 minutes. My difficulty is that there are some Members who are very keen to speak. But we have in any case to keep within the limits that we have put on ourselves. The overall limit must be maintained, but within that the time can be adjusted.

Shrimati Jayashri (Bombay Suburban): I welcome this Bill. It is a progressive measure like the previous two Bills, the Marriage Bill and the Succession Bill, and aims at removing the disabilities under which Hindu women are suffering.

I am surprised to hear Shri Trivedi asking for a common law. I would have welcomed that. Most of the women's associations had asked for a common law for all India, but as we had the Hindu Succession Bill and the Marriage Bill, the two other remaining parts will naturally follow. If we had accepted the Indian Succession Act, then I would have said that there was no necessity of a separate Bill and the Guardians and Wards Act would have sufficed. Both of these hon. Members are supporters of joint family system. This Bill will be treated in a way so that the property of the minor, who is governed by the joint family system, will also have to be taken into consideration. I think that this Bill supports the idea of *de facto* and natural guardians; it limits the guardians to parents and does not go very further. Still it does not deprive the natural guardians, the parents, from appointing other guardians if they think they are necessary. It does not do away with the idea of having *de facto* guardians. Only these guardians are limited, and I am glad to say that in this Bill, better status is given to women, the mother. We are all aware that all these years, women were suffering from disabilities and they were considered as mere chattel. They were not entitled to look after their own children. Social habits are similiar in various countries, and the modern view throughout the various countries is that it is impossible in the case of a young child to find any adequate substitute for the love and care of the natural mother. The mother's position is considered much more important in modern times than it was in the former days. I am glad that the previous speakers have also stressed this point.

The other important thing is that this Bill considers not only the right of the parents but the welfare of the child. I am glad that more stress is laid on the welfare of the child. There may be a clash between the father and the mother, but the court will be careful to see whether the child's welfare should rest in the hands of the father or the mother. We are glad that this Bill envisages that the court will be given power when such a clash arises. In natural conditions such things may not arise, but we are aware that perhaps in the case of separation or divorce, such a situation may arise. The court has to interfare then in order to say to whom the custody of the child should be given. I am glad that the right of the mother is given importance in the Bill.

As I have only a very short time at my disposal, I am unable to cite some of the cases in our courts in which the court given custody of the child to the mother. Sometimes the custody of a girl upto the age of 14—the right age when both boys and girls reach their age of puberty—should be given to the mother. In case the father is not fit, the custody should be given to the mother. I would like to suggest that this particular clause should be changed so that the word "unfit" also should find a place there. There are many occasions when the father might have been imprisoned for theft, might have committed some crime, or might have been a lunatic, and in such circumstances the custody of the child should not remain with the father. I have therefore given notice of an amendment so that the clause will read "the father, and after him, the mother in case the father though living is unfit or unwilling to act or incapable of acting, the mother". I have also given notice of another amendment for the addition of these words in clause 6:

> "and after the death of the father the custody of a minor who has not completed the age of 14 years shall normally be with the mother".

Those two amendments are very necessary in case the father is not fit. I agree that so long as we have to see to the education, health and maintenance of the child, naturally the custody would remain with the father, but in certain circumstances, when the father is unfit, I recommend that the custody should remain with the mother in spite of the fact that another guardian might have been appointed by him.

With these words I commend my two amendments for acceptance. I hope the House will agree that this measure is not at all controversial. It is a very necessary measure, and as all Members have said, I hope that in future we might bring forward a comprehensive Bill for all communities, because this guardianship Bill is also necessary for other communities, for instance, in respect of the Muslim community, in their law they have also not given a proper place to women. If our laws will include all the communities, I should be very happy. If we can have a Bill modelled on the Indian Succession Act which would apply to all communities, it would be very desirable to have this Guardianship Bill and also the Adoption Bill, because that is also a very important chapter in the Hindu Code Bill. Both these can be taken up in a common law. Till that time, after the passing of this Bill, the Law Minister may kindly see that the Adoption Bill is also brought forward, because that is also a very important part of the Hindu Code Bill. I support the present measure.

श्री नन्द लाल शर्मा :

नमोऽस्तु रामाय सलक्ष्मणाय
देव्यै च तस्यै जनकात्मजायै ।
नमोऽस्तु रुद्रेन्द्रयमानिलेभ्यो
नमोऽस्तु चन्द्रार्क महद्गणेभ्यः ॥

माननीय उपाध्यक्ष महोदय, यह हिन्दू कोड बिल की तीसरी किस्त इस रूप में अति भयंकर है क्योंकि इसके द्वारा अल्पवयस्क हिन्दू बालकों और बालिकाओं के ऊपर एक भयंकर आघात और दुष्प्रभाव पड़ने वाला है । बालकों के हित की हत्या करने का श्रेय हमारे पाटस्कर जी को अवश्य मिलेगा । जिस समय माता पिता दोनों की मृत्यु हो जाये और आज तक जहां बड़े भाई अथवा काका, मामा और दूसरे सम्बन्धी जो कि उनको अपने बालकों की तरह पालते रहे हैं और मैं समझता हूं कि कितने ही व्यक्ति यहां होंगे जिनको कि इस बात का अनुभव होगा, उनको इस सूची में से हटा कर उनके अधिकारों और उनके कर्तव्यों से रोके रखना मैं समझता हूं कि उनके लिए उतना हानिकर नहीं है

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जितना कि बालकों के लिये हानिकर है। प्रश्न यह उठेगा कि वह कोर्ट में क्यों न जायें। माता की मृत्यु हुई, पिता की मृत्यु हुई अथवा दोनों की मृत्यु हुई, सम्पत्ति में भेद हुआ और सम्पत्ति भेद होने के बाद भाइयों की सम्पत्ति और बहनों की सम्पत्ति आपस में बंट गई, ऐसी परिस्थिति में कोई एक कर्ता फैमिली (परिवार) का नहीं रहा और जिसका कि कोई कर्ता नहीं होगा तो कोई भी व्यक्ति अपनी यह जिम्मेदारी नहीं समझ सकता है कि मैं दूसरे की सम्पत्ति को किस तरह से संचालित करूं। स्वयं आपके इस बिल के द्वारा भी उस माइनर (अल्पवयस्क) की सम्पत्ति में डील करने का निषेध किया गया है और मैं समझता हूं कि ऐसी परिस्थिति में कोई व्यक्ति अथवा बड़ा भाई भी जा कर के कोर्ट तक पहुंचे और कहे कि मुझे उसका डिफैक्टो अथवा कोर्ट गार्जियन डिक्लेयर कर दिया जाये, ऐसा परिश्रम कोई नहीं करेगा और फल यह होगा कि अल्पवयस्क बालक और बालिकाओं का जीवन, उनका व्यक्तित्व और उनकी सम्पत्ति दोनों पर भयंकर आघात पहुंचेगा। श्री पाटस्कर के सामने शास्त्र की बात करना व्यर्थ है क्योंकि शास्त्र की बात का उनके सामने कोई मूल्य नहीं रह गया है और वे ऐसा समझते हैं कि मनु, याज्ञवल्क्य इत्यादि अपने अपने समय में भले ही ठीक रहे होंगे लेकिन आज के जमाने में उनकी आवश्यकता नहीं है। लेकिन मैं उनको बतलाना चाहता हूं कि वर्षों तक उनकी आवश्यकता हमारे पूर्व विदेशी शासकों ने अनुभव की जिनको कि हमारे कांग्रेसी बन्धु बराबर अंग्रेज कहा करते थे और जो हिन्दू धर्म पर आघात किया करते थे, वे अंग्रेज लोग भी प्रिवी कौंसिल के जजमेंट्स (निर्णय) में मनु, याज्ञवल्क्य और मिताक्षर कानून को आधार मान कर उसके अनुसार अपने जजमेंट दिया करते थे। मैं कहता हूं कि पाटस्कर साहब जो धर्मशास्त्रों की आवश्यकता नहीं समझते उनको कम से कम न्यायपूर्वक यह चीज तो देखनी चाहिये कि यह जो आप धर्मशास्त्र बदलते हैं तो उसके द्वारा पाप पुण्य जो होने वाला है वह भी क्या बदलने का आपको अधिकार है? कोई व्यक्ति मरेगा तो उसके मरने के बाद उसको स्वर्ग और नरक में भेजने का भी अधिकार क्या हमारे पाटस्कर जी को है? जब तक उनको यह अधिकार नहीं है तब तक मैं समझता हूं कि उनको धर्म शास्त्रों को भी बदलने का कोई अधिकार नहीं है। हिन्दू धर्म के अनुसार हमारे यहां तो यह सिद्धान्त प्रतिपादित किया गया है :

"पिता पितामहो भ्राता
माता मातामहस्तथा"

अर्थात् पिता के अभाव में पितामह और पितामह के अभाव में ज्येष्ठ भ्राता को रखा गया है। अगर बड़ा भाई विद्यमान हो तो उसको चाहिये कि छोटे भाइयों और बहनों का पुत्रों की तरह पालन करे और छोटे भाइयों और बहनों का कर्तव्य है कि उसको पिता के समान मानें और अगर वह ऐसा नहीं करते हैं तो दोनों के दोनों पाप के भागी बनते हैं और फिर अगर ऋतुमती कन्या घर में बैठी है और रजस्वला होने पर उसके विवाह का कोई प्रयत्न नहीं किया गया तो हमारे धर्मशास्त्र यह कहते हैं :

"माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च।
त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम्॥

अर्थात् कन्या को रजस्वला देखने के बाद पिता, माता और ज्येष्ठ भ्राता यह तीनों नर्क में जायेंगे। मैं पूछना चाहता हूं कि इसके स्थान पर पाटस्कर साहब कौन विधान देंगे? मैं समझता हूं कि यह अधिकार स्वर्ग और नर्क देने का न तो पार्लियामेंट के ५००

या ७०० सदस्यों की है और न ही हमारे ला मिनिस्टर को है। ऐसी परिस्थिति में जब उनके ऊपर से आप डिफैक्टो गार्जियनशिप (यथार्थ संरक्षकता) का जो नाम आज तक विद्यमान था उस नाम को भी आप हटा लेते हैं तो मेरी समझ में नहीं आता कि उन बालकों अथवा उन अल्पवयस्क बालिकाओं की रक्षा कौन करेगा। मैं समझता हूं कि ऐसी परिस्थिति में हमको एक शब्द पहले श्री राघवाचारी द्वारा कहा जा चुका है कि धर्म परिवर्तन की परिस्थिति में क्या करें। धर्म परिवर्तन की परिस्थिति में पिता को अधिकार नहीं है कि वह अपने बालकों के सम्बन्ध में किसी प्रकार की गार्जियनशिप करे लेकिन माता को वैसा ही अधिकार इसमें दे दिया गया है और इस पर हमारी कम्युनिस्ट सदस्या बड़ी प्रसन्न हुई कि चलो कहीं न कहीं हिन्दू जाति को लात तो लगी परन्तु मैं बड़ी नम्रता से निवेदन करता हूं कि आप बिल्कुल किसी प्रकार का हिन्दू कानून का नाम न रख कर के एक जनरल कानून बनादें तो मुझे उसमें कोई आपत्ति नहीं है परन्तु प्रश्न यह है कि हिन्दू के नाम से आप हिंदू कानून बनायें और फिर हिन्दू धर्मशास्त्र को अथवा हिन्दू समाज को खुल्लमखुल्ला लात मारने की चेष्टा करे तो यह कुचेष्टा होगी और यह हिन्दू जाति के साथ अन्याय करना होगा और इसलिये इस में "ही" और "शी" का देना आवश्यक होगा।

इसी के साथ साथ इस विधेयक के क्लाज ८ के अन्दर जहां स्मरण करवाया है कि किसी प्रकार का प्रापर्टी के अन्दर मोर्टगेज (बन्धक), लीज (पट्टे) और डिस्पोजल (बेचना) इत्यादि नहीं हो सकेगा तो उसके सम्बन्ध में मेरा यह कहना है कि आज हमारे जीवन में यह देखा जाता है कि पिता कभी कभी कोई सम्पत्ति अपने पुत्र के नाम पर खरीद लेता है और उसके स्नेहवश उसके पुत्र के नाम से कर देता है और आवश्यकता पड़ने पर उसको अपनी फैमिली के लिये प्रयोग भी कर सकता है परन्तु आज के बाद उसके लिये यह परिस्थिति खड़ी हो जायेगी कि यदि उसने स्वयं अपनी सम्पत्ति खरीदी हो अथवा पुत्र के नाम से खरीदी हो तो उस सम्पत्ति को बिना कोर्ट की आज्ञा और कोर्ट की आज्ञा से भी नहीं ले सकेगा। ऐसी परिस्थिति में मैं चाहता हूं कि श्री पाटस्कर मेरे इस संशोधन को "Provided that the above restriction shall not apply to the self-acquired property of the natural guardian transferred to or named after the minor." जो मैं ने प्रस्तावित किया है उसको स्वीकार करने की कृपा करें अन्यथा उस संशोधन की शब्दावलि में जैसा चाहें वैसा परिवर्तन कर सकते हैं। मैं चाहता हूं कि पिता माता के स्नेहपूर्वक अपनी संतान के लिये कुछ कार्य करने पर उनके मार्ग में आगे के लिये ऐसी रुकावट न आ जायें कि वे स्नेहपूर्वक कुछ कार्य न कर सकें।

एक जो युनिफार्मिटी (समानता) का प्रश्न था उसके लिये भी कहा जा चुका है कि जम्मू और काश्मीर पर इसको ऐप्लाई (लागू) नहीं करेंगे। हिन्दू ला मैं समझता हूं कि युनिफिकेशन के लिये हो रहा है और मैं समझता हूं कि ऐसे हिन्दू जो हिन्दुस्तान से बाहर रहते हैं और भारतवर्ष के अन्दर जो हिन्दू रह रहे हैं, जम्मू और काश्मीर में बसने वाले हिन्दुओं को इस कानून की परिधि से बाहर रखना यह कोई युनिफार्मिटी लाना नहीं हुआ। आपकी किसी एनामली (असंगतता) की वजह से और मैं समझता हूं कि इसके लिये कांग्रेस पार्टी दोषी है कि काश्मीर पर आज भारत के कानून लागू नहीं हो रहे हैं और अगर वह इस प्रकार का नया झगड़ा खड़ा न करते तो जैसे बाकी स्टेट्स के रूलर्स ने वहां के राजा, महाराजाओं

[श्री नन्द लाल शर्मा]

ने मर्जर पर हस्ताक्षर कर दिये थे और उसी तरह महाराजा हरिसिंह ने भी इंडियन यूनियन के साथ मर्जर (विलय) पर हस्ताक्षर कर दिये हैं और उसके पश्चात् कोई कारण नहीं रह जाता कि काश्मीर को क्यों इस तरह से अलग रखा जा रहा है। हर कानून बनाते वक्त उसमें यह लफ्ज जोड़ देते हैं "except the State of Jammu and Kashmir" अगर आप यह शब्द न जोड़ कर यही लिखा रहने दें कि "extends to the whole of India", तो उसमें कोई फर्क पड़ने वाला नहीं है। अगर कोई बाधा वैधानिक या किसी किस्म की बाद में उस कानून को वहां पर लागू करने के रास्ते में पड़े तो आप उसको वहां पर न एक्सटेंड करें। काश्मीर के सम्बन्ध में इस तरह का भेदभाव बर्त करके आप वहां के हिन्दुओं को हिन्दू ला से वंचित करना चाहते हैं और मैं समझता हूं कि यह हिन्दुओं के साथ अन्याय है और जहां तक हिन्दुओं के पर्सनल ला की हत्या है वहां भारत के समस्त हिन्दुओं को एक युनिफार्म ला के द्वारा गवर्न करने की आपकी प्रतिज्ञा भी भंग होती है।

इसी प्रकार से क्लाज ३ के पार्ट बी० खण्ड ३ के भाग ख द्वारा हम यह पाते हैं कि बुद्धिस्ट, जैन और सिक्ख्स को इस कानून से अलग रखा गया है जो कि बिल्कुल अनुचित कार्य है, ऐसा करके आप उनको जबर्दस्ती हिन्दुओं से अलग करना चाहते हैं। जैन आज तक अपने आपको हिन्दू कहते रहे हैं लेकिन आप उनको धीरे धीरे हिन्दुओं से अलग करना चाहते हैं। हम लोग निरन्तर परिश्रम करते हैं और मास्टर तारासिंह भी कई बार कहते रहे कि हम लोग हिन्दुओं से अलग नहीं हैं फिर भी आप एक पोलिटिकल झगड़ा खड़ा करके हिन्दुओं और सिक्खों में भेदभाव पैदा कर रहे हैं। इसी प्रकार से बुद्धिज्म का भी प्रश्न आता है। मैं समझता हूं कि पुनर्जन्म को स्वीकार करने वाले, ओंकार को मानने वाले और गऊ पर श्रद्धा रखने वाले, जितने भी लोग हैं, वे सब हिन्दू जाति के अन्तर्गत आते हैं और हिन्दू संस्कृति के अन्दर आते हैं और उनको हिन्दुओं से अलग नहीं रखना चाहिये, यही मेरा निवेदन है। उनको अलग रूप से नहीं रखना चाहिये, यह मेरा एक और निवेदन है। इसके लिये मेरा यह निवेदन है कि जिस तरह बार बार पंडित ठाकुर दास भार्गव और श्री त्रिवेदी कहते हैं, मैं भी उनके साथ अनुहुंकरण करता हूं, आपने मैरेज के द्वारा अथवा उत्तराधिकार के द्वारा जो लात मारी वह तो हिन्दू वयस्क पर थी, वह तो बेचारे किसी प्रकार से सह लेंगे, और हो सकता है कि आपकी बात मानें या न मानें, उनकी बात और है। लेकिन बच्चा तो अपने लिये कुछ कर नहीं सकता है। इस से उसके ऊपर आघात पहुंचेगा। जब तक वह २१ वर्ष का होगा तब तक संसार बदल जायेगा, न जाने आप कहां होंगे, हम कहां होंगे। इसलिये उचित यह है कि हिन्दू बालकों और बालिकाओं के लिये आप कृपा करके कोई और अच्छा सा बिल लावें। इस विधेयक को आप लौटा लें क्योंकि इस में बहुत से दोष हैं। संभवतः, जैसा अभी कहा गया, यदि माता पिता न रहे, तथा ऐसा कोई गार्डियन न बन सका, ऐसी परिस्थिति में अगर कोई बच्चों को उठा भी ले जाय तो किडनैपिंग (अपहरण) की बात कहने वाला कोई नहीं होगा कि किसकी कस्टडी से ले गया। कोई गार्डियन ही नहीं है तो फिर कस्टडी कैसी? ऐसी परिस्थिति में उसकी रक्षा करने वाला भी कोई नहीं रहेगा। कोर्ट भी स्वयं बिना किसी के आवेदनपत्र के कोई कार्य नहीं करेगा। ऐसी परिस्थिति में आप उन बालकों के साथ अन्याय कर रहे हैं और उनका अहित

कर रहे हैं । कृपा करके अगर सचमुच आपके अन्दर कोई भावना उनके लिये रह गई है और हिन्दू जाति को अंकुर मात्र से ही नहीं उखाड़ना है, तो बच्चों के लिये कोई अच्छा बिल लावें और इस विधेयक को लौटा लें ।

Mr. Deputy-Speaker: I now propose to call the hon. Minister, but I assure all those hon. Members who have been disappointed that I will give them time during the second reading.

Shri Patskar: Mr. Deputy-Speaker, to some extent I might say that it has really pained me to hear some of the remarks which have been levelled by some hon. Members against a measure which, I still maintain, is innocent in character and cannot on any stretch of rational thinking be regarded as striking on anything which can be said to be the essence of Hindu religion. It is very easy to make vague charges. Because the Bill relates to minors it can be said: "Oh! why are you hurting the minors? Why are you killing them?" But I fail to find a single argument as to how the unfortunate minors amongst the Hindus are going to be hard hit by any of the provisions contained in this Bill. Well, I shall leave it at that.

I now come to the other argument which my esteemed friend Pandit Thakur Das Bhargava advanced. I would make it clear to him that I am also one of those who want to see that, ultimately, whatever has been laid down in the Constitution as directive principles of our State policy—that there shall be uniform legislation—should not be allowed, at any rate, to be retarded by whatever we do in this piece of legislation.

What is the present position? There is the Guardians and Wards Act passed in the year 1899. It applies to all Hindus, Muslims, Christians and everybody. It has been made perfectly clear in clause 2 of this Bill "that the provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1899". There is one thing which I am prepared to examine. If there is anything which is inconsistent with the very fundamental object with which this Bill has been brought forward as a result of anything which might be put as interpretation on sub-clause (b) of clause 5, I am prepared to consider the position when we come to that clause, because I make it perfectly clear that it is far from my mind that I should be a party to doing anything which will be a retrograde step from that point of view. I still think that brobably it may not be open to that interpretation. However, I am prepared to consider it when we come to the discussion on that clause.

Why then, I am asked, is it necessary to bring a Bill like this with respect to Hindus? My argument is that it is necessary because of what has now come to be regarded as part of the Hindu law in respect of the provisions of the Guardians and Wards Act. Unlike in respect of other communities, natural guardians have come to be recognised by a long process of decisions of courts for the last so many years. I am further charged that instead of trying to have a sort of an evolution or improvement upon the existing thing I am trying to do something which will destroy the Hindu society and that I am actuated by that desire, Well, Sir, so far as my knowledge goes, even under the Hindu law as it is administered now the natural guardians are only the parents. Here it is said: "The father is the natural guardian of the separate property of minor children and next to him the mother. Unless the father has by will appointed any other person as guardian no relation except parents is entitled the right to the guardianship of minors". That is the law as it stands now.

What I am trying to do by this Bill is to give a recognition. We have not as yet been able to evolve a common law applicable to the whole of the country and we are going by

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a certain process. It is more to preserve, and not to destroy, immediately what is being done. It is from that point of view that I have tried in this Bill to recognise the natural guardians to the extent possible, because at the present moment I have not brought forward a Bill which will be applicable to all people. Even in the case of succession and measures relating to other things we have not been able to do it. After all it is a move in the right direction and we are doing that. The object is that, when the time comes, instead of having a Hindu Code we will have a Civil Code. At the present moment it is out of regard for what has come to be recognised among the Hindus that a special measure, not applicable to any other community, has been brought forward and I have recognised in this Bill the natural guardians as they are recognised today. Still it is said that this is no mercy for the Hindus or their children. That is the cry made.

Having recognised that, what is the other thing that I have done? There is another clause to which I will refer and then I will sum up. Why is there the question of de *facto* guardians? They are never recognised. Father and mother have come to be recognised as natural guardians and there is no dispute on that. These de *facto* guardians are peculiar only to the Hindus, again by that process of law which has come to be administered. There are rulings and all my lawyer friends know it. There are no such de *facto* guardians amongst Muslims, Christians and others. Why is that so? There was a ruling in 1856 in that famous case Hanuman Prasad versus the manager of the estate of a joint family. There some words were used very loosely and as a result of that a certain peculiar position has come to be recognised in respect of this. I will just quote something as to what this de *facto* guardian is. I will only quote a short passage from the report of the Federal Court about the scope and decision in Hanuman Prasad's case. It is a famous case held, I think in 1857. Since, then there has been a fair interpretation in India about judgment law. This *de facto* aspect has nothing to do with any of the slogans which my learned friend can find in the old and ancient books of Sanskrit. Manu was never aware of it. He did not know Hanuman Prasad nor his case. This is what the judgment says:

> "I would like to make a few observations about the phrase 'de *facto*' guardian. In my opinion, it is a loose phraseology for the expression '*de facto* manager' employed in Hanuman Prasad's case".

It was a case—relating to the appointment of a *de facto* manager who was not appointed by law.

> "Their Lordships, in different parts of the judgment, used the words 'guardian, *de-jure* and *de-facto* manager'. This phrase is certainly not known to any text of Hindu law, but it aptly described the relations and friends who are interested in a minor and who for love and affection to him, assumed supervision over his estate".

I shall not read from it further.

This was followed by a long stream of decisions of law. So, if I may say so, what is or who is a *de facto* guardian is a hazy thing. It all depended upon the facts of each case. There have been cases in which it has been held that unless the person has been actually doing the necessary duties, he is not a guardian in the *de facto* sense. There have been cases in which it has been decided that he *is* a *de facto* guardian. Who is a *de facto* guardian? Therefore, what has been done here is that the de *facto* guardian should not deal with minor's property. Supposing there is a minor, unfortunately he loses his parents, and somebody should take care of that minor. I am not a demon incarnate to say that these minors should not

be protected. How am I interested in *bal hatya*? After all they are just poor, innocent children of whom somebody should take care. Why should I indulge in *hatya*? I want to avoid using bad language and urging any argument in bad language. But I would say this much. What is there to show this argument against this measure? It is want of grasp of the real situation. I do not say that in the case of the absence of the father and the mother, nobody should take care of that unfortunate child. Where is that provision in the Act? What I say is, there may be de *facto* guardian; somebody has to take care of the child. What I further say is, where is the guarantee that such a *de facto* guardian shall not alienate the property of the guardian? If there are good people coming forward to take care of the minors, I can understand. But what is the objection to the provisions that are made? The wording in regard to certain things may be changed later. But what I say is, in the name of taking over the interests or protecting the interests of the minor who is unable to look after himself, I do not wish that anybody should come forward and offer help. He would after all see that the property is sold away. So, I do not want that such a man should be appointed as guardian. Of course, I shall go into the details later on. There must be some restriction on the powers of those who constitute themselves as guardians. If one goes to the court under the guardians and Wards Act, somebody gets appointed as guardian. I have no objection to that, but I do not want that everybody should go to the court, because there are uncles, aunts and other good relations who could take care of the minors. I do not believe that Hindus have gone so bad that there will be no good people. There will be very few people, Hindus, who will contend and fight for the right to alienate the property of the minors over whom they want to be guardians. I regard such people as bad guardians. There must be protection given to the minors against such people. That is what is being done by this Bill. Nothing more. Nobody is going to prevent people from being *de facto* guardians.

Pandit Thakur Das Bhargava: Is there any proection left now?

Shri Patnaikar: I am not going to yield. I have heard all the hon. Members patiently and I think I am entitled to be heard with equal patience. I would request the Members to hear me.

So, what is this natural guardian? I say I have recognised them as a special case, because they are being recognised by some people. I am not entering into the details about it. What really pained me was the discussion about the nature of this guardian. In the first place, we do not want to do anything which will conflict with the salutary provisions of the Guardians and Wards Act.

The most important clause is clause 13 wherein it is laid down that the welfare of the minor will be the paramount consideration. Probably, No. 13 is considered to be a bad number, but I am not a numerologist and I have no particular liking for one number or the other. Clause 13 reads as follows:

> "(1) In the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration.
>
> (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor".

Therefore, let us consider the provisions of this Bill coolly. What is there in this Bill which has really created such an amount of vehement opposition, I do not understand. I would say that so far as this Bill is concerned, far from a desire to withdraw the Bill, it is a very useful piece

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of legislation. I would request the hon. Members of this House, irrespective of party and irrespective of their pre-conceived ideas, to support this measure.

As I said at the beginning, probably, matters like succession, etc., have been different, but what is there in this Bill that is objectionable? We are trying to do something consistent with the law as it stands, in order that the minors' interests should be protected. It has been asked: "Why do you put restrictions on the powers of the natural guardian?" It is very easy to understand. For instance, take a husband and wife who have a son. Here, there is no question of a conflict arising. But many of the cases are those where the wife dies and the husband is left with children and he marries again. Then, he naturally becomes the guardian of the unfortunate children who have been left without the mother. In that case, the man has got another wife and some other children too. I would like my lawyer friends to consider this. In numerous cases I find that the father and the mother have to take care of the whole family. They have got their children and also other interests. It is in the interest of the minor in the property that is sacrificed in all these cases. That is the thing which I want to guard against by the provision contained in this Bill. It is not anybody's desire that there should be any hitch put in the way of bringing up these children by the father. What is it that we can do to guard the minors in such cases? The general rule is that there should be a third party who can screen it, *prima facie*. That is the provision in general. If there is a natural guardian and if he wants to dispose of the property of the minor and alienate it, should it not be guarded against? I am told that the words "deal with" are not necessary. It may be that there is difficulty in phraseology also. We can consider them at the proper stage.

Now, I have heard some Members suggesting that the properties may be leased out, for a hundred years but then, the properties may not be sold out or be mortgaged. There also, we do not want such things to happen. The whole idea is that the property which belongs to the minor, who is incapable of taking interest in his property. We want to see that till the children attain majority, their property should be cared for and that the property should enure to them. It is for this that we have made provisions in this Bill.

Now, the same argument that has been made in regard to some other Bills has been repeated in this case also and that is about the inclusion of Jammu and Kashmir. I may inform the House that it is on account of technical difficulties which have been explained so many times that we cannot pass a law for that State. There are so many complications into which I need not enter. But I am glad to inform the House that the Hindu Marriage Bill which we have passed is now applied to the Government of Jammu and Kashmir. They have since adopted that measure. That process of adoption is going on. Probably they will adopt our Hindu Succession Act also. We have to make proper approaches and we should not confuse the approaches with the other kinds of approach that lurk in our minds. I believe that there will be no objections to the provisions contained in the Bill in the light of my explanations. The Bill is satisfactory so far as I can see and if we really pass it into law, I am sure it will be accepted by the country. Some objections have been raised to some of the provisions; I will deal with them when we come to the discussion of the clauses. All that I wish to say now is that this Bill which has been passed by the Rajya Sabha will have to be passed by us in the interests of the minors.

Mr. Deputy-Speaker: The question is:

> "That the Bill to amend and codify certain parts of the law

relating to minority and guardianship among Hindus, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 —(*Application of Act*)

Shri Nand Lal Sharma: I beg to move:

(i) Page 1, line 14—

for "or Arya Samaj" *substitute*: "Arya Samaj, Jaina, Sikh or Buddhist".

(ii) Page 1—
omit lines 15 and 16.

(iii) Page 2—
omit lines 11 to 15.

As far as amendment No. 23 is concerned, I want that Jainas, Sikhs and Buddhists should not be separated from Hindus. Hindu religion in all its forms includes all of them. Jainas Sikhs and Buddhists have formed part and parcel of the Hindu culture and they should be considered as such. Therefore, I have said that the words "Jaina, Sikh or Buddhist" should be added after the words "Arya Samaj". The next one, amendment No. 24, is a consequential amendment.

My amendment No. 25 seeks to delete the following sub-clause:

"(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution, unless the Central Government, by notification in the Official Gazette, otherwise directs."

I want these lines to be deleted, because, as has already been stated, those persons who have been governed by the Hindu Law till now or who have not been governed by any other law like the law of the Muslims, Christians, Parsis or Jews, should be construed as Hindus. The Scheduled Tribes have so far formed part and parcel of the Hindu culture and they should be considered as such.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 1, line 14,—
for "or Arya Samaj" *substitute*:

"Arya Samaj, Jaina, Sikh or Buddhist."

(ii) Page 1,—
omit lines 15 and 16.

(iii) Page 2,—
omit lines 11 to 15.

Shri K. L. More (Kolhapur cum Satara—Reserved—sch. Castes.): I beg to move:

Page 1, lines 21 and 22—

for "which provision is made" *substitute* "dealt with".

This amendment will bring the language of the sub-clause in accord with the language of the corresponding sub-clauses in the Hindu Marriage Act and the Hindu Succession Act.

Mr. Deputy-Speaker: Amendment moved:

Page 1, lines 21 and 22—

for "which provision is made" *substitute* "dealt with".

Shri Pataskar: I accept amendment No. 10 moved by Mr. K. L More, because it brings the definition into uniformity with the definitions already contained in the two Acts—the Hindu Marriage Act and the Hindu Succession Act.

As regards Mr. Nand Lal Sharma's amendments, I only want to say that the definition contained in the Bill has already been accepted. The clause relates to the application of the Act, and the definition has been the subject-matter of long discussions. Let us stick to the definition which has been arrived at after a good deal of consideration. I am not, therefore, accepting amendments Nos. 23, 24 and 25.

Mr. Deputy-Speaker: The question is :

Page 1, lines 21 and 22.—

for "for which provision is made" *substitute* "dealt with".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 1, line 14—

for "or Arya Samaj" *substitute*:

"Arya Samaj, Jaina, Sikh or Buddhist".

The motion was negatived.

Mr. Deputy-Speaker : The question is:

Page 1—

omit lines 15 and 16.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2—

omit lines 11 to 15.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 3, as amended, stand part of the Bill".

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4—(*Definitions*)

Shri K. L. More: I beg to move:

Page 2—

(i) line 26, *omit* "or";

(ii) line 28, *omit* "or"; and

(iii) line 29, *for* "or" *substitute* "and".

If this amendment is accepted, it will make the clause a little more elegant.

Shri Nand Lal Sharma: I want to move amendment No. 26. The amendment printed here is just the opposite of what I gave. I said, *for* "father and mother" *substitute* "natural guardian". Here it is printed, *for* "natural guardian" *substitute* "father and mother".

Mr. Deputy-Speaker: Perhaps it is a typographical error. He may move it in the correct form.

Shri Nand Lal Sharma: I beg to move:

Page 2, line 28—

for "father or mother" *substitute* "natural guardian".

My intention is that we should not restrict the guardianship only to the father and the mother, but other guardians also should be added.

Mr. Deputy-Speaker: Who are the other guardians?

Shri Nand Lal Sharma: Eldest brother, paternal grandfather etc.

Shri Pataskar: So far as Mr. Nand Lal Sharma's amendment is concerned, according to the present Hindu Law, parents are the natural guardians. Therefore, I am unable to accept his amendment.

I accept Mr. More's amendment, because it is more or less a drafting adjustment.

Mr. Deputy-Speaker: The question is:

Page 2—

(i) line 26, *omit* "or";

(ii) line 28, *omit* "or"; and

(iii) line 29 *for* "or" *substitute* "and".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, line 28—

for "father or mother" *substitute* "natural guardian".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4, as amended, stand part of the Bill".

The motion was adopted.

Clause 4, as amended, was added to the Bill

Clause 5— (*Over-riding effect of Act*)

Shri K. L. More: I beg to move:

Page 3, line 3—

for "made" *substitute* "contained".

The purpose of this amendment is to make the language of this clause conform to the language in the corresponding clauses in the Hindu Marriage Act and the Hindu Succession Act.

Mr. Deputy-Speaker: Amendment moved:

Page 3, line 3—

for "made" *substitute* "contained"

3 P.M.

Shri Nand Lal Sharma: I beg to move:

Pages 2 and 3—

for clause 5 *substitute*:

"5. Notwithstanding the provisions of this Act, the original texts of the Hindu Shastras and immemorial traditions of the Hindus shall continue to have the same force as heretofore and the provisions of this Act shall be construed as a mere interpretation and codification thereof."

I know already that the hon. Minister is not going to accept it. In spite of that, I have moved it. As I have already submitted, heretofore, even the Privy Council and all other High Courts in India have been basing their judgments on the Hindu Shastras including Mitakshara, Yagnyavalkya and Vedas. I have therefore substituted this clause for the present clause 5. I think one of the laudable ideals of the Minister of Legal Affairs. . .

Mr. Deputy-Speaker: The Parliament shall pass a law and it should be construed as an interpretation. .

Shri Nand Lal Sharma:....of the Hindu Shastras and traditions. He said that he was simply codifying the Hindu Law that had not been codified till today. Therefore I say that this should be construed as an interpretation and codification of the Hindu Shastras. The Hindu personal laws should not be wiped by one stroke. A Hindu should not be cut off from the Hindu scriptures and Hindu Shastras. I appeal to the Minister of Legal Affairs to that and adjust himself so that the Hindu conununity is not cut off from its original sources.

Mr. Deputy-Speaker: Amendment moved:

Pages 2 and 3—

for clause 5 *substitute*:

"5. Notwithstanding the provisions of this Act, the original texts of the Hindu Shastras and immemoral traditions of the Hindus shall continue to have the same force as heretofore and the provisions of this Act shall be construed as a mere interpretation and codification thereof."

Shri Pataskar: I regret again that I am not able to accept the amendment moved by my hon. friend Shri Nand Lal Sharma. I think for obvious reasons he will realise that so far as this Bill, particularly the provisions regarding natural guardians and de *facto* guardians are concerned, I have already explained that it has nothing to do with the original texts of the Shastras, for which I have great regard, probably as much as he.

Shri Nand Lal Sharma: It is clearly mentioned.

Shri Pataskar: Therefore, I am unable to accept any such amendment.

There is one point that I would like to take up.

Mr. Deputy-Speaker: What about amendment No. 12?

Shri Pataskar: I am coming to that. I refer to sub-clause (b) of clause 5. I find from the arguments of Pandit Thakur Das Bhargava and one or two other friends that this sub-clause (b) might be interpreted in such a manner as to say that it will affect any of the provisions of the Guardians and Wards Act which is already there. I take it that the position is clear that that is not so. The only object is to make a change so far as the existing law is administered. It is not the intention in any way to make any change so far as the provisions of the Guardians and Wards Act are concerned. If you will kindly permit me, I would like to retain sub-clause (a) and delete sub-clause (b). Shri K. L. More's amendment may not be necessary.

Mr. Deputy-Speaker: What is the amendment?

Shri Pataskar: Clause 5 may read like this:

> "Save as otherwise expressly provided in this Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law 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."

There the clause ends. Sub-clause (b), I think, is redundant. There is no other law.

Mr. Deputy-Speaker: You move for the deletion of sub-clause (b)?

Shri Pataskar: Yes.

Mr. Deputy-Speaker: How about the amendment of Shri K. L. More?

Shri Pataskar: It is not necessary.

Pandit Thakur Das Bhargava: May we know the effect of this amendment? The hon. Member wants to take away sub-clause (b).

Shri Pataskar: The effect will be this. I would like my hon. friends also to consider it from that point of view. I have heard the hon Members say that the provision reads as if we are making a change in the existing law. It is true that we are making a change. Sub-clause (b) says:

> "(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 made in this Act."

I do not think that we have really made any provisions which are inconsistent with the Guardians and Wards Act. It may be that some people may raise this argument. So far as I am concerned, there is no other law which has to be amended. It is not the intention of the Government to give room for any argument about any particular matter. So, I have consented to the deletion of sub-clause (b), so that nobody may be able to say that by introducing this sub-clause we are trying to do anything inconsistent with what we have already done in clause 2 that the provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act.

Mr. Deputy-Speaker: A peculiar position, it seems.

Pandit Thakur Das Bhargava: I will get it explained by the hon. Minister. I understand his motive. He wants the Guardians and Wards Act to remain in force as it has remained for the rest of the community. My difficulty is this. We have passed clause 2 which runs as follows:

> "The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1899."

As long as these words "save as hereinafter expressly provided" are there, I do not think that we could improve matters by deleting sub-clause (b) I do not think that

what the hon. Minister has in mind will be implemented by taking away sub-clause (b), and retaining the words "save as hereinafter expressly provided" in clause 2. I have no objection. But, my fear is, so long as these words are there, they are only a paraphrase of what is contained in sub-clause (b). For instance, take the definition of minor. As it is expressly provided, a minor shall have to come within the meaning given in this Act and not within the meaning given in the Guardians and Wards Act. Similarly in some other matters we know there is conflict between the express provisions of this Act and the Guardians and Wards Act. The words which you have been pleased to use in clause 2 will have force. So long as you keep these words in clause 2, the taking away of sub-clause (b) will not improve the position. As long as this expression is there in clause 2, this amendment is out of order. This has got no meaning whatsoever as long as you keep clause 2 as it is.

Mr. Deputy-Speaker: No question is out of order. Then, it would mean that it would not fit in. A provision is considered redundant by the Minister. He thinks it may be deleted.

Pandit Thakur Das Bhargava: So long as we have passed clause 2, any amendment which has the effect of nullifying the effect of that clause will not lie. He says that he wants to keep the Guardians and Wards Act in force. Since you have passed clause 2, this amendment is out of order. We should take away these words, 'save as hereinafter expressly provided' from clause 2. I would rather request the hon. Minister to take away those words from clause 2 also, so that they may have the same meaning. Then, your intention will be fulfilled. If you do not take away those words from clause 2, in spite of your best intentions, the position will remain as it is.

Shri Patasakar: It is only out of deference to the wishes of the hon. Members that I consent to this amendment. I have no desire to make any change so far as this clause is concerned. I only wanted to move this amendment in order to satisfy some apprehensions in the minds of some hon. Members. Probably, my hon. friend wanted something else. I am not able to accept that. I might accept Shri K. L. More's amendment and we may proceed. It makes no difference.

Mr. Deputy-Speaker: It has been brought to my notice that there is no quorum. Let the bell be rung.

Now, there is quorum.

The question is:

Page 3, line 3,—

for "made" *substitute* "contained".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Pages 2 and 3,—

for clause 5 *substitute*:

"5. Notwithstanding the provisions of this Act, the original texts of the Hindu Shastras and immemorial traditions of the Hindus shall continue to have the same force as heretofore and the provisions of this Act shall be construed as a mere interpretation and codification thereof".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 5, as amended, stand part of the Bill".

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6-- (*Natural guardians of a Hindu minor*)

Shri K. L. More: I beg to move:

Page 3—

for lines 17 and 18 *substitute*:

"(b) if he has renounced the world by entering any religious order".

[Shri K. L. More]

This is the phraseology adopted in the divorce section of the Hindu Marriage Act, and therefore I move this amendment.

Shri Nand Lal Sharma: I beg to move:

Page 3, line 8—

after "mother" *insert*:

"Grandfather paternal, eldest brother, paternal uncle, Maternal Grandfather and Maternal uncle".

The reasons have been already stated. In case both the father and mother die, the children should not be left unprotected, especially the girls, and somebody must be able to look after them. Therefore, the peternal grandfather should be considered a natural guardian, and after him the eldest brother and the paternal uncle who live in the same family and after that the maternal grandfather and the maternal uncle.

Shrimati Jayashri: I beg to move:

(i) Page 3, lines 7 and 8—

after "the father, and after him, the mother" *insert* "in case the father though living is unfit or unwilling to act or incapable of acting, the mother".

(ii) Page 3, line 10—

add at the end—

"and after the death of the father the custody of a minor who has not completed the age of 14 years shall normally be with the mother".

(iii) Page 3—

omit line 13.

Shrimati Renu Chakravartty: I beg to move:

Page 3, line 9—

omit "who has not completed the age of five years".

I want that the custody of the minor shall ordinarily be with the mother. I have already stated the reason for it and I state it once again. I feel that the minor child should be normally under the care and guidance of the mother because it needs the mother most of all in the formative period of its life. That is why I very strongly recommend this amendment.

I should also like to add my voice in support of amendments 3 and 4 moved by Shrimati Jayashri because I do feel that those two additions will clarify certain things that are not there already. In case the father is living and yet is unfit or is unwilling or is incapable of acting as the proper guardian, the mother should become the guardian. That lacuna should be filled and I trust the Minister will accept the amendment.

I also support amendment 4 because although the principle which guides my amendment 17 is the same as that of Shrimati Jayashri, I know that many conservative people will argue that to lay it down that the custody should be with the mother right up to the age of majority may be a little too much. Though I do not agree with it, at least let it be categorically stated that a minor who has not completed 14 shall normally be with the mother.

Mr. Deputy-Speaker: Amendments moved:

(i) Page 3—

for lines 17 and 18, *substitute*:

"(b) if he has renounced the world by entering any religious order".

(ii) Page 3, line 8—

after "mother" *insert*:

"Grandfather paternal, eldest brother, paternal uncle, Maternal Grandfather and Maternal uncle".

(iii) Page 3, lines 7 and 8—

after "the father, and after him, the mother" *insert* "in case the father though living is unfit or unwilling to act or incapable of acting, the mother".

(iv) Page 3, line 10—

add at the end:

"and after the death of the father the custody of a minor who has not completed the age of 14 years shall normally be with the mother".

(v) Page 3, *omit* line 13.

(vi) Page 3, line 9—

omit "who has not completed the age of five years".

Shri Tek Chand (Ambala—Simla): I oppose the amendment moved by Shri K. L. More because I feel that the language of (b) as at present in the Bill is more precise and less likely to cause difficulties. According to my friend, a person forfeits the right of becoming the guardian if he happens to enter any religious order. This, to my mind, deprives unnecessarily a father of the guardianship of the child. There may be religious orders which a person may enter without being, as the lawyers would say, civilly dead. Therefore the Minister has designedly put in the words "if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)." Therefore, entering into any religious order should not ban or bar a father's guardianship of his child.

Shri Nand Lal Sharma: Vanaprastha is not a religious order.

Shri Tek Chand: I support amendment 28 of Shri Nand Lal Sharma. One serious flaw that we find in this Bill is that a Hindu child is being deprived of a very necessary protection. No doubt the Bill is styled as the Guardianship Bill, but so far as certain clauses are concerned, you might as well style it with reason as Guardianship Depriving Bill. I wish in all humility to invite the pointed attention of the hon. Minister to section 361 of the Indian Penal Code which makes kidnapping an offence. Kidnapping is done when a minor is deprived of lawful guardianship. For the benefit of some of my friends who may not be aware, and to whom the provisions of section 361 may not be very fresh, I may read the section:

"Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of keeping of the lawful guardian of such minor, without the consent of such guardian, is said to kidnap, for which the penalty is prescribed in section 363."

Kindly see the position now. *De facto* guardian is an entity which will be unknown to our law, if clause 11 becomes a part of the Act. Therefore, in the case of a Hindu minor, male or female, the only guardian known to such a child is either the natural guardian, which definition is confined to father, and failing the father the mother or such guardian as the court may appoint, maybe a relation or maybe a stranger. But in the case of a person who has got a *de facto* guardian under the mohammedan law or any other species of Indian law that we are aware of, if any person were to kidnap the male or female child, he does a criminal offence under section 363 of the IPC, because he removes the child out of keeping of the lawful guardian—and a *de facto* guardian is as lawful for purposes of the IPC as a *de jure* guardian. What therefore happens is that a kidnapper of a Hindu child from the custody of uncle, brother, or grandparents can do so without any fear of coming within the clutches of criminal law. Therefore, whereas I am very keen that a *de facto* guardian is a very

[Shri Tek Chand]

necessary person, because there is hardly a child of impressionable years without a guardian....

Mr. Deputy-Speaker: A granddaughter living with a grandfather will be without lawful guardianship for purposes of the IPC?

Shri Tek Chand: Yes. I am grateful to you for having put this question. Now, kindly examine it. Please read clause 11 which says that a *de facto* guardian is not going to function.

Mr. Deputy-Speaker: Not alienate property.

Shri Tek Chand: True. But so far as guardianship is concerned, it is now confined to legal guardian and to natural guardian. Therefore, I am keen, when I am supporting the amendment of my hon. friend, that among the natural guardians, if the father is no more, if the mother is dead, then there should be in that group the relations mentioned by him, because all those relations are such relations as have got the welfare of the child nearest their heart. It is for this reason that I am keen that they should also be treated as coming within the class of natural guardians. If you deprive them of natural guardianship then what happens is that with the best of motives there will be a time-lag, there will be an interval of time, when the child would remain without a guardian, before a guardian is given to him by a court of law, assuming that somebody applies to become a court guardian. Therefore, it will be most desirable if the list of natural guardians is enlarged.

There is one thing more that I would like to submit; that is that in explanation to clause 6, you say:

> "In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother".

I wish this Explanation had been omitted. My reasons are these. Let us assume now that we are getting very up-to-date and very civilised, in our matrimonial laws. Let us assume that the Hindu parents of a minor child are divorced. Suppose it happens to be a male child, and suppose the divorce is due to the reason that the mother of the child has been faithless, or disloyal or has been living in adultery with another person, and suppose in a case like that, the man remarries, and the child is brought up by the step-mother, and the father dies; then you say that the mother living in adultery is a better guardian than the step-mother. Now, reverse the illustration. Again, you say that a step-father is a good guardian as against the man who is misbehaving himself otherwise. Now, there will be cases where a natural guardian is dead, and the only relation is a step-father or a step-mother. Do not deprive the step-father or the step-mother of guardianship in such cases Deprive him of the guardianship by a specific provision if you find that in a particular individual case, he forfeits the right of being a guardian, because he is not looking after the interests of the child or because the child's welfare is not in his becoming a guardian.

I would say, among the list of guardians, retain the step-father and the step-mother. They come only after the death of the father or the mother. So, retain them. But exclude them by a specific provision which you have laid down already. You can even deprive a natural father of the guardianship, when you find that he is unworthy of bearing that responsibility.

Shri Barman: I have an amendment to clause 7, but I think it is more proper if I speak at this moment when clause 6 is being discussed.

In clause 6 (a), natural guardianship for a boy or an unmarried girl has been provided for. The material point that I want to draw your attention to is that it is also provided therein that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. If you compare this provision in clause 6 with that in clause 7 regarding an adopted son or daughter, you will find that in the case of an adopted son or daughter, no provision has been made to the effect that in case the age of the minor is below five, the guardianship of the minor will be primarily with the mother. I do not find any reason why this distinction should be made between a son or daughter born out of lawful wedlock and one that is being adopted to the family. Under the Hindu law, as soon as a boy is taken into the family of another by way of adoption, he loses all his ties, both temporal and spiritual, with the family in which he was born, and all rights and obligations accrue to him inside the family in which he is adopted. Therefore, I do not find any reason why the provision that is made regarding a minor under the age of five in sub-clause (a) of clause 6 should not equally apply to clause 7 also.

If the Minister agrees to the contention I am making in favour of an adopted minor son or daughter, it would be appropriate to include that provision in clause 6 itself, in which case there will be no necessity for clause 7. If we want to make a provision in clause 7, I think there will be a little complication, not only as regards the language but also as regards other provisions of this Bill.

Shri U. M. Trivedi: We have not followed the hon. Member's argument.

Shri Barman: My point is this. In the case of a son or daughter born out of lawful wedlock, provision has been made in sub-clause (a) of clause 6 that in case of a minor under five years of age, it would be the mother who would primarily be the guardian. We have dealt with the case of an adopted son in clause 7. It is an entirely different section. While dealing with the adopted son is clause 7, no provision has been made as is made in sub-clause (a) of clause 6. I do not find any reason why this invidious distinction should be made. Under all sanctions of our religion and also of the law prevailing at present, the adopted son is treated just as a natural born son in the family of the adoptive father.

So what I submit is that in clause 6 itself there should be a provision that both in the case of the son or daughter born out of lawful wedlock as well as in the case of an adopted son, the clause will apply, that is, in case the minor be under five years of age, the mother will primarily be the guardian.

If the hon. Minister concedes this proposition of mine, it would be better to make this amendment in clause 6 because that will simplify other matters.

In clause 9, we have made a provision for testamentary guardianship. There the words used are 'legitimate children'. Whether the words 'legitimate children' will also include an adopted child is a point that may come up for contention because in the *Oxford Dictionary*, I find that the word 'legitimate' has been defined as 'a child born out of lawful wedlock'. Now, the adopted son was not born in the family of the adoptive father out of lawful wedlock. Therefore, that difficulty may arise. But if we simplify the matter in clause 6 by saying that that clause will apply equally to an adopted son, the difficulty may be solved.

Pandit Thakur Das Bhargava: Before we are asked to vote, may I know from Shrimati Jayashri, the mover of the amendment that sub-clause (c) be deleted, through you, as to whom she wants to be the guardian in the case of a girl who is married and is minor? Does she

[Pt. Thakur Das Bhargava]

want it to be the father or somebody else?

Mr. Deputy-Speaker: The hon. Member may vote against it.

Pandit Thakur Das Bhargava: I want to understand. There is no question of voting it down. We must consider everything.

Shrimati Jayasbri: We have given separate and equal status to women. We think that they can look after themselves, and there is no necessity of having that provision.

Pandit Thakur Das Bhargava: If the husband is a minor and the married girl is a major, then she may be appointed the guardian of that husband. I have no objection to that from the point of view of equality.

Mr. Deputy-Speaker: Perhaps she might agree to that because there is equality.

Shrimati Jayashri: In the case of the married daughter, I think the father should be the guardian.

Mr. Deputy-Speaker: The husband might suffer to have the wife as guardian.

Shri M. S. Gurupadaswamy (Mysore): She is the best guardian.

Shri Pataskar: So far as amendments Nos. 3, 4 and 13 are concerned, what Shrimati Jayashri wants is this. Amendment No. 3 says:

> "after 'the father, and after him the mother'. insert 'in case the father though living is unfit or unwilling to act or incapable of acting, the mother'."

I think there is some misconception on this point. As I have been already saying, clause 6 gives recognition to what are termed as natural guardians, and they are, naturally, the father and the mother. So we say:

> "in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."

This is the law as it stands now. What the hon. lady Member wants is that in case the father, though living, is unfit or unwilling to act or incapable of acting, the mother should be the guardian. What we are trying to provide is in respect of natural guardians. So far as guardians appointed by court under the Court of Wards Act or the Guardianship and Wards Act are concerned, that is altogether a different matter. Here there are certain persons who are recognised. Supposing we incorporate a provision like the one that the hon. lady Member has in view, there will be complications. There should be somebody to decide as to whether he is unfit, whether he is willing and all those things. That can only be gone into by the court.

Pandit Thakur Das Bhargava: Clause 13 covers that.

Shri Pataskar: If really the father is unfit or is unwilling to act as guardian, there is recourse to the ordinary provisions of the Guardianship and Wards Act. That is the only way it can be decided. By inserting this provision, the matter is not still improved. I sympathise with the object that the hon. lady Member has in view, but that cannot be served by making a provision of this nature. There is already a provision in the Act which can decide the matter by reference to court. Otherwise, if you put in this provision here, it will lead to interminable quarrels between the parties concerned. The father might say that the mother is unfit, and the mother might say that the father is unfit.

So the object cannot be served by making this amendment, but by the appropriate procedure prescribed in the Guardianship and Wards Act. Therefore, I hope the hon. lady Member will withdraw that amendment.

Then in amendment No. 4, she says that after the death of the father, the custody of a minor who has not completed the age of fourteen years shall normally be with the mother. What is the provision here?

> "in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."

When will this situation arise? Not when the father and mother are both living together. Then there will be no such question. But it will arise when there is a dispute between the father and the mother. If he has not completed the age of five years, ordinarily the custody shall be with the mother. It is only a guidance to the court. We are not going to interfere with what the court decides. Perhaps, there may be cases in which the court finds that both the father and the mother of the child are bad and that the custody should go to a third party. This is only an indication to the court if, unfortunately, the minor has got a father and a mother who are quarrelling about the custody of the child. Even now this is the principle followed by the courts. There is no point whether the daughter should continue with the mother or the son with the father or whether the girl should remain with the mother until she attains puberty; all these are besides the point. We indicate that normally until the child has completed the age of five years the custody shall be with the mother.

Before coming to the point raised by my friend, Shri Tek Chand, I will answer the point raised by Shri Barman. I want to point out to him that under the General Clauses Act, son includes the adopted son also. There is no difficulty so far as clause 6 is concerned. In the case of the adopted son the question comes only when there is the natural father and the adoptive father. Therefore, it was put in. It has been put in in clause 7 because cases might arise where in spite of the fact that son includes adopted son, the natural father may claim that he should be the guardian. We say that for the purposes of this Act, the natural guardian of an adopted son who is a minor shall be the adoptive father. Naturally, when a boy passed from one family to another by adoption, we want to make it clear that the right of natural guardianship which is a special feature of Hindu law, will pass to the adoptive father and adoptive mother. The adopted son is as good as any other son. I shall explain more, if necessary, when we come to clause 7. There is no definition of son given here and so the General Clauses Act will apply.

The other point on which much argument was based by Shri Tek Chand is this—section 361 of the Indian Panel Code. He thinks that by the deletion of the *de facto* guardians disastrous consequences will follow. What is the provision of section 361 of the Penal Code?

> "The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person."

There are no natural guardians amongst the Muslims and the Christians. What happens to those minors who have no parents living? Is it that they could not be easily kidnapped? That is a wrong way of trying to interpret the section. There is no question of trying to take away something which was already there. In this we are trying only to recognise the natural guardians who are already recognised by the Hindu law.

There was an argument, what about the definition in clause 4. The definitions in this Act are for the purposes of this Act. You cannot try to utilise them for the purposes of other Acts with which we are not dealing now. (*Interruption*).

Taking a realistic view, I think, this clause 6, as it stands, does not need any amendment. If we look at it in the proper perspective, we will see

[Shri Pataskar]

that what we are trying to do is only to recognise the natural guardians already recognised by Hindu law.

With respect to the amendment of Shri More, the only object is that he wants to bring it in conformity with the wording in the other Act. I am more impressed with the argument of Shri Tek Chand. I am inclined to look at the matter from a different point of view. It may be that a man has renounced the words or entered some religious order and yet, probably, may be in a position to look after the minor. I would prefer not to accept the amendment hastily. When time comes for codifying and to have uniformity, at that stage, I would like to disturb it. Therefore, I oppose all the amendments that have been moved and I hope the hon. Members would withdraw the amendments in view of the explanation that I have given.

Shrimati Renu Chakravartty: The hon. Minister said that the general desire of those who have framed this Bill is that the custody of the minor shall ordinarily be with the mother. That is the explanation given. If that is so, in view of the fact that he is sympathetic and that all sections of the House, including those who are opposed to the other provisions of the Bill, feel that the age of five years is too low, will he do away with it altogether or would specify a higher limit? I wonder why he is opposing this particular amendment—either mine or that of Shrimati Raiji.

Shri Pataskar: As I have tried to explain, no purpose would be served. It is only that we give an indication. The interest of the minor will always be kept in view. It is generally to say that a child who is suckling should not, as a matter of prudence, be weaned away from the mother.

Shri Nand Lal Sharma: The hon. Minister was just now saying that de *facto* guardianship was nowhere stopped. In clause 4, there is reference only to 4 classes of guardians, the natural guardian, the guardian appointed by will, the guardian appointed or declared by a court and a person empowered by any enactment. There is no fifth class.

Mr. Deputy-Speaker: We have gone much farther now. The hon. Member is taking us back.

Pandit K. C. Sharma: (Meerut Distt.—South): He is coming from dreamland.

Shri Nand Lal Sharma: *De facto* guardian is found nowhere.

Mr. Deputy-Speaker: Can I take it that all these amendments may be put together?

Shrimati Renu Chakravartty: I would like that Shrimati Jayashri's amendment No. 4 be put separately.

Mr. Deputy-Speaker: The question is:

Page 3, line 10—

add at the end:

"and after the death of the father the custody of a minor who has not completed the age of 14 years shall normally be with the mother."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3—

for lines 17 and 18, *substitute*:

"(b) if he has renounced the word by entering any religious order."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3—

for lines 17 and 18, *substitute*:

"(b) if he has renounced the word by entering any religious order."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3, lines 7 and 8—

after "the father, and after him, the mother" *insert* "in case the father though living is unfit or unwilling to act or incapable of acting, the mother."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3, *omit* line 13.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3, line 9—

omit "who has not completed the age of five years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7—(*Natural guardianship of adopted son*)

Mr. Deputy-Speaker: Does Shri Barman wish to move his amendment, No. 15?

Shri Barman: No. Sir; I am not moving it.

Shri Nand Lal Shama: I have an amendment No. 29 to this clause.

Mr. Deputy-Speaker: The hon. Member may move it.

Shri Nand Lal Sharma: I beg to move:

Page 3, line 23—

add at the end:

"and in their absence to his natural parents in the same order as indicated in clause (6)."

क्लाज ७ में मेरी जो अमेंडमेंट २९ है उसके द्वारा मैंने यह चाहा है कि एडाप्टिड चाइल्ड (दत्तक बच्चे) के एडाप्टिड माता तथा पिता की मृत्यु के बाद उनका जो एडाप्टिड माइनर (दत्तक अवयस्क) है वह असुरक्षित न रह जाये। इस वास्ते उसके जो अपने पिता माता हैं उनको भी उसके नेचुरल गार्डियन (स्वाभाविक संरक्षक) होने का अधिकार प्राप्त होना चाहिये। इस प्रयोजन को सिद्ध करने के लिये मैं ने इस क्लाज में ये शब्द जोड़े हैं। मैं आशा करता हूं कि इस में कोई विशेष झगड़े की बात नहीं है और माननीय मंत्री महोदय इसे स्वीकार कर लेंगे।

Mr. Deputy-Speaker: Amendment moved:

Page 3, line 23—
add at the end.

"and in their absence to his natural parents in the same order as indicated in clause (6)".

Shri Pataskar: I am sorry I cannot accept the amendment and probably it does not fit in. The scheme is that the natural guardianship of an adopted son, who is a minor, passes, on adoption, to the adoptive father, etc. Having passed that, I do not want to revert it.

Shri Nand Lal Sharma: Supposing both the adoptive father and adoptive mother are dead, what will happen?

Shri Pataskar: There is the guardian.

Mr. Deputy-Speaker: Such arguments should not proceed further after the hon. Minister has answered.

Shri Tek Chand: I do not want to allude to anything which the hon. Minister has said. I do not want to take up long but only a minute with a view to invite his attention to what, in my mind, appears to be a terminological inexactitude, and that is this. You have in clause 7 the adoptive father and after him, the adoptive mother. As the hon. Minister knows the Hindu law of adoption, in those

[Shri Tek Chand]

cases where the mother is not entitled to adopt, there is only one person, the adoptive father. If the adoptive father adopts, then the wife of the adoptive father is not the adoptive mother just as he has no adoptive brother and no adoptive uncle and no adoptive grandfather and so on. Therefore, the relationship between that lady and the adopted child of the adoptive father is that she happens to be the wife of the adoptive father but she is not the adoptive mother of the child. I suggest that 'adoptive mother' will not be a precise way of describing this person.

Mr. Deputy-Speaker: This exactly conveys what the hon. Minister has said.

Shri Pataskar: So I need not reply to it.

Mr. Deputy-Speaker: The question is:

Page 3, line 23—*add* at the end.

"and in their absence to his natural parents in the same order as indicated in clause 6".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 7 stands part of the Bill."

Thre motion was adopted.

Clause 7 was added to the Bill.

Clause 8—(*Powers of natural guardian*).

Shrimati Renu Chakravartty: I do not wish to move my amendment Nos. 18 and 19, but I shall only move my amendment No. 20.

I beg to move:

Page 3, line 37—

for "voidable" substitute "void".

I am trying to substitute the word "void" for the word "voidable" in order to make things simpler to prove the voidability. I have nothing further to say in this connection.

Shri Nand Lal Sharma: I beg to move:

Page 3,—

after line 41 *add*:

"Provided that the above restrictions shall not apply to the self-acquired property of the natural guardian transferred to or named after the minor."

मैं यह चाहता हूं कि यदि कोई गार्जियन (संरक्षक), कोई पिता या माता स्नेहवश कोई सम्पत्ति जो उसने अपने ही धन से खरीदी हो या स्वयं प्राप्त की हो उसको अपनी संतान के नाम पर लगा देता है तो ये सारे के सारे प्रतिबन्ध उसके ऊपर नहीं लगने चाहिये और आवश्यकता पड़ने पर उसके अन्यथा उपयोग करने की आज्ञा उसे होनी चाहिये। मैं आशा करता हूं कि मंत्री महोदय इस मामूली सी अमेंडमेंट (संशोधन) को तो अवश्य ही स्वीकार कर लेंगे।

Mr. Deputy-Speaker: Amendments moved:

(i) Page 3, line 37—

for "voidable" substitute "void"

(ii) Page 3,—

after line 41 *add*:

"Provided that the above restrictions shall not apply to the self-aquired property of the natural guardian transferred to or named after the minor"

Shri Pataskar: The amendment moved by my opponent of this Bill is a bit strange considering the fact that he is one of those who believe in the ancient traditions of our *dharma*. What does his amendment mean? What he wants to do is this. Supposing there is the father and he has transferred his property in the name of his son, then if something happens, that should

not be the son's property but it should revert to the person concerned. That brings in the question of what I would call the *benami* transaction. I do not want to complicate this matter. There is a saying true of all people who are given to the correct ancient traditions being followed, and in Marathi we have a saying which means that when once a thing is given away by you, if you take it back, it is the worst sin that a Hindu can commit. It is strange for a protagonist of ancient culture to say that having transferred his property, it should be open to him to take it back as otherwise it would go to the same minor person.

Regarding Shrimati Chakravartty's amendment, I should like to explain what the significance of the present provision is.

[SHRI BARMAN *in the Chair*]

As matters stand at present, natural guardians can alienate property for certain definite purposes, for the benefit of the minor, for education and so on and so forth. What we have decided is that normally he shall not do so without approaching the court for a *prima facie* examination as to whether there is a real necessity for such transfer. Supposing there is a father who wants to spend money for the education of his son and under certain circumstances he can dispose of that property—it is really for the benefit of the minor and so he can do it. The whole idea underlying the disposal of the minor's property is that it should be open for the minor, after he attains majority, either to ratify the transactions entered into by the guardian or to say that they are not binding on him. When we say it is voidable, we leave it to the option of the minor after he attains majority. Suppose there is a case in which the alienation of the property by the natural guardian is done in the interest of the minor but without taking the permission of the court, then we do not want to say that such a transaction will automatically be void. The option is given to the minor, after he attains majority, to decide whether it can be ratified or whether he should say that it is not binding on him. So, I think "voidable" is the proper word to be used. I hope Shrimati Renu Chakravartty will also withdraw her amendment.

Mr. Chairman: The question is:

Page 3, line 37—

for "voidable" *substitute* "void".

The motion was negatived.

Mr. Chairman: The question is:

Page 3, *after* line 41 *add*:

"Provided that the above restrictions shall not apply to the self-acquired property of the natural guardian transferred to or named after the minor."

The motion was negatived.

4 P.M.

Mr. Chairman: I shall now put clause 8 to the vote of the House.

Shri Tek Chand: What was debated was the amendment of my hon. friend. I wish to say something on this clause if you will allow me, especially when the hon. Deputy-Speaker has said that the time for the general discussion was short and that he would allow those who wished to take part, to speak at this stage.

Mr. Chairman When the amendments were moved, it was quite open to any hon. Member to speak generally. Now, the hon. Minister has replied to amendments Nos. 20 and 30. They have been disposed of. It is quite open to hon. Members to speak generally on the clause or on the amendments before the hon. Minister replies. That should be the ordinary procedure. But, if the hon. Member is very keen to speak, I will allow him.

Shri Tek Chand: I am grateful to you because clause 8, if I may say so, is the pivotal provision of this Bill. There are certain provisions here which are going to be very harsh. I am not here saying anything with respect to the offended dignity of the parent whereby you make him the target of tremendous suspicion. It is

[Shri Tek Chand]

not so much from that point of view as from the interest of the minor, that I wish to say something.

Clause 8(2) says:

> "The natural guardian shall not, without the previous permission of the court, mortgage or charge.... the immovable property of the minor."

Kindly take this fact into consideration that the meaning of 'natural guardian' is now confined to a father; failing father, the mother. You think that the father's judgment is false and you put an embargo upon him. For the sake of educating his child he may have to mortgage the property. In order to meet any other pressing necessity to the advantage of the child, he may have to alienate some property. To ban it absolutely and to subject it to a previous permission of a court will be a dilatory process and thereby the interests of the minor will suffer. I can understand if sub-clause (a) were confined to gifts. One has no right to gift away a minor's property and you may have said the same thing with respect to sale because it is a permanent and irrevocable alienation. But you place difficulties in the way of even mortgaging or charging or exchanging when there is no loss. In fact, I feel that it is hard upon the minor whose interest you seem to subserve by this Bill.

Clause 8(b) empowers the guardian to lease any part of the minor's property for a term not exceeding five years. That is, to my mind, again wrong. Take for instance a case like Delhi. There is a tempting offer made. A lessee is prepared to pay a tempting rent provided he lets him stay for ten or fifteen years. But, the father cannot do so. Every time he has to go to the court.

What is worse is this. In clause 8(4) it is said that the permission of the court shall not be granted except in case of necessity or for an evident advantage to the minor. It may be genuine and real advantage, yet not evident. Evident means apparent on the face. Therefore, a thing may be real and yet not evident. The advantage is there. The court will say this: "The law requires us to find out if the advantage is evident. It may be genuine and real but in so far as it is not evident, we withhold permission much as we would like to help you as the law has tied us down by its language".

Clause 8(3) says:

> "Any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person claiming under him."

You may as well have added: "....or claiming on his behalf". The reason is that a minor as such cannot institute a suit and therefore, the language will not be precise when you say 'at the instance of the minor'. It should be: 'unless the suit is at the instance of the new guardian of the minor'. The minor as such cannot figure as a plaintiff; he figures as a plaintiff through his guardian and therefore, it may not be at the instance of the minor. The minor can come in after having attained majority within a stated period. He may say: "I have become a major today. I realise that something to my detriment had been done by my natural guardian. Therefore, that alienation of his is being contested today, now that I am a major." That may be at the instance of the same person but on the date of the suit if he has attained majority; one cannot say that it is at the instance of the minor. Therefore, perhaps a certain amount of clarification is necessary. I would, therefore, in all humility and earnestness request the hon. Minister to see that in the interest of the minor these alienations are not unnecessary clogged.

Shri Patashar: I believe that the arguments advanced by the hon. Member are not very correct. In the

first place, there is no disrespect shown to the parents. On the contrary, any natural guardian—father or mother—who is respectable will try to see that any immovable property which comes under his or her management is not alienated by him or her. So, this is a procedure provided in the interest of protecting the property for the minor till he attains majority. I think no self-respecting father should ever think that all this that is being done in this Bill is in any way derogatory. On the contrary, he will welcome this measure as he will be saved from temptations on account of pressure from the minor's step-mother or on account of some other forces. I think there will hardly be any complaint on that score.

As far as possible we want to keep the property which is inherited by a minor and prevent it from being alienated so that it should go to him when he attains majority, when he may choose to do anything he likes. That is the whole idea underlying the Bill.

Similar is the question of lease. My friend knows the provisions of the Guardians and Wards Act. If we allow lease for larger periods and if one finds that one cannot alienate the property, there would be leases for such periods that there would be no real advantage to the minor. If in a particular case a lease is very advantageous to the minor, what is there to prevent the guardian from going to a court and saying: "I am here in Delhi. This lease for twenty years will be to the evident benefit of the minor"? The court may grant that permission.

With respect to the wording, there has been a considerable amount of comment. But, there is nothing new in this phraseology. It is already used in the Guardians and Wards Act. The object of using these words: "except in case of necessity or for an evident advantage to the minor" is that we really want that advantage to be evident; otherwise I have known cases in which they have frittered away some very valuable property. I have known of a case where a property which was situated about 50 miles away from the place where the minor resided was sold away and another one purchased which was near to the place of the guardian on the question of more convenience for management. Who knows whether the minor would have, when he attained majority, chosen to go and stay in the property which was away from his guardian and utilised it for his own benefit? That is why we have put the words "evident advantage". We do not want at that stage the court to go into all questions and say *prima facie* whether there is a good case. Supposing somebody is going to be sent to England and he has got some immovable property, then obviously it is to the advantage of the minor concerned. In such cases there is no difficulty in getting the necessary permission.

On the whole, therefore, I think the clause, as it is worded, need not offend the sentiments of any respectable father or mother, because that has been done with the intention of safeguarding the interests of their ward. From that point of view I say that the clause as it is should be passed.

Mr. Chairman: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9— (*Testamentary guardians and their powers*)

Shrimati Renu Chakravarty: I have sent in an amendment which says:

Page 4, line 24,—

after "father" *insert* "or mother".

Here, I would like some clarification from the hon. Minister. I have added the word "mother" because I want that a Hindu father as well as a mother should not only be entitled to act as the natural guardian of his or

[Shrimati Renu Chakravartty]

her minor legitimate children, but he or she may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property. In sub-clause (1) of this clause only "a Hindu father" is mentioned. Later, down in sub-clause (3) of the same clause it is said:

> "A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property..."

Actually, this is what I want to know. Why is this difference in sub-clause (1) and sub-clause (3)? Is it only a question of making clear the Hindu widow's and the Hindu mother's right to appoint a guardian in two different places? If that is so, then I do not move my amendment.

Shri Pataskar: I think that is so. The clause reads like this:

> "9(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both."

That is done on principle. Then we come to sub-clause (2) which says:

> "An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian."

I think there is no difficulty about that also. Then there is sub-clause (3) which says:

> "A Hindu widow"—supposing she is a widow—"entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such..."

The words "Hindu mother" are deliberately put here because she is in that case the mother and not a widow. The words "Hindu widow" are put because that is not covered by sub-clause (1). I think the wording is consistent with the provisions that we have already passed.

Shrimati Renu Chakravartty: Then I do not move my amendment because it is actually covered.

Mr. Chairman: Then I will put the clause to the vote of the House. The question is:

> "That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Clauses 10 to 13 were added to the Bill.

Clause 1—(Short title and extent)

Shri K. L. More: I beg to move

> Page 1, line 4—
> *for* "1955" *substitute* "1956".

Shri Nand Lal Sharma: Sir, I beg to move:

> Page 1, lines 5 and 6—
> omit "except the State of Jammu and Kashmir."

Mr. Chairman: That point has already been discussed.

Shri Pataskar: I am not going to accept amendment No. 22. I accept amendment No. 2 because the year has to be changed.

Shri U.M. Trivedi: But there is one thing. I raised that point to some extent in my speech, but I do not know why the hon. Minister has not tried to explain that.

Shri Pataskar: I explained it fully, but, unfortunately, the hon. Member was not present in the House then.

Shri U. M. Trivedi: I want this specific question to be answered. Extra-territorial jurisdiction has been created for those who have been domiciled here in any part of India. Even if they go and live outside India this jurisdiction has been extended to them. So far as this Act is concerned, even if those Hindus were born and brought up there, or they hold doube citizenship so to say, it will apply. For example, if they are citizens of Jammu and Kashmir, even if they come and stay here in India this law can apply. If this law can apply to our nationals who go there and those nationals come here, what is wrong in applying the whole of the Act to the Hindus of Jammu and Kashmir? That was the specific question that I raised; I do not know whether the hon. Minister has answered that.

Shri Pataskar: The point is very simple. Clause 1, sub-clause (2) says:

> "It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories."

What my learned friend wants to point out is that even to those people who are really citizens of India but who have gone and domiciled in Kashmir this law will apply. I think there is nothing wrong in it. He also does not object to that. What he objects to is that it does not automatically apply to Jammu and Kashmir. He wants to know why it does not automatically apply to Jammu and Kashmir. As I have already pointed out there are some constitutional difficulties which prevent us from legislating in regard to this matter for the State of Jammu and Kashmir. All the same, I have already pointed out that so far as the Hindu Marriage Act is concerned, which was part of the Hindu Code, they have adopted it. I am sure they will shortly adopt the Hindu Succession Act also. I am also sure that the Hindus there will also adopt this Act in due course. So there is practically no difficulty. The difficulty is only in the procedure to be followed and it is more constitutional than trying to make any difference between the people of Jammu and Kashmir and the people of India.

Shri Nand Lal Sharma: The difference between an adopted father and a natural father.

Mr. Chairman: The question is :

Page 1, line 4—

for "1955" *substitute* "1956"

The motion was adopted.

Mr. Chairman: The question is:

Page 1, lines 5 and 6—

omit "except the State of Jammu and Kashmir".

The motion was negatived.

Shri Nand Lal Sharma: I suggest that the words "as passed by the Rajya Sabha" may he deleted. Again, for "Sixth Year of the Republic of India" "Seventh Year of the Republic of India" may be substituted.

Mr. Chairman: That will be done by the office.

Shri Pataskar: When I move that Bill be passed, everything that is necessary will be carried out.

Mr. Chairman: I shall now put clause 1, as amended, to the vote of the House. The question is:

> "That clause 1, as amended, stand part of the Bill"

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1—

for "Sixth Year", *substitute*:

"Seventh Year".

—[Shri *K. L. More*]

Mr. Chairman: The question is:

"That the Enacting Formula, as amended, stand part of the Bill".

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

Shri Pataskar: I beg to move:

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

Mr. Chairman: Motion moved:

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

Shri Achuthan: I am very glad that we have come to the last stage, practically, of the series of Hindu Law which we have been legislating upon for the past few years. In fact, the credit goes to the hon. Minister of Legal Affairs, Shri Pataskar, who took keen interest in splitting up the voluminous piece of legislation into compartments and who took great pains to see that the laws were well discussed in both the Houses. We have now come to pass the Hindu Minority and Guardianship Bill in the same series.

Even though we cannot say that these laws may be very good, so far aa this Bill goes, it is really an improvement upon the existing law on the subject. In the question of Hindu marriages also, we have affected a number of improvements and it has already been enacted and has come into force a few months back. With regard to the Hindu Succession Act also it will work wonders in this country, more especially when we realise that our women are given full right over the property of their fathers or their family. Complete, independent rights to dispose of the property as they wish has been given to the women. In fact, the All-India Women's Conference, from its very inception, was clamouring and agitating for the rights to be bestowed upon the females of our country and they have been since given the rights.

With regard to the Hindu minority and guardansbip also, this Bill has codified and compressed the lengthy and voluminous Hindu law on the subject which has come into existence by a number of decisions and commentaries. As it is, the subject of Hindu minority and guardianship has been compressed into 13 clauses. Some Members said that 13 is a bad or inauspicious number but then the Minister himself has, I am glad to say, observed that he has no liking for one number or the other.

I want to point out one important thing. Previously, all the members of a joint Hindu family, so far as Mitakshara system of law was concerned, had a right by birth. After the Hindu Succession Act came into force, that right is needed and unless the father can will away his property. Hereafter, the father will have complete right over his property. He can of course will away his property as he likes. Thus, there will not be any litigation in that respect over the matters concerning Hindu minority and guardianship also.

Shri Raghavachari: The moment the child is born, be has the right over his share.

Shri Achuthan: At least for sometime, the father will have the right. So, there will be less litigation in that respect. Previously there was a lot of litigation over that aspect. Hereafter, the father has got a complete right over his share even though children are born to him.

Shri Raghavachari: No. So far as the ancestral property is concerned, the moment the son is born, he is given his share. The father can will away his own share only.

Shri Achuthan: That will continue only for one generation. For sometime there will be some litigation. Subsequently, it will be his own property by partition. After some time, the question of his ancestral and self-aequired property will dwindle into insignificance and the father will be complete owner, and there will be less scope for litigation. Here, it has been clearly stated that father or mother will be the guardian. They can will away the property. If the property is willed away, and if he states that it must be managed in such and such a way, then there is no question of guardianship coming up. According to me, this provision in the Hindu Minority and Guardianship Bill goes to the advantage of the minors. I visualise less of litigation even though Shri Tek Chand may say with regard to clause 6(a) that the father and the mother are more competent than the court to look after the minor children. Even then, to make a provision that the father must get the sanction of the court for disposal of the property would add to the interests of the minor concerned.

Moreover, our lawyer friends know that a number of cases are coming up in this regard. I know of cases where the father is actually alienating the property for the benefit of his son and when the son becomes major, the father stands behind. The poor assignee or the mortgagee has just to produce evidence, get things done and sometimes the party has again to shell out some money. Hereafter, all such things will be set at rest. For these reasons, I welcome the Bill and I hope that it will have its due effect on society in the years to come.

Mr. Chairman: According to the time-schedule fixed by the Speaker, we have exhausted the time available for this Bill. A number of Members have already expressed their views on many occasions over this Bill, and it appears to my mind that it is the provisions of the Bill that were very important. As regards general observations, they have already been made.

Shri Tek Chand: How much time can be allowed for the Members to speak now?

Mr. Chairman: Shri Tek chand has already spoken. Has he got any new points?

Shri Altekar *rose.*—

Mr. Chairman: Let Shri Altekar speak.

Shri Altekar: So far as this Bill is concerned, the propriety for its provisions has arisen on account of the Hindu Code being split up into compartments.

Mr. Chairman: Do we propose to take the next Bill after, say, ten minutes, or do we propose to proceed with this Bill for the rest of the day?

The Minister of Revenue and Defence Expenditure (Shri A. C. Guha): If there is not sufficient time for the speech at the introduction stage to be finished—it may require about 30 minutes—I do not think it will be of any use to take up the other Bill and leave it half-way during the introductory speech.

Mr. Chairman: How many Members are there to speak? I see Shri Tek Chand, and Shri S. N. Das standing. All right. Let us continue with this Bill.

Shri Altekar: The change that has been made in this Bill is that though the hon. Minister would not like *de facto* guardians to be abolished, they have been practically ignored. The situation is that in a large number of cases, there are minors who have no parents and who have to be cared for by near relatives like uncles, brothers and grandfathers. These near relatives on account of their natural affection and love for the minors, take over the guardianship

[Shri Altekar]

in the natural course. By the provision that has been made, they are not recognised as natural guardians. They are not even recognised as de *facto* guardians. As a matter of fact, they will be functioning all along in the society because there will be minors who have no parents and who live with uncles, brothers and grandfathers.

In clause 11, we have said that de *facto* guardians cannot dispose of or deal with the property of the minors. According to this Bill, even uncles, brothers or grandfathers will have to go to the courts and get themselves appointed as guardians. We know the conditions in the rural areas. There are millions of families living there and they do not know how the law is being administered. They will not go to the courts simply for the purpose of getting themselves appointed as guardians, because the properties may be so small. So, this will prove to be a great difficulty and handicap. Disposing of property is one thing and dealing with property is an entirely different thing. If a brother is taking care of the property of the minor brother, he will have to pay the taxes and paying taxes also is dealing with property. He will have to maintain his brother, purchase small things for his daily necessities, pay school fees etc. All these will be dealing with property and these will be illegal because he is prevented from dealing with the property of the minor. Therefore, I think that the words "deal with" should have been omitted from clause 11. Unfortunately I was not here at the time this clause was passed; I had to attend some committee meeting. So far as the alienations are concerned, there may not be many, because generally the guardians take care of the children and they look to their necessities. The difficulty arises when they have to incur expenditure for meeting the daily needs of the minor.

Mr. Chairman: I think management of the property is also covered by that clause.

Shri Altekar: The property of the minor will have to be used for meeting his own needs, but that will be prevented because the guardian cannot "deal with" the property according to clause 11. In most of the cases, the guardians will be dealing with the property in a normal way and when the minor comes of age, he usually does not go to the court complaining against the guardians. But if there is a mischievous intention on the part of someone, it might create difficulties. Anyhow, I submit that this particular phrase "deal with" should not be there.

Our approach towards the de *facto* guardians is not very reasonable. Provision ought to have been made in the case of those who are taking care of the minors in the natural course of events. They do not come from another place; the minors are living with them. When the minor has no parents, he is living with his uncle or with his grandfather. There is absolutely no change in the status of the family and the uncle or grandfather takes care of the minor as a natural course of events. So, though this piece of legislation is forward, it will bring about a great disturbance in the every day functioning of the relationship between the various ingredients of our society. I will not object to the permission of the court being necessary for de *facto* guardians to dispose of the property of a minor. But, in the case of guardians of the type I have mentioned, who come to take care of the minor in the routine natural course of events, the day-to-day management of the property should not be hindered. The burden also lies on the person who purchases the property of the minor. I have seen so many cases in the courts, I have found that only in cases where it can be proved by means of documents or by evidence that the alienation was for the purposes of benefiting the minor and in the interests of the

minor, then alone the alience will succeed. So, as far as protecting the interest of the minor is concerned, it need not be anything more than what it was till now. According to this Bill in a number of cases the people will be forced to go to the district courts and it will be a terrible hardship for the people to go from the remote villages to the district courts for getting permission to manage the property of the minor, if the property is of a small size. So, in a large number of cases, rather than securing any protection of the interests of the minor, there will be hardship and difficulty. That will be the ultimate result of this particular attitude towards the *de facto* guardians.

I think that the legislation that we are passing now will not be ultimately regarded by the society to be in the general interest of the minors. That is what I feel about the matter. Now that the legislation is being passed, it has become rather a matter of great concern, and we shall have to watch the developments. If we find ultimately that it is not working in the interests of the minors, probably we may have to revise it again.

श्री श्रीनारायण दास (दरभंगा मध्य) : सभापति महोदय, जो विधेयक अभी लोक सभा द्वारा संयुक्त प्रवर समिति को सुपुर्द किया जा रहा है उसके महत्व के सम्बन्ध में मुझे कुछ विशेष नहीं कहना है। जो अल्पवयस्क लोग हैं वे, जो कानून आजकल है, उसके अन्दर अनेक तरह से उपेक्षित कहे जा सकते हैं। उन की सम्पत्ति और स्वार्थ का जैसा संरक्षण होना चाहिये, वैसा नहीं हो रहा है। माननीय मंत्री ने इस विधेयक को संसद् के सामने रख कर उन उपेक्षित लोगों के साथ न्याय करने का प्रयत्न किया है। यह जो विधेयक पेश है, इसका मैं समर्थन करता हूं। लेकिन एक दो विषय हैं जिनकी ओर मैं सरकार का ध्यान आकर्षित करना चाहता हूं और मैं समझता हूं कि उनके सम्बन्ध में यदि इस विधेयक में कुछ बातें कह दी गई होतीं तथा उनके अनुसार इस विधेयक की धाराओं में कुछ सुधार कर दिया गया होता, तो बहुत अच्छा रहता।

इस विधेयक में जहां दूसरी प्रकार की सम्पत्ति का ठीक प्रबन्ध करने के बारे में जिक्र किया गया है वहां पर संयुक्त परिवार में अल्पवयस्क लोगों के अधिकारों का तथा उनके हितों का कहीं भी जिक्र नहीं किया गया है। हो सकता है कि संयुक्त परिवार का जो कर्ता है वह उस माइनर (अल्पवयस्क) के संयुक्त परिवार में जो हित हैं, उसके जो सम्पत्ति पर अधिकार हैं, उनकी देखभाल भी करे। लेकिन हो सकता है कि संयुक्त परिवार का जो कर्ता है और उस परिवार में जो अल्प वयस्क की सम्पत्ति है उसके स्वार्थ हैं, उसकी रक्षा न कर सके और उस संयुक्त परिवार में अल्पवयस्क के अधिकारों में किसी प्रकार का हस्तक्षेप हो। इस वास्ते मेरा विचार है कि इस सम्बन्ध में इस विधेयक में कुछ जिक्र रहना चाहिये। गार्जियन और वार्डस एक्ट (संरक्षक तथा प्रतिपालक अधिनियम) की मुझे कोई खास जानकारी नहीं है और मैं नहीं जानता कि अल्पवयस्क की संयुक्त परिवार में जो सम्पत्ति है उसके सम्बन्ध में गार्जियन नियुक्त करने का अधिकार स्वतः हाई कोर्ट या किसी दूसरी कोर्ट को है या नहीं। मैं समझता हूं कि हाई कोर्ट को इस बात का अधिकार होना चाहिये कि जब कभी कोई .....

श्री पाटस्कर : हाई कोर्ट को यह पावर है।

श्री श्रीनारायण दास : जहां तक मेरा खयाल है हिन्दू कोड की जो शाखा है माइनोरिटी और गार्जियनशिप के बारे में उसमें कहा गया है :

"Provided that nothing in this section shall be deemed to affect the jurisdiction of High Court to appoint a guardian in respect of such interest".

[श्री श्रीनारायण दास]

That is, the interest of a minor in joint family property.

श्री पाटस्कर : क्लाज १२ को पढ़िये, इसको अभी भी रखा गया है।

श्री श्रीनारायण दास : मुझे दुःख है, मैं ने उसकी तरफ ध्यान नहीं दिया।

अब मैं आपका ध्यान एक और विषय की ओर दिलाना चाहता हूं। अभी हमारे मित्र आत्तेकर साहब ने कहा कि जो डिफैक्टो गार्डियन (वस्तुतः संरक्षक) हैं उनके अल्पवयस्क की सम्पत्ति के साथ किसी प्रकार का व्यवहार करने का जिक्र नहीं किया गया है। वैसे हिन्दु समाज के अन्दर जो सामाजिक सम्बन्ध हैं उनके अनुसार एक अल्प वयस्क का चाचा या मामा या उसके मातामह या पितामह जो हैं वे उनके डिफैक्टो संरक्षक हो सकते हैं और उसके ऊपर इस बात की जिम्मेवारी आ सकती है कि वे किसी भी अल्पवयस्क का पालन पोषण भरण पोषण, देख रेख, शिक्षा दीक्षा का प्रबन्ध करे। । लेकिन इस विधेयक में जो धारायें दी गई हैं, मैं समझता हूं उनके द्वारा अल्पवयस्क के प्रति न्याय नहीं किया गया है। वैसे जो सामाजिक सम्बन्ध हैं उन में उन लोगों का यह कर्तव्य है कि वे उस अल्पवयस्क के हितों की रक्षा करें और उसके अधिकारों का दुरुपयोग न करे। मैं नहीं चाहता कि किसी भी संरक्षक को यह अधिकार हो कि वह उसकी सम्पत्ति का दुरुपयोग करे। लेकिन डिफैक्टो गार्जियन जो है उसकी इस बात का अधिकार रहना चाहिये था कि वह कोर्ट की आज्ञा से ही सही उस अल्पवयस्क की भलाई के लिये तथा अपने कर्तव्य पालन में सुविधा लाने के लिये उसकी सम्पत्ति के साथ कुछ अदल बदल कर सके तथा सम्पत्ति को व्यवहार में ला सके। माननीय मंत्री जी ने जो इस बिल में डिफैक्टो गार्डियन को सभी प्रकार के अधिकारों से वंचित कर दिया है और कह दिया है कि किसी प्रकार का अधिकार अल्पवयस्क की सम्पत्ति में उसका नहीं रहेगा। मैं समझता हूं जब उसको व्यवहार में परिणित किया जायेगा तो कठिनाई होगी। इससे अल्पवयस्क को शिक्षा दीक्षा देने में, उसका भरण पोषण करने में उसकी देख रेख में अवश्य ही कठिनाइयां उत्पन्न होगी। इसके बारे में इस बिल में कोई भी व्यवस्था नहीं की गई है। सरकार कानून तो बना देती है लेकिन उसका असर देश के विभिन्न भागों पर और खास तौर से देहातों पर क्या पड़ेगा इस ओर कुछ विचार नहीं किया जाता है। आदर्श के रूप में यह ठीक है कि अल्पवयस्क की सम्पत्ति का किसी प्रकार से दुरुपयोग नहीं होना चाहिये उसकी किसी भी प्रकार की क्षति नहीं पहुंचनी चाहिये। लेकिन इस समय जो हमारी सामाजिक व्यवस्था है, जो सामाजिक सम्बन्ध हैं, या जो सामाजिक जिम्मेदारियां हैं उन में यदि हम यह चाहते हैं कि माइनर्स के जो स्वाभाविक अभिभावक हैं या संरक्षक हैं वे न रहें और उनकी जगह पर जो दूसरे डिफैक्टो गार्जियन हैं, संरक्षक हैं वे रहें तो उनको अपना कर्तव्य पालन करने में सुविधा हो इसको भी इस कानून में व्यवस्था होनी चाहिये थी। डिफैक्टो गार्जियन को यह अधिकार भी मिलना चाहिये था कि वह अल्पवयस्क की सम्पत्ति तथा उनके स्वार्थों की रक्षा करने के साथ साथ उसकी शिक्षा दीक्षा, उसके पालन पोषण, उसकी देख रेख, उसका भरण पोषण करने के लिये उसकी सम्पत्ति में अदल बदल भी कर सकता। अगर इस बिल में इस चीज की व्यवस्था भी हो जाती तो मैं समझता हूं यह बिल और भी अच्छा हो जाता। इस समय तो इसकी व्यवस्था इस में नहीं है और मैं समझता हूं किसी दूसरे समय पर पाटस्कर साहब द्वारा या जो भी उस समय दूसरे मंत्री होंगे उन के द्वारा इस चीज की

व्यवस्था इसमें कर दी जायेगी । जहां तक देहातों का सम्बन्ध है और जहां तक वहां बसने वाले लाखों करोड़ों लोगों का सम्बन्ध है, मैं समझता हूं इस विषय में काफी कठिनाइयां उत्पन्न होंगी और जो डिफैक्टो गार्जियन होंगे उनको अपना कर्तव्य पालन करने में काफी असुविधा होगी और वे समुचित रूप से अल्पवयस्कों की शिक्षा दीक्षा, उनके भरण पोषण, उनकी देख रेख कर सकेंगे या नहीं ?

इस बिल का तो मैं समर्थन करता हूं और मैं आशा करता हूं कि अल्पवयस्क के स्वार्थों और उसकी सम्पत्ति की रक्षा होगी लेकिन साथ ही साथ जिन कठिनाइयों की ओर मैंने ध्यान आकर्षित किया है, मैं आशा करता हूं उन पर भी विचार कर लिया जायेगा ।

Mr. Chairman: How long will the hon. Minister take for his reply?

Shri Pataskar: Whatever you give. I think I require at least 7 or 8 minutes.

Mr. Chairman: There is no time. You may begin.

Shri Pataskar: Another hon. Member may speak. Leave me some time.

Shri Tek Chand: Mr. Chairman, without any mental reservation, I extol the hard work done by the hon. Minister. But, I cannot share his enthusiasm or his optimism. I feel that this Bill bears the stamp of futility indelibly fixed upon it on every section. I wish that the great talent which the hon. Minister undoubtedly possesses had not been wasted on this measure. The hon. Minister says that this is an innocent measure. I entirely agree with him. It is certainly innocent of logic, it is innocent of justice.

Pandit Thakur Das Bhargava: Innocent of good results also.

Shri Tek Chand: I adopt the suggestion of my hon. friend, innocent of results. I feel that it will let loose the doors of litigation. For every little alienation, the guardian must engage counsel, must lead evidence, must argue out the case and must await the decision of the case. It may take many months. There is a four-worded latin maxim. I wish that the hon. Minister should know it by heart and those who are associated with him: *Summum jus summa injuria*: the more the law, the greater the injustice. We are having an overdose of legislation which brings in its train expense, litigousness, waste of time, colossal waste of national funds.

Shri M. S. Gurupadaswamy: You are a lawyer.

Shri Tek Chand: That shows that a lawyer can dispassionately bring to bear logic and principles of justice in anything that he cares to examine.

Shri A. C. Guha: So even a lawyer can be impersonal!

Shri Pataskar: And can have logic!

Shri Tek Chand: I feel, as indicated by my hon. friend Shri Altekar, that clause 11 can lead to very serious results. A *de facto* guardian dare not deal with the property. If it is in a state of disrepair, he dare not touch it. If it wants a tenant and one is available, he cannot arrange it even if it happens to be the property of his grand-child or brother or nephew. I hope in good time the hon. Minister will be in a position to bring forward a real, good, logical and proper measure which would protect every minor in this land, be he Hindu, Muslim, Christian or anybody else.

Shri Pataskar: Generally I try to avoid using harsh words against any one so far as I can, but when some lawyers begin to speak in the name of logic and justice, it is a bit difficult. I find unfortunately Shri Altekar is a lawyer, Shri Tek Chand is a lawyer and probably Shri Shree Narayan Das is also a lawyer.

Shri Bhagwat Jha Azad (Purnea cum Santal Pargnas): No, but he supported you.

Shri Pataskar: Prejudices and habits die very hard. As a matter of fact, the *de facto* guardian for whom everybody has shown such an amount of sympathy is a modern creation dating back 100 years, resulting from a certain decision of a High Court.

Then they say, supposing there is an uncle or a brother who is living in the village, and there is nobody else, what will happen? Nothing will happen. If he is a good man, he will try to look after the interests of the minor. If he wants to deal with or alienate immovable property, then we say that a *de facto* guardian should not do it. Who are the *de facto* guardians? Are they always uncles and brothers? A halo is being created around them by people who ought to understand better, because according to the law as it stands now, a *de facto* guardian may be anybody, a neighbour, a friend, a relation or anybody on earth, who can come forward and deal with the property of an unfortunate minor who has no parents.

Then they say, if he has to get himself appointed as guardian by a court of law, it would involve cost. To say that a person who is and ought to be in a position of a trustee of the property should not be asked to go to a court for getting himself appointed as guardian is a thing difficult to understand. The only reason is that probably we have got accustomed to it.

I think there are five or six crores of Muslims in this coutnry, they are also living in the rural areas. There is a recent decision of the Supreme Court that there is no such thing as a *de facto* guardian among the Muslims. Who are the *de facto* guardians and what are their powers? In many cases the transactions that were entered into by them in respect of the minor's properties were set aside.

If the property is big enough, I think there should be no difficulty in the *de facto* guardian getting himself appointed. If it is too small, is it desirable that anybody in the name of being *de facto* guardian should waste it before the boy has a chance of becoming a major and trying to get what belongs to him? These are the hard facts. It proposes to impose no hardship on anybody. Unfortunately people have become accustomed to it and the only argument put forward by them is the question of the rural population. I do not blame anybody, but whenever there is a change, there is a natural tendency to resist it. Because this forms part of the Hindu Code, my friend Shri Nand Lal Sharma opposes it, though if he were to study it, he would find it has nothing to do with the ancient Hindu shastras. Naturally prejudices, sentiments and habits die very hard and that is the only justification.

To err is human, and I do not claim that this may not cause any hardship, but I appeal to hon. Members to take a more dispassionate, rational and clear view of what we are doing, what is happening in the rest of the world, and not try to perpetuate what has been an anachronism so far as our society is concerned. I hope that the measure which we are today passing will ultimately enure to the benefit and interest of the minors for whom it is intended. After all, as I have already stated, there is the Guardians and Wards Act, and subject to that we are going to recognise certain fundamental features broadly with respect to the parents who are natural guardians.

I have nothing more to add. I thank all those who have generally accorded support and even my critics because, after all, there must be critics. I still maintain that in my humble opinion it is an innocent measure which is likely to yield good results.

Mr. Chairman: Shri Altekar raised one point, *viz.*, whether the words "deal with the property" mean the ordinary management also.

Shri Pataskar: It is not a newly coined phrase for the purpose of this Act. It is also used in the Guardians and Wards Act. The object it that

people may not dispose of the property, but should try to act in such a manner that the interests of the minor are ultimately served. That is the intention.

Shri Altekar: Is collecting revenue or rent and even making some disbursements in connection with the routine daily life "dealing with the property"?

Shri Pataskar: I would rather avoid trying to give an interpretation to a phraselogy which is already there in other Acts, which is being interpreted and which might be interpreted in future by the courts. I think I must resist the temptation.

Mr. Chairman: The question is:

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

The motion was adopted.

5 P.M.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 18th July, 1956.