Central Excise Rules, 1944. [Placed in the Library. *See* No. S-108/55.]

STATEMENT ON PROGRESS OF FLOOD CONTROL MEASURES

THE DEPUTY MINISTER FOR IRRIGATION AND POWER (SHRI J. S. L. HATHI)-; Sir, on behalf of Shri Gul-zarilal Nanda, I beg to lay on the Table a copy of a statement on the progress of flood control measure [Placed in the Library. *See* No. S-107/55.]

THE HINDU MINORITY AND GUARDIANSHIP BILL, 1953— *continued.*

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Chairman, on Thursday last before the House rose for the day, I was submitting those features of the present Bill which, according to me, were very healthy, and were a step forward in giving rights to women, as well as protective of the rights of the minors. Towards the end, just before we rose, I had stated that there were at the same time certain other features of the Bill which, to my mind, were retrograde and were uncalled for. The first of such features which I had mentioned was the taking away of the right of natural guardians to alienate the properties of the wards even in case of necessity without obtaining the leave of the court, and I had stated that the withdrawal of that right was hardly called for, and that there had been no occasions, so far as I was aware, where the natural guardians, namely, the father or the mother, had alienated the property of their wards, either for their own benefit, or to the disadvantage or prejudice of the. minors. And I had further stated, Sir, that I had not known of any public demand from any section of the Hindu community for the "withdrawal of that right, which at present vests in the natural guardians. And on this point, Sir, I was submitting that the powers which are enjoyed under the Hindu law by the guardians at present are sufficiently restrictive and protective of the rights of the minors. And in dealing with that subject, I had brought to the notice of the House the well-known case of Hunooman Persaud *v.* Mussu-mat Babooee, which is reported in 6 M.I.A. And today I would like to cite a portion of the judgment of the case in order to make it clear to the House in what manner the present law is restrictive on the subject. In that well-known case, the Judicial Committee has stated as follows:

> "The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of
> the estate ..... The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded in each particular case."

Therefore, Sir, according to me, this position of the law is very clear, and sufficiently protects the interests of the minors, since it does not enable them to transfer the property of the minors under any circumstances except for necessity and for the benefit of their estate. As for the right of the minors to repudiate the transaction on attaining majority, the law on the subject under the present Bill remains the same as it is at present under the Hindu law. The minors, even under the present Hindu law, can alienate any transfers made by then-guardians and they can challenge them on the ground that they were not for their benefit or for the benefit of their estate or for their need. In this connection, I am in agreement with my hon. friend, Shri Rajagopal Naidu, who has criticised the point that in clause 7, sub-clause (4), the words used are "except in case of necessity or for an evident advantage to the minor." These words, Sir. all: they occur under section 31—perhaps —of the Guardians and Wards Act, are yet words which are newly employed on the subject and have not been sufficiently examined in the

[Pandit S. S. N. Tankha.] courts of law, whereas the words used under the Hindu law, as interpreted in various decisions, are better and more suitable to convey the exact position of limitations on the powers of guardians. I think it is always better to use those words in our legislation which have in course of time been interpreted by courts of law because by using new words there is always the danger of the new words being differently interpreted. Further, Sir, it will take a long time for these new words to be exactly denned and to acquire definite legal significance. Therefore I think that in clause 7, sub-clause (4) it will be far better if the same phraseology is used as has been interpreted under the present Hindu Law, *viz.* "for necessity or for the benefit of the estate of the minor." While speaking on this subject, my friend Mr. Naidu, said that the words "for an evident advantage to the minor" might be interpreted by the courts in a different way and he cited an instance where a property which had been bought for a definite sum was after some time sold for any greater amount, say for double the amount, and he said, quite rightly I think, that there was danger that the courts would -interpret such transactions as being "for the evident advantage of the minor," but, Sir, under the present Hindu Law in the case of Kishen Chand *v.* Ratan Bai reported in Calcutta Notes it has been held like this:

> "Mere increase in the immediate income of the minor or of his estate does not necessarily justify the inference that the particular transaction is 'for the benefit of the estate' within the meaning of this rule, which could hardly have been intended to include cases of speculative development of estates of minors. When the only circumstance relied on, in justification of the sale, is that the price realised is much more than the normal value of the property, the sale cannot be regarded as one for the benefit of the estate."

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So, you will see that under the present Hindu Law the courts have held that such transactions cannot be deemed to be for the benefit of the estate, and no transaction of this character can be entered into by the guardian, whereas with the words "evident advantage to the minor" as used in subclause (4) of clause 7 there is every danger that the courts may interpret such a transaction as being for the benefit of the minor's estate. Therefore, Sir, I am definitely of the view that new words should not be imported into the Bill. On the question of the retrograde features of this Bill I might also say that according to me another retrograde step which has been taken under this Bill is the abolition of the so-called de *facto* guardians and ad hoc guardians. I submit that these de *facto* guardians are no others than the near relations of the minor who, after the death of the parents of the minor, have taken upon themselves the duty to give protection to the minor and to look after his estate. It is true that in some cases these guardians do act beyond the powers which are given to them in law, but in all such cases I submit that, wherever the matter has gone up to the courts of law, it has been held that unless the transaction was for necessity or for the benefit of the estate, any transaction so entered into by the *de facto* guardian has been superseded. Therefore, I do not think it is right on our part to abolish this class of guardians. The effect of the abolition of this class of guardians under the law would be that the near relations will cease to feel that it is their duty—that is their moral duty—to maintain the minors who have no guardians left to them. It will be no use denying the fact that more often than not it is only when the law gives or recognises a definite status or position for a particular person that he begins to feel some responsibility in the matter, and the moment you say, "You are no person to take care of the minor or his estate; and that you have no rights

over that person.", that men will begin to think that since the law does not recognise them as guardian, it is none of their duty to protect the interests of the minor.

Then I come to clause 12 which relates to guardianship of minors' undivided share in the joint family property. I think that this clause is good and should be allowed to stand. The *karta* of the family should be allowed to take charge of and manage the estate of the minor, as the head of the family. On this question it has been stated by some hon. Members here that this institution of coparcenary is dwindling or is breaking down, and therefore it is only right and proper that we do away with this institution and should not recognise it and should decide that the undivided interests of the minor will aslo be capable of being managed only by a guardian appointed by the court. I am afraid that there is some confusion on this subject in the minds of those hon. Members. It is not a fact, Sir, that the joint family is really breaking down. According to me and according to law, joint families are of two kinds: One is the larger joint family which is composed of the grandfather, grand-uncles, nephews, grand-nephews, etc., i.e., the whole branch of the bigger family; the second one is the smaller unit, which is also a joint family, but consists only of the father, the sons and the grandsons. This type of joint family still exists considerably in India and is very much in vogue even today. This keeps the small family unit united. The father, the grandfather and the grandsons all live, mess and worship together and the education of children, etc. is carried on jointly. It is not a fact that either this type of smaller unit is crumbling down or needs to be abolished. Therefore I am in entire agreement with this clause of the Bill and in my view it should be allowed to remain.

Regarding clause 11, I have already made my submission. While dealing with clause 11, I might also mention that my friend Mr. Rajagopal Naidu had said that the *de facto* guardians were playing havoc with the property

of their wards but I am not inclined to agree with that point of view.

Regarding clause 10 of the Bill, I find that clause 10 provides that a minor shall not act as guardian of the property of any minor. That position exists even under the present law. H the intention of this clause in the Bill is to deprive the minor husband of the custody of his minor wife, then it should be made clearer by inclusion of certain suitable words. Section 21 of the Guardians and Wards Act also is to the same effect but it already provides that the minor will not be the guardian of another minor except where the minor is the husband of a minor wife and in such a case he will be entitled to have her custody. Sir, I am in entire agreement with the view that no minor should be allowed to become the guardian of another minor but I am inclined to think that it will be wholesome and proper to allow the minor husband to become the guardian of his minor wife as under the present law. But if it is desired to alter that position, I have not much quarrel with that either and the law may be changed in that regard but that position should be made quite clear under clause 10.

Coming now to clause 9 which reads as under:

> "It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion to which the father belonged at the time of the minor's birth and, in the case of an illegitimate child, in the religion to which the mother belonged at the time of the minor's birth."

I am in full agreement with the remarks of my hon. friend Shri Ram Chandra Gupta that the guardian should be directed to bring up the minor in the religion to which the father belonged at the time of his conversion and not in the religion of the father at the time of the birth of the minor because as Mr. Gupta stated, if the father was a Christian at the time of the birth of the child and later gets converted to Hinduism and

[Pandit S. S. N. Tankha.] still later is reconverted to Christianity or Muslim faith, then the child will have to be brought up by the guardian not as a Hindu child but as a Christian child. I submit that it is not right. Moreover, I don't think that under a law specifically enacted for the Hindus it will be right, or proper, to direct any guardian to bring up the child in another faith. That law can be concerned with that child's religion only because of the fact that the religion of the minor's father, at the time of his conversion to another religion, was Hinduism, and he being a Hindu at the time, it is within the purview of this Act to take cognizance of the minor's father thereafter and to direct the guardian to see to it that the child is brought up in a particular faith but that faith should be the faith of the father at the time of his conversion, *viz.,* the Hindu religion, and not any other faith which the father may have had earlier at the time the child was born.

There is just one other matter to which I would like to draw your attention. Sub-clause (b) of the Proviso to clause 5 says:

> "Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section: —
>
> * « • * *
>
> (b) if he has completely and finally renounced the world by becoming a hermit *(vana-prastha)* or an ascetic *(yati* or *sanyasi)* or a perpetual religious student *(naishthika brahmachari)."*

Now these words are very vague and indefinite. How is a Court to determine at what stage a person has finally and completely renounced the world? Whenever this question happens to come up before a Court of law, the hermit may come forward and say that he has not completely renounced the world and that he may come back to the world at some later date and as such no other I guardian can be appointed for the minor. Therefore, Sir, the provision is vague and indefinite. .You can never know when a person has completely and finally renounced the world. Therefore these words should be suitably modified so that this vagueness may disappear.

With these words, I commend this Bill.

MR. CHAIRMAN: Shri Kailash Bihari Lall, I hope you will be as brief as possible. I want Mr. Patas-kar to reply in the afternoon and the first stage to be completed today.

SHRI KAILASH BIHARI LALL (Bihar): Mr. Chairman, my first reaction to this Bill was that there is no objection to it but later on when I read it, I find that in the case of this

[MR. DEPUTY CHAIRMAN in the Chair.]

Bill guardianship has shifted to other hands and it has not received the attention that it ought to have. Although everything comes in the name of making a law comprehensive, but so far as this Bill is concerned, I find that it has not received proper attention. Of course, apart from the legal things that have been said by so many lawyers, I find that even my lawyer friends have not been able to separate themselves from the function of a lawyer to that of a legislator. Here I confess that we are lawyers no doubt but we are primarily legislators and we should not split hairs from the point of view of a lawyer. That is my point of view. I found that apart from the fact that it has received good attention of the lawyer friends, they have missed also certain things while they have confined themselves to the niceties of law points that may arise in this. However, I too am tempted to point out some difficulties that may arise in that because I also have not been able to find out how many things can be reconciled. For instance in one place I find that a minor cannot act as a guardian of the property of another minor. Suppose a minor girl who has given birth to a child has become a widow and she is herself a minor and when she has

become the guardian of her child, what will be the fate of the property of the child or the person of the child—whether she will be allowed to act as a guardian?

MR. DEPUTY CHAIRMAN: It refers only to property and not to person. The mother will be in possession of the child.

SHRI KAILASH BIHARI LALL: Even though she is a minor?

MR. DEPUTY CHAIRMAN: Yes.

SHRI KAILASH BIHARI LALL: Then I find in another place that if a Hindu ceases to be a Hindu, then this will not apply. It has not been clear to me how a Hindu ceases to be a Hindu. I say this because in this parti cular Bill I find that even those who do not profess the so-called Hindu religion, according to this Bill, are also Hindus. For instance, some people have been enumerated who, it is said, though they do not profess the Hindu religion, will be Hindus. The man is to be a Hindu, but in what sense? It is a peculiar sense, as it appears to me.....

MR. DEPUTY CHAIRMAN: What is the difficulty? In this Act, a Jain, for instance, is a Hindu; and if he becomes a Muslim or a Christian, he ceases to be a Hindu. What is the difficulty?

SHRI KAILASH BIHARI LALL: And a Hindu who is a Hindu by religion, if he adopts Jainism? What happens to him?

MR. DEPUTY CHAIRMAN: A Jain is a Hindu, according to this Bill.

SHRI H. C. DASAPPA (Mysore): He continues to be a Hindu.

SHRI KAILASH BIHARI LALL: So it is not in the sense of religion that you say that a person is a Hindu or not. That is what I wanted to get clarified.

MR. DEPUTY CHAIRMAN: The word "Hindu" has been defined in this Bill.

SHRI KAILASH BIHARI LALL: And so according to this Bill also the Hindu religion has been given the goby, so far as certain points are concerned.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Will the hon. Member say what he means by the Hindu religion?

SHRI KAILASH BIHARI LALL: I am coming to that point. The hon. Law Minister is in love with the Hindu religion. He is hammering on that sense of the word, but he gives up Hindu religion. We all have love for Hindu religion, we preach Hindu religion, but in the atmosphere of piling legislation, I find that this is also one of the links, in the pile or chain of legislation. That was the point I was coming to. You give up the so-called Hindu religion and rope in some people, those who are not by religion Hindus, within the Hindu group. If that is the case, then why not extend the scope of this measure further and take in more persons and make it a truly national piece of legislation, instead of spoiling the atmosphere? That is the point I was coming to.

Sir, in this particular link of the chain, in this measure, I was search ing, but I found no provision with regard to the guardianship of orphans. There are such categories of children, children who are orphans and who art admitted into orphanages. Their parents or guardians have expired but they had left behind some property ana there is no person to look after that property. I myself have got' some experience in the orphanage that I am running. Some of the orphans came there who had properties and there was no guardian; no guardian in the sense that when you want some person to take care of .....

MR. DEPUTY CHAIRMAN: Why do you think that this Bill will not apply to orphans' property?

SHRI KAILASH BIHARI LALL: Who will be the guardian of the orphan, Sir?

MR. DEPUTY CHAIRMAN: Anybody can file an application and the court will decide the matter. Even Mr. Kailash Bihari Lall can file an application and the court will go into it.

DR. R. P. DUBE (Madhya Pradesh): What about the manager of an orphanage?

SHRI KAILASH BIHARI LALL: But, Sir, there is no special mention to that effect in this Bill.

MR. DEPUTY CHAIRMAN: This applies to all Hindu minors, as defined in this Bill.

SHRI KAILASH BIHARI LALL: I understand that, Sir, that it applies to all Hindu minors. But the point is, there is no mention in this Bill that in the case of orphans, such and such person will act as the guardian.

SHRI H. V. PATASKAR: The court will appoint somebody.

SHRI GULSHER AHMED (Vin-dhya Pradesh): And the manager of an orphanage could be appointed the guardian.

SHRI KAILASH BIHARI LAL: But, Sir, so far as the comprehensiveness of the Bill is concerned, I was only pointing out that there should have been such mention with regard to such categories of minors who have no guardians, that guardians may be appointed specially in such cases. Of course, the point was raised, as to what will happen if the mother was a profligate or if the father was a profligate, or if the mother or father or both are of unsound mind and all that. There is no mention of all this in the Bill. Suppose the father is of unsound mind, and also that the mother is of unsound mind. Who will be the guardian? There is no specific mention of that.

SHRI H. C. DASAPPA: Clause 13 is there.

SHRI KAILASH BIHARI LALL: Of couise, I heard the discussion about this clause, clause 13. But that clause is not clear. There may be disputes over this clause with regard to the point that I raised now. That is an important point. It is not clear, it is ambiguous and it has left scope for further litigation, and just as was said by some of my friends here, who also are lawyers. I feel this will fill the pockets of lawyers. So that is the position I was going to point out so far as the question of making the Act a comprehensive one is concerned, so that they may leave no loopholes and scope for further contentions and further conflicts. For this, they should have made the provision specific and clear.

SHRI GULSHER AHMED: Why should the hon. Member have this prejudice against lawyers?

SHRI KAILASH BIHARI LALL: No, no. I have no such prejudice, I have love for lawyers; but, for that, should there be defects left in the law? That is the point. The Bill should be considered only on its merits. Whether lawyers are good or not, that is a different matter about which we need not worry.

DR. R. P. DUBE: May I ask whether the hon. Member is a lawyer?

SHRI KAILASH BIHARI LALL: Yes, I am, but it does not mean that I am going to plead the cause of lawyers here. The lawyers will take care of themselves and God will take care of the lawyers. It is not a question of taking care of the lawyers here. It was from that point of view, Sir, that at the very beginning I said that we should, for-a moment at least, forget that we are lawyers and remember that we are here legislators.

SHRI GULSHER AHMED: May 1 ask, if Parliament made a perfect law, what will happen to the lawyers?

SHRI KAILASH BIHARI LALL: It was for that very reason that at the very beginning I mentioned this point which is raised over and over again here, that we should forget here that we are lawyers, at least for the time

being, that we are not to create some thing for filling their pockets. We are here legislating, making laws on sound principles so that the country may be benefited by such laws. That should be our concern here as legisla tors; we should forget that we are functioning here for lawyers. We are functioning as legislators and we should not think of the lawyers, what the lawyers will be earning and all • that, what loopholes should be left in the law. That will not be in conso nance with the honesty with which we should perform our duty here. If some hon. friends.....

MB. DEPUTY CHAIRMAN: Now, let us know how you will make this piece of legislation a perfect one.

SHRI H. V. PATASKAR: I would like to know the hon. Member's interpretation, and then try to correct it.

SHRI KAILASH BIHARI LALL: When the Bill has come out from th« Select Committee stage up to the present one, it is not for me to give comprehensiveness to this Bill. You have this clause here regarding guardianship, for instance, and I was only concerned with pointing out that it is not as comprehensive as it ought to have been, and the measure has not enjoyed good guardianship as yet.

The other thing that I was going to tell you was that by this piece of legis-lation—I have already submitted and you have also heard arguments on the floor of this House during the course of the two previous days—you are going to arouse a sort of religious feeling in the minds of the people instead of rubbing it out. The points of difference and the points of friction are now going to be aggravated. We are already in troubled waters and we should not take up such a legislation as would aggravate and increase tension. Making laws for a particular •ection of the community or enaetlr laws in the name of a community will not do any good. Even so far as this Bill is concerned, we should have been quite large-hearted and liberal-hearted and we should have made provision and scope for even a non-Hindu—according to me all are Hindus but according to those people they are non-Hindus—to be appointed as a guardian of the children of a Sanatani Hindu. *(Interruption.)* I have already explained that and I do not think that there should have been any interruption on this score.

SHRI GULSHER AHMED: Will you kindly explain as to what you mean by a Muslim Hindu?

SHRI KAILASH BIHARI LALL: I have already said that and if you like, I shall repeat it; Muslim Hindus are those Hindus who profess Islam. Sir Saiyad Ahmed of Aligarh fame, used to say that he was a Hindu by nationality but Muslim by religion. On the floor of this very House the Rev. J. C. Chatterjee who was a Christian used to say that he was a Hindu by nationality and Christian by religion. You can have this conception. You heard the other day Dr. Radha Kumud Mookerji saying that Hindu is a geographical term and that it is not a religion-denoting term. We are twisting this word and are adopting it in the sense of religion in order to create more and more of differences between the parties. I do not mean to say that we must make this a compulsory measure; let this be made a permissive one. Let there be scope. As it is, a Sanatani Hindu, if he has got a fast Muslim friend, cannot make him as one of the guardians of his children.

SHRI H. C. DASAPPA: Even now you can do It by testament, by will.

SHRI KAILASH BIHARI LALL: Does this Bill envisage that?

SHRI H. C. DASAPPA: Yes. Besides, the Court may appoint anybody as a guardian.

SHRI KAILASH BIHABI LALL: Under this law?

SHRI H. C. DASAPPA: Yes.

SHRI KAILASH BIHARI LALL: I want to know whether the law gives you the scope. The Law Minister is shaking his head and you say 'Yes'.

MR. DEPUTY CHAIRMAN: It does not take away your right. Mr. Lall, it does not take away your right to appoint a Muslim by will as guardian of your children if you so desire. A Court may appoint him as a guardian if it comes to the conclusion that it will be in the interests of the minor.

SHRI KAILASH BIHARI LALL: I only wanted to make it clear.

SHRI M. GOVINDA REDDY (Mysore) : The only thing is that the minor must be a Hindu.

SHRI KAILASH BIHARI LALL. The other point that I was going to suggest was about the lady Members. They are very anxious to have all the rights. I cannot enumerate them here.

SHRIMATI LAKSHMI MENON (Bihar): How many do they have?

SHRI KAILASH BIHARI LALL: It may be like the case of the hungry man wh<. wants to swallow whatever comes his way. It may be quite cor rect, as Mrs. Menon says, but I do not think it is so; if it is so, then it becomes the case of the hungry man who tries to swallow all at once in one morsel everything that comes up before him. They want divorce; they want to marry according to their choice; they want to stop the man from having more than one wife; they want to have the right of custody of the child. What will be the fate of the, man and of the child? The father has got as much affection as the mother and the ladies want to have the sole right of custody of the child. Sup posing the wife is divorced and the child goes with her and then later on the mother changes her religion. What is to happen to the child?

SHRI H. V. PATASKAR: All laws cannot be safety valvea for all abnormal changes. The sole consideration is the minor's welfare under the provisions contained in clause 13.

SHRI KAILASH BIHARI LALL: Will the minor who is below Ave years be taken away from the mother?

SHRI H. C. DASAPPA; Yes.

SHRI H. V. PATASKAR: It all depends upon the circumstances.

SHRI KAILASH BIHARI LALL: If it is so, then it is another blow to the lady Members.

SHRI D. NARAYAN (Bombay): Be kind to them.

SHRI KAILASH BIHARI LALL: I am not unkind to them. I can say that in my conception of the family, the home is a peaceful homogeneous place where the husband and wife should live together having consideration for each other. When I come to this House and find the lady Members speaking, then I imagine the home to be a battle-front and I begin to think of the fate of the man who might be living in such a house where there are people with the concept of warfare at all times. After hearing the speeches I wonder if there is any place where man and woman can live peacefully. The way in which rights are advocated makes us think that it is a society in which the ladies are at war.

SHRI D. NARAYAN: Is that the experience of Mr. Kailash Bihari Lall?

SHRI KAILASH BIHARI LALL: Thank God, my wife is not a Member of Parliament. I do not know what will be the fate of a man like myself if it were so. The poor husband must be pitied. They will say: the child is mine; this thing is mine; that thing is mine. You have to enjoy everything but you claim your right in that way. Just as on a battle-ground you are waging a war. Then that home will not be a home; it will not be a place to live in, and the lot of the husband

is to be pitied. It is very easy to talk about right to this person or that person, but if the right is going to be exercised in the way in which the speeches are made, then you can imagine in your mind what can be the fate of the home. But I am sure it is only for the sake of making speeches in the House that a war atmosphere is created. I am certain about it and I even give them a challenge and ask how many lady Members there are who are not desirous of having a son. They say daughter and son are equal. I have seen womenfolk urging upon their husbands to re-marry if they have not even a single son. According to our prevailing Sanatan religion the very marriage is enjoined upon for begetting a son for the spiritual benefit of the ancestors; and a son is always liked more than the daughter.

SHRIMATI CHANDRAVATI LAKHANPAL (Uttar Pradesh): Those days are gone.

SHRI KAILASH BIHARI LALL: For the sake of making a speech you may say that everything is equal, that you regard everybody as equal, but place your hand upon your heart and say you regard equally the son and daughter. I wish that you had that equality in your mind. I do not know why there is not that equality; only nature will be able to say. But is it not a fact that most of the ladies also — not to speak of the gentlemen—want that they should have a son if they have got only daughters? Where is that spirit of equality? I do not know why they want a son.

I have already been warned not to take much time and I would not take any more time in order to be questioned. Although I have certain points to urge, I think, I need not dilate on them since I have already mentioned them so far as the important points are concerned and I am afraid that if I go on taking up the thread of some points I may be pulled up for making a repetition. Of course, I support the Bill, incomprehensive though it is. I wish it were better drafted and I wish it were a national piece of legislation rather than a communal piece of legislation. With these words I support the Bill.

SHRI M. GOVINDA REDDY: Sir, I appreciate the object with which this Bill has been brought. This Bill seeks to codify the position of a minor and the practices that are existing now in the unwritten Hindu law. In particular, Sir, it seeks to confer statutory recognition on the natural guardians and it seeks to protect the property of the minor from being wasted. In the past, Sir, it is true that many a guardian, whether a casual guardian or a *de facto* guardian or a father or a mother, has made himself or herself free with the minor's property, and there is a volume of case law to disclose that a minor is in jeopardy with regard to his rights and with regard to his property in the hands of a guardian, who does not work for the benefit of the minor. Whatever be the fact, Sir, about the justification of having a de *facto* guardian functioning or eliminating him altogether from guardianship, whatever be the justification, one should agree to a certain restriction, in the interests of the minor, with regard to the management of the property of the minor by the guardian. It is not as if all de facto guardians have worked prejudiciously to the interests of the minor. Although there has been a lot of case law regarding this, we must realise that in those case laws, which seem to us to be the justification for the Rau Committee as well as for this Bill to eliminate the de facto guardian altogether, the cases which went to courts were cases wherein there was obvious mismanagement or abuse of the minor's property. But if we compare such cases with the cases where a guardian managed the property of the minor in the interests of the minor and to the benefit of the minor, then these cases of abuses and mismanagement will be comparatively of no account whatsoever. But to us it looms large because only those cases of improper management or abuse of minor's right and confidence come to our notice.

[Shri M. Govinda Reddy.] So, Sir, in my opinion, the *de facto* guardian has functioned well and he has been a much wronged person, and he has functioned in the majority of cases in the interests of the minor, but to safeguard, as an extra precaution, the property of the minor, the de facto guardian has been eliminated. But, Sir, we do not stop there. In our anxiety to safeguard the property of the minor from the abuses to which many a de *facto* guardian in the past put it by acting in a way injurious to the interests of the minor, we have not stopped with eliminating the de *facto* guardian. We have gone further and we have tried to impose restrictions on the natural guardians in the management of the immovable property of the minor. How far this was necessary and how far this can be justified is, in my opinion, a serious question to be reviewed. While framing any law, specially for the bulk of our people, for the illiterate— the majority are hopelessly illiterate —we should take care to see that the law which we frame will be consistent with the social conditions prevailing, will be consistent with the position of the average citizen. **Sir,** in our country, as I said, the bulk of the people are illiterate. The distances from court to the village or the home of the litigant in the village are so great and then the procedure of law is so costly, is so far so unrelated to the average means of the litigant that we should, while framing any law, take care to see that there will be as little room as possible, in the law we frame, for the citizen to go to a court. If we are to frame a law, we should have in mind those numerous illiterate millions and not the educated people alone who can understand law and who therefore can live within the limits of the law and who will avoid the necessity to go to court; but that is not the case here and we should have the teeming millions before us in framing this law. Sir, what have we done here in this Bill? In this Bill, Sir, take for instance the question of the management and aUenation of the immovable property of the minor. Now we say in this Bill that the natural guardians cannot alienate pr charge or mortgage the immovable property of the minor without the consent of the court. Well, Sir, let us see if this fits in with the existing conditions, with our social conditions, and with our practices. A father dies leaving a minor and the mother is there as guardian. What is she to do? Sir, with regard to the property and with regard to our average farmer we know the man will not have any cash laid by; it is hand to mouth living all through one's lifetime. The season comes. She has to borrow money for cultivation operations or for seeds or for manure or . for harvest or even for family necessity. What is she to do? She will have no movable property. The only property that she has is immovable property, either a house or a plot of land. How is she to manage? One may say: She can file an application to the court, get a certificate from the court and then alienate or charge the property. Well, is that practicable? Will that give the necessary and the needed remedy? This is how we should consider. I do not think, Sir, in any case a certificate such as we think a court should give now, could be got within a period of less than six months. To get a succession certificate, it costs in Delhi not less than Rs. 500—to get only a succession certificate.

And to get a certificate an illiterate mother or an illiterate man must apply to the court. He must seek the help of the lawyer and pay him the fees. We are also laying down a condition on the court that the court must see before giving such a certificate that there is actual necessity for the property to be charged or alienated and that it is to the evident advantage of the minor. This is a provision which, I think. Is a cent per cent guarantee against the abuse of the property of the minor but it does not help the minor at all. The minor under this provision will be In the position of the man the story of

whom I think I have once quoted here. Sir, there was a rebellion against Hyder Ali in Mysore and a Maratha gentleman was found to be the chief promoter of the rebellion, the agent provocateur. The rebellion was eventually crushed but he was absconding. All attempts were made to trace the man but to no avail until at last Hyder Ali discovered that the man was being hidden by the Ru.ers whom he liad deposed. He was being kept in their family house and Hyder Ali could not invade the house of the Rulers because that would offend the sentiments of a majority of his subject;-. So he wanted to pursue means of persuasion and he tried to persuade the Rulers. So Hyder Ali told the Rulers, 'Look here, I won't harm him, I will treat him just as you would treat a parrot.' The Rulers were thus persuaded to surrender that man to Hyder Ali. When Hyder Ali got that man, he had a cage erected and then put that man into that cage and began even feeding him through the cage. When the Rulers saw this, they reminded Hyder Ali and said, 'You promised so many things for the man but what is it you are doing now?' Hyder Ali told them, *'I* said that I would treat him just like a parrot and I am only doing that.' In the same way if this provision is insisted upon, you will be treat ng the minor in the same way as Hyder Ali treated that man. This provision will not be available to the minor in case of necessity and I make bold to say that in ninety-nine cases out of hundred the minor stands the chance of his property being charged or alienated by the guardian for his own benefit. So this is a provision which is very unreal. After all, who is the natural guardian? He is not some x, y or z. He is not a person of the sort made out by our friend Shri K. B. Lall. He is the father or the mother. We are only introducing artificial relations between the parents and the children. In this connection I am reminded of a very cryptic sentence of Rabindranath Tagore. He says that we cannot bring in artificial relations in places where personal relations count. He says in one place that if one wants to kiss his wife he cannot do it through a solicitor. It is a thing which he must do it himself in person. That is a thing which is intensely personal. Here also the relationship of the father or the mother with the sons and daughters is a relationship which is intensely personal and what are we doing I here? We are saying that the father shall not have the right to mortgage the property or alienate the property or charge the property. Can we by any authority presume that the father or the mother will act prejudicially to the interests of the minor? Even in a thousand cases there will not be one such case. There may be a case of a gambler or a drunkard who may not care for the interests of the minor and may be prepared to alienate the property. And let us see where does this necessity arise. The necessity does not arise where the mother and father are both living. It will arise only in the case where the father is not there and where the mother is put to the necessity of doing this work. Otherwise if the father is there, then the father will be in charge of things and if it is his self-acquired property, then the minor has no interest. If it is his ancestral property, then the minor has interest but can it be said that the father will be acting prejudicially to the interests of the minor? I do not think anybody will argue that in a family the father would act prejudicially to the interests of the minor.

Take the question of the custody of the minor. We say that the mother should have the custody of the child till five years. The Rau Committee had put down three years but now we have liberalised it and made it into five. This contingency will arise only where the minor has lost his father or where there is separation between the husband and the wife. If the father and mother are living together the question of custody of the minor does not arise i at all, as anybody can see it. The whole thing is so artificial In the

LShri M. Govinda Reddy.] family just for pleasure what the father does is that he will ask his baby daughter, 'Whose daughter are you?' and he will be pleased if the baby daughter says, 'I am your daughter and not mummy's'. So also the mother asks her baby son, 'Whose son are you?' and she would expect him to say, 'I am your son'. But this is in fun; just a joke but what we are doing here is that we are legalising that position. Where both the parents are living, the custody of the child will be in the hands of both. We cannot divide the sphere of the father as distinct from the sphere of the influence of the mother. We cannot say that the father will have the custody of the child for so long and the mother for so long. It Is not so. The custody of the minor will be in the hands of both if both the parents are alive and living together.

So this question can arise only in the case of separation, and in the case of separation, the mother is the best person to be in custody. Why only for five years? If it is agreed that she is the best person to keep the child for five years, why should we stop it at five years. Why should we not extend it till such time as the child comes of age or attains majority as we say or until the child can take care of itself. What we have done may be justified in law but is it good in practice *io* introduce artificial relations giving room for litigation?

I am faced with numerous complex problems with regard to this Bill, although I would very much like this Bill to be a law soon. I will take it up clause by clause but will only point out the difficulties. I will not discuss the clauses in detail.

The first clause limits the operation of this Bill; this does, not extend to Jammu and Kashmir. I have a problem in mind and I wish to place it before the hon. Minister. A Hindu Indian marries a Kashmiri Hindu woman. Now, what would govern their relations? Suppose the Kashmiri wife lives with her children there. What is the right of the Indian Hindu husband over her? Can he get the custody of the children under the provisions of this Bill?

SHRI H. V. PATASKAR: She will be governed by the law as administered in Kashmir.

SHRI M. GOVINDA REDDY: I suppose so. She will be governed by the Hindu law as administered in Kashmir. She and her children there will be governed by the Hindu Law as administered in Kashmir, whereas the husband will be governed by the Hindu Law administered as in India and we will be making it impossible for this couple to live under one law.

I know the constitutional position in relation to this. We cannot extend this law to Jammu and Kashmir. But, Sir, we should persuade them by bringing such examples before them that both the countries have merged and have to go on together. I do not imagine that it would be difficult for us to persuade them, by giving such instances, to agree to the institution of such harmless laws. It is not a law which takes away the right of the State; it is not a law which takes away the right of the Government. It is a law which governs a particular section of their subjects and, therefore, it would not be difficult for us to persuade them.

MR. DEPUTY CHAIRMAN: We will continue in the afternoon. The House stands adjourned till 2-30.

The House adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI M. GOVINDA REDDY: Sir, I was submitting some of the difficulties that would arise if this measure is not extended to Jammu and Kashmir, or if there is not a co-extensive measure. We are having close relations with Jammu and Kashmir not only politically, but we would like to have close relations with that State matrimonially also. It should not become impossible for any citizen of India to have

matrimonial relations with a citizen of India but belonging to the other State. , Well, Sir, I would very humbly suggest to the Law Minister to see his way to extend the scope of this measure to the State of Jammu and Kashmir also. We may not actually have jurisdiction over them to pass this law, because they have not integrated into India in this respect, but they can enact the same thing there. In fact, we are extending the Part C States Act to several Part A and Part B States. In fact, in the old India, the pre-independence India, every princely State extended the Acts that were passed in the so-called British India. In fact, in Mysore we had the Penal Code extended to Mysore. In the same way, this Bill, when it becomes an Act, may be extended to Jammu and Kashmir State. That would be in the interests of both the States, and in the interests of the peoples of both the States. Moreover, Sir, now we have extended the jurisdiction of the Supreme Court to the State of Jammu and Kashmir. When we have extended the Supreme Court's jurisdiction to that State, it would be in the fitness of things, if, as far as possible, there is a common law to be administered. Now the Supreme Court, as it is. will have to administer the Hindu law as in vogue in Kashmir, and then there is the Hindu law administered, as it is current here. Well, that anomaly would be avoided, because we have the same Supreme Court and appellate jurisdiction, if the Government of that State could be persuaded to extend this Act.

Next, Sir, I would point out some of the difficulties which arise under the definition of 'natural guardian'. I am aware that this clause has been discussed at great length here, and therefore I am not going to enter into a detailed discussion, but I would only like to point out certain anomalies or difficulties that, according to me, seem to arise in this provision, *i.e.,* clause 5. It has been provided here that only the father and the mother would be the natural guardians. Supposing, there is a father and there is a mother, and ate? «Juwa is an adult brother. When both the parents are not living, why should it become impossible for an adult brother to become a natural guardian? Well now that we have done away with a *de* facto guardian whether for good or for bad, when it has been urged here on the floor of this House by many hon. Members that the scope of the natural guardian should be extended, we should have more natural guardians, not only the father and the mother, but some others also. Amendments have been given notice of proposing a grandfather, a grandmother, an uncle, and so on and so forth. Well, it would be very wise to liberalise this provision. After all, why should we narrow down the scope of the natural guardian, now that we have, according to clause 7, limited the rights of the natural guardian over property? Why should we not extend the scope of the natural guardian to other relations, particularly those relations who are considered, in one way or the other, as natural guardians; for instance, a maternal uncle is considered to be as good as a father, and then, a father-in-law is considered to be a father. Of course, in law also he is a father. So, according to me, Sir, the scope should be liberalised.

Now in the case of a married girl, I know that according to the law that is in practice the husband is considered to be the guardian of the minor married girl. But now we are changing our outlook, and we are changing the law as it existed once. When we are changing the law, why should we not change it so as to see that it fits into the new outlook? The husband who does not belong to the family, and who lives far away from the minor girl, how could he be a guardian of the minor girl? It would be better if the parents who are really interested in the girl, who have brought her up, are the natural guardians of the married girl until she attains majority, or until she comes to live with her husband, or until she attains puberty. There are these problems attendant upon this clause.

And then there are other things also. Sir. Supposing there is a father, and

[Shri M. Govinda Reddy.] we have provided in the next clause, clause 8, ior testamentary guardians to be appointed by the father. I am not taking a joint family into consideration, but a single Hindu family. Supposing there are three sons, out of whom one is a major and the other two are minors, and the father thinks of appointing a guardian. Well, if there is a major son, it would not be considered to be desirable by anybody, I think, to see that the father should be entitled to appoint a guardian for him. I will come to discuss that in detail when I come to clause 8. When there is a major son in the family, he should be the proper person to be in charge of not only the person but of the property also of the minors. So, we should extend, in my opinion, the operation of this clause.

Now, Sir, I come to clause 7. This is tne most contested clause. The question is whether we should restrict the rights of the natural guardian over the immovable property of the minor. In my remarks, Sir, which I made in my speech this morning, I made a reference to it as an illustration. Well, I must very humbly say that this clause has been drafted regardless of the social conditions that are existing in our country today. In fact, I must say that those who have drafted this clause have got no real knowledge of the existing conditions. Sir, we have declared ours to be a socialistic pattern of society. So, we must conform our law to the conditions of the majority of the people. Well, the knowledge of real conditions could have helped to remove the difficulties that would arise under this clause. These difficulties could have been visualised. If a coat is to be made for me, there is no use taking the dimensions of hon. Mr. Dasappa. A coat can be made for him according to his measurements. Well, that would not fit me. It would be like a jacket for me. So, Sir, according to the new concept that we have in view and our social conditions, we have to frame this law.

In this connection, I would like to five one or two instance*. Supposing there is a mother to a minor, and there *js* no father. And she wants to take advantage of the loans that the Government is giving. The Government gives taccaui loans; and it also gives other kinds of loans. If she is to apply for a loan, naturally the Government insists that she should enter into an agreement with the Government charging the property. Well, she has no right. So she has to wait for six months or so, to undergo a costly procedure and get the previous consent of the court in order to obtain a loan, let alone the question of loan itself, Sir. Suppose she wants to make use of electric power which the Government is supplying, electric pumps and other things on an easy loan basis and that the Government would make it a charge on the property of the minor. According to this clause, she cannot do it, as she has no power "to charge the property of the minor, and the Government naturally would not give the pumping set without the guardian agreeing to make the property a charge. So, under these conditions, are we helping the minor by enacting this clause? We are not helping the minor. On the other hand, we are only placing obstacles in the way of the minor and in the way of improving his property. Government gives, for example, improvement loans. If we insist on this clause, it tantamounts to saying that we do not want the minor's lands to be improved until the court thinks fit >to give its previous permission. There will be all sorts of difficulties for the guardians if we enact this provision. All that we should take care to see is that nobody acts in a way prejudicial to the interests of the minor, that nobody alienates the property of the minor in a prejudicial manner. This being so, I would reconcile myself to the position that, as far as alienation of the immovable property of the minor is concerned, there should be some restriction placed on the natural guardian. I am not entirely in favour of this, but as a compromise I would agree to the forbidding of the natural guardian from alienating the minor's property, but as far as charging the

property is concerned, I think that the natural guardian should have the power to do this. Otherwise he would not be able to act in the best interests of the minor. Even though the natural guardian may like to help the minor, we are forbidding him from acting in the best interests of the minor. By sub-clause (1) of clause 7 we have given powers to the natural guardian to do anything necessary for the benefit of the minor or for the benefit of the minor's estate, but by sub-clause (2) we are taking away this power. I have also tabled an amendment, and I hope that the Law Minister would see his way to agree to this. He may accept this or any of the other amendments tabled by other hon. friends like Mr. Rajagopal Naidu or Mr. Tankha or Mr. Dasappa. They have all brought in their amendments. This question has to be seriously considered. Otherwise, I feel that the present law, as it is, would be more beneficial to the minor than the law we are going to enact now because there is so much protection in the present law for the minor's interests and the court decisions also have taken care to see that the minor's interests are safeguarded. If we go beyond that, it will be impossible for the guardians to act in the interests of the minor, and especially in view of the insistence on the courts as in sub-clause (4) of clause 7, we have to be very careful to see that the guardian's position is made freer.

Under clause 8, a Hindu father is entitled to appoint a testamentary guardian for the benefit of his minor children. If a major son is there in the family, why should we entitle the father to appoint a testamentary guardian? Let us imagine a case where there is a major son and two minor children, and the father appoints a testamentary guardian for his two minor children. What will be the position in the family? Will the major son allow the testamentary guardian to operate? He would not; it is unnatural if he does. When a brother who is an adult is there to look after the family, why should the father be allowed to appoint a testamentary guardian for his minor children? Will that fit in with the family? This way we will only be disturbing the relations in the family.

bHRi GULSHER AHMED: Suppose the father is not satisfied with the habits of the major son and suppose he feels that the interests of his minor children will not be safe in his hands.

SHRI M. GOVINDA REDDY: It may be that the eldest son is a rogue or a scoundrel or a gambler and unfit to be a guardian. That is a different matter altogether.

SHRI H. V. PATASKAR: The father should be in a position to say by will as to who should take care of his minor children rather than leave the whole thing to the court.

SHRI M. GOVINDA REDDY: Naturally the presumption is that a brother would act in the best interests of his other brothers.

MR. DEPUTY CHAIRMAN: If the elder brother is a deserving person, do you mean to say that the father will not consider his case before he makes somebody else the guardian?

SHRI M. GOVINDA REDDY: That I also concede. It is also conceivable that the father may appoint someone else as the guardian.

MR. DEPUTY CHAIRMAN: He knows how best the property of the minors could be administered.

SHRI M. GOVINDA REDDY: I concede the force of your argument. My friend, Mr. Dasappa, here suggests another instance. The father appoints a testamentary guardian for his minor sons, and then one of his sons becomes a major some time after the testamentary guardian is appointed. What is to be the effect of the authorisation made by the father? Should it lapse or should it continue when that son becomes a major? Certainly he must not be entitled to act.

MR. DEPUTY CHAIRMAN: It is not a case of a joint family property. When the father appoints a guardian for his minor issues, it means that he will have apportioned their shares.

SHRI M. GOVINDA REDDY: Not necessarily. I do not agree that even then the brother should not be appointed as the guardian of his other minor brothers.

MR. DEPUTY CHAIRMAN: That is why there are the courts. You cannot provide for all contingencies under the law.

SHRI M. GOVINDA REDDY: I cannot agree that a third person in the normal course would be better able to take charge of the minor or his property than a relation.

And then sub-clause (2) of clause 8 says that the testament of a father will revive if the mother dies without appointing any guardian by will. Why should it revive? I do not see the purpose. Naturally, if the mother also dies, there will be other major persons in the family. Supposing there is nobody, and then in the fitness of things, the whole thing should go to court and the court may appoint a guardian. The father's testament may have been made several years before. Would the man continue to be the same person? The lapse of time may be so long there that it is not necessary, in the interests of the minor, to make the testament of the father to revive after the mother's death.

Again under sub-clause (3) 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. That means that even in the lifetime of the father, the mother can appoint a testamentary guardian, if the father is disentitled. Suppose the reason for the father's disentitlement disappears, what happens to the mother's will? Why should we permanently deprive a father of his right to appoint a guardian and make his disentitlement a permanent one? Under sub-clause (4) a Hindu mother who is entitled to act as the natural guardian of her minor illegitimate 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 or in respect of both. Here also there should be room, if there are major sons for them, to become guardians.

Clause 12 presents a very serious difficulty. We say that no guardian shall be appointed for the minor in respect of such undivided interest of a minor member of a joint family. It is all right but we have a proviso which says that the High Court can appoint a guardian for such interests. Suppose we presume the High Court appoints a guardian for the undivided interest of the minor, then of course, the High Court will naturally appoint such a guardian only when it decides to get the minor's property divided up from the joint family properties.

AN HON. MEMBER: Not necessarily.

SHRI M. GOVINDA REDDY: Yes, I do concede. If it is not necessary and if for the joint family property a guardian is appointed, what will be the position? There are adult members in the family and the High Court appoints a guardian for the property of the minor, what will be the position? Will the adult members of the family co-operate with them?

AN HON. MEMBER: The High Court will decide.

SHRI M. GOVINDA REDDY: Unless the High Court gets the property divided up by metes and bounds, the High Court will not be effective in seeing that the Court guardian will be able to safeguard the interests of the minor. It is not practicable.

DR. W. S. BARLINGAY (Madhya Pradesh): But all that will be for the High Court to see.

SHRI M. GOVINDA REDDY: What is it that the High Court sees? All that it sees is whether it is necessary to appoint a guardian or not and specially in view of this provision that

no guardian will be appointed, all that the High Court sees is whether it is called for or not and if it is convinced that it is necessary, the next step the High Court should take is to see that the undivided interest of the minor is divided.

SHRI GULSHER AHMED: Not necessarily.

SHRI M. GOVINDA REDDY: Otherwise High Court's appointment of guardian will be as good as nothing.

SHRI H. V. PATASKAR: There is a similar provision in the present Guardians and Wards Act and in spite of that it is only the High Courts which are established by Letters Patent that have gone to the extent of saying that they have the power. It is exercised very very rarely and I don't think there is any harm in view of the direction given that ordinarily it should not be done unless there are exceptional circumstances.

SHRI M. GOVINDA REDDY: Will you be introducing any harmonious element into the joint family when the court appoints a guardian? I should think not. How are you helping that family? I can understand if you bring a law to break up the family, and if the High Court divides the whole lot. But we are enacting this provision to see that the joint family continues to be a joint family as far as practicable. In the interests of the continuance of the status of the joint family we are enacting clause 12.

MR. DEPUTY CHAIRMAN: Short of breaking up the family, the High Court may give sufficient directives to safeguard the property, for proper accounting etc.

SHRI H. V. PATASKAR: The wording is 'to appoint a guardian in respect of such interest'. They will look to the interests of the minor.

SHRI M. GOVINDA REDDY: Even the court has no power *to* appoint a guardian in respect of the interest o! an adult member.

MR. DEPUTY CHAIRMAN: Suppose there is only one adult manager who mismanages and two or three minors, to safeguard the interest of the minors they may appoint a guardian.

SHRI M. GOVINDA REDDY: The mother is there who can look after them.

MR. DEPUTY CHAIRMAN: Suppose there is no mother? So the High Court have been given power. They will consider the merits of each case.

SHRI M. GOVINDA REDDY: In that case such adult members of the family as are quite capable of looking after the minor's interests, will do so. Anyway I don't think this is a happy provision.

MR. DEPUTY CHAIRMAN: It is for the High Court and it will be used only in exceptional cases.

SHRI M. GOVINDA REDDY: The very fact that the High Court is approached for the appointment of a guardian will affect the relationship.

MR. DEPUTY CHAIRMAN: Do you want that clause to be removed?

SHRI M. GOVINDA REDDY: No. The proviso should be removed. Under the general law there is provision for a minor to go to a court at any time and get a guardian appointed for him.

MR. DEPUTY CHAIRMAN: The minor cannot go.

SHRI M. GOVINDA REDDY: Of course somebody else on his behalf— the mother, or uncle or some other relation. So it is not necessary to provide that here. The same benefit can be had without this provision being made here. Why I insist on this is to see that the minor is not left in a vacuum.

MR. DEPUTY CHAIRMAN: The entire scheme is this. The guardianship is only for property other than the minor's share in the joint family property. This provision is for his share in the joint family. Under this clause power is given to the High

[Mr. Deputy Chairman.] Court and I think it is a very healthy provision.

SHRI M. GOVINDA REDDY: The same benefit can be had without this provision.

MR. DEPUTY CHAIRMAN: The ordinary court has not got this power.

SHRI M. GOVINDA REDDY: This will be for only exceptional cases.

SHRI H. V. PATASKAR: The only extension that this Bill makes by this is that at present it is only the High Courts which are established by Letters Patent who exercise this power under exceptional circumstances because there was a similar provision with regard to the joint family regarding the Guardians and Wards Act. Now what has been done is, instead of confining it to only two High Courts, all the other High Courts also have been given the powers because we did not want to make distinctions between different High Courts.

SHRI M. GOVINDA REDDY: I understand that. Normally such cases don't arise. So in my concluding remarks, I would say that there is no hurry with regard to this. Since we are enacting other parts of the law, it can be viewed in relation to them. If it is to be enacted it would be very wise on the part of this House to see that some of these difficulties are not there. When we are codifying these laws, we should see that those who cannot easily avail of this without much expense or trouble are not made to go to court every now and then, and that no room is left for them to take resort to court to get the remedies.

With these words, I submit these remarks for the consideration of this House. I have tabled my amendments and when the time comes for discussing them, clause by clause, I will speak on them.

SHRI D. D. ITALIA (Hyderabad): Mr. Deputy Chairman, it gives me great pleasure indeed to rise and whole-heartedly support this Hindu Minority and Guardianship Bill. Some of my Hindu friends may be surprised and they may ask why a non-Hindu should stand up and speak in support of this Bill. My main reason for standing up and speaking in support of this Bill is to draw the attention of the hon. Law Minister to the question which I most respectfully wish to ask him, namely why such a non-controversial and harmless Bill as this one is introduced only for the protection and the safeguarding of the interest of the minors of one section of the people only and why he has omitted the other sections of the public. Sir, I feel, and I am sure my other non-Hindu friends, such as the Muslims, Christians and Jews, will all be in favour of the principles underlying this Bill and no one will have any objection to such a measure being made applicable to all the communities. Sir, it is high time that such a non-controversial and harmless Bill should be introduced not for one community only, for I feel that such Bills, for instance the Succession Bill or the Hindu Minority and Guardianship Bill should be introduced for safeguarding the interests of all people who live in India, irrespective of caste or creed.

3 P.M.

DR. W. S. BARLINGAY: Congratulations.

SHRI D. D. ITALIA: After all the question of the protection of minors and their guardianship does not arise among Hindus alone. Members of all other communities also have to face such problems during their lifetime and I am sure that it is the duty of every Government to protect the rights of minors belonging to all communities, both in respect of person and property.

Sir, our thanks are due to the Members of the Select Committee who took great interest and care to protect the rights and interests of Hindu minors, both in respect of person and of property and they have improved the Bill to a great extent, and they

have made it a comprehensive one.

Many of my hon. friends who have spoken during the last two days on this Bill have spoken on the different clauses and so I do not want to take up much time, but would only give my opinion on some of the provisions contained in this Bill. First of all, there is this question of who will be the suitable natural guardian for a minor child. To my mind, it is the mother who has the love and the affection towards her child and so she is in a better position to protect her child. So I think the child should be entrusted to the care of the mother during minority. In many matrimonial cases among Parsis, whether it be cases of judicial separation or divorce, the court always gives the direction that the minor child should be entrusted to the mother. No doubt some sort of instructions or directions are also given that the minor child should be sent to the father once a month, so that some kind of affection and love may be continued between the father and the child. I therefore, feel that some such clause should be embodied in this Bill also so that the father and the child may have some kind of affection and love for each other.

The next question is, up to what age the minor should be with the mother. I think five years is too short a period and I therefore submit that in the case of a son, the age should be raised to 12 years and in the case of a daughter, it should be the age at which she attains majority or whenever she gets married.

And, in the absence of the natural father or mother, I think it is but proper that the grandfather or the grandmother—both maternal and paternal—must be considered the most suitable natural guardians, more suitable than any guardian appointed by the court. I am glad that my hon. friend Prof. Kishen Chand and the hon. Lady Member, Shrimati Savitry Nigam have supported this idea of mine. It has been my experience and I am sure it is the experience of many others also that the grandfather and

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the grandmother have more affection and love towards the grand-children and I think they will protect the rights of the minors better than outsiders appointed as guardian by the court. I do agree with Shrimati Savitri Nigam when she said "jf^-?? % T? ^{C}TRT" which means that interest is sweeter than the principal sum.

Then there was the question of the powers of the natural guardian. I agree with many hon. friends who said that the natural guardian should have more power for the disposal of the property or the mortgaging of it, in the interest of the minor child, and for the proper care and development of the minor child, without obtaining the permission of the court. We all have bitter experience of proceedings in courts and how in many cases it takes months before we obtain the permission from the court.

The third and the most important point is whether the natural guardian can continue to be so after he or she had changed his or her religion. Sir, to my mind, in the best interest of the minor, We should say that as soon as the guardian has changed religion, the custody of the minor should be entrusted to some one else, according to the decision of the court, some other guardian should be appointed by the court. It is necessary that whosoever protects the minor, he should bring up the child in the religion to which his father belonged at the time of the birth of the child.

Much has already been said about testamentary guardians and guardians appointed by courts and I do not want to take up more time on these points. I would conclude with humbly requesting the hon. Law Minister to consider my suggestions and in future to have one law for all such cases, where the matter is non-controversial and harmless. Sir, with these words, I support this Bill.

SHRI BHUPESH GUPTA (West Bengal): Mr. Deputy Chairman, we welcome this measure and we are very happy that it has come back to us with certain agreeable changes

[Shri Bhupesh Gupta.]

from the Select Committee. But it seems that it has not quite met the legal points that hon. Members have in mind. It appears to me also that this Bill is liable to be interpreted in radically different ways. In the course of the debate we have heard some hon. lawyers speak in support of the clauses and giving one type of interpretations. We have also heard another set of hon. lawyers speaking also in support of the clauses, but giving a different type of interpretations. Therefore, I feel that one is more or less in a state of ambiguity in this matter. I can quite understand that when a measure like this is brought up, which naturally relates to certain other existing laws, the measure is liable to be interpreted in different ways. Therefore, we feel that when we take up such measures, the law should be straightforward and simple. The difficulty of interpretation cannot be obviated unless and until we have placed it on the footing of a comprehensive Code, dealing with tUe private law of the citizen.

The protection of a law of such a nature should be extended to all sections of the community. But at the same time it is necessary to keep in mind that we should not proceed in such a manner in these cases, as would injure the religious and other susceptibilities or sentiments of the people. But as far as a Hindu Code Bill is concerned, the matter has been under discussion for a long time and it has been ascertained that public opinion is overwhelmingly in favour of enactments of this nature.

Therefore, we take it for granted that the Hindu community, at any rate, would accept this measure as it has been pressing for its enactment. With regard to the Muslim and other communities, naturally the question has to be viewed from a broader and social angle and we should proceed in such cases in a manner that would not injure their feelings and it should be our duty to get their support also. The fact remains that in India today we require a code of law dealing with the private rights of the citizens, dealing with the property relations, etc. We are very far from it although we have got certain legislative enactments. When I was listening to the arguments put forward by the hon. lawyers, I felt that the minor would be in a very difficult position if the lawyers had their way, because it seems to me that they can make any case out of anything and I can tell you, Sir, that it is the privilege of the lawyers to speak on anything and make any case at their pleasure out of anything.

SHRI M. GOVINDA REDDY: That is what you do also.

SHRI GULSHER AHMED: What about you?

' SHRI RHUPESH GUPTA: If the clients are rich people, then they can afford the luxury of such things, but in the case of the poor people that luxury costs much; they cannot afford to have that luxury. Therefore, I have my misgivings in this matter as to whether this law would really bring the benefits that are intended to be created.

Certain points were made in the course of the debate and I think the hon. Law Minister should consider them in order *to* eliminate the complications and make this Bill a straightforward and simple one.

I listened to the speech made by the hon. Mr. Dasappa. He spoke for full one hour on this thirteen-clause Bill. This Bill attracted from him a very able and thought out speech for one full hour. I do not know what will happen if he appears in a court of law taking one side or the other under this enactment. The more hours, the more days, the more money for the lawyers. I think this is a matter which should not be lost sight of when we are dealing with social legislation of this sort. The trouble with the Government is that it stops half-way. For instance, we could have eliminated certain things here. It is said that a Hindu minor has to be brought up in the religion to which the father belonged at the time of the

minor's birth. Naturally, somebody can go to a court of law and file a petition saying that the minor is not being brought up in the religion of the father and that the guardianship be annulled. The court will, in such cases, naturally take upon itself the task of interpreting as to what is meant when it is said that the minor has to be brought up in the religion of the father. These are very simple points but the moment you go "o a court of law, lawyers will get up and say, "The way the child is being brought up shows that the child is not being brought up in the religion of his father"; they will naturally advance various arguments, customs, usages in order to prove their case. The contestant, on the other hand, will get up and say that the child is being brought up in the religion of the father. A controversy will arise and the remedies that are sought to be given will at least take a long time in coming. This danger, therefore, remains and I see no necessity whatsoever of retaining this clause in the present form. All that we are concerned with is that the children should be brought up as good citizens of India. That is enough; whether he is brought up as a Hindu, Muslim or Christian or something else does not matter as long as he is brought up as a good citizen of our land. That is what we should aim at. I am not saying that this should be done because we are a secular State and all that. Those points have been made by others but the point here is that in keeping with modern times the provision here should be such as would not be liable to be misinterpreted and take away the rights that are sought to be given. We should be satisfied with the fact that the children of our society are being brought up as good citizens and as legislators we need not try to poke our nose into domestic matters as to how one should bring up one's child. We can leave all that. The point is that the child should not be brought up in a manner which is repugnant to good life or is inconsistent with civilised life. The child should be brought up as a good citizen; that is number one; secondly, the court may come into the picture and give its verdict. It will be for the court to see, but you are restricting the scope of the court; you are becoming a little dogmatic in this matter when you say that the child should be brought up in the religion of the father. In such circumstances, one does not know what one means in a court of law. For instance, somebody might go and say that that community sends the child to the Ganges for a bath every day and that this is not being done by the guardian; therefore, the guardian is not looking after the religious interests of the child; and all this sort of thing. Similar instances may be given. That would complicate matters. I think this clause might have been easily omitted; there is the ordinary law, the Guardians and Wards Act, to give some direction as to how the courts should view this matter. The whole thing has been much too restricted and I think it is liable to be used against the interests of the children, at least in some cases.

Then a point was made about the *de facto* guardians. Some hon. Members seem to think that the *de facto* guardians should remain. Now, the *de facto* guardians may remain; there is no harm in it. If somebody likes to look after the children, minor children, well and good. Nobody will come forward and say that he is doing something wrong and that he should give up that sort of work. That is not .the case but the moment the *de facto* guardians begin to deal with the properties this law intervenes. The *de facto* guardian will not be able to alienate or charge the property until and unless he has the sanction of the court. I think this is a very reasonable thing in the present circumstances. We have no quarrel with the *de facto* guardians in our country; we know there are very good *de facto* guardians. You find some very good *de factos* in various walks of life but we are not concerned with them. We are mainly concerned with those guardians who claim themselves to be *de facto* guardians and arrogate to them-

[Shri Bhupesh Gupta.] selves the right of dealing with the properties of the minor and dealing ia such a manner as would jeopardise aad injure the interests of the minor. In such cases, in the fitness of things, the guardians should take care and lee that the permission of the court is sought. There is nothing wrong in it. Mention was made about brothers and others. Nobody is saying that the brothers are bad. Why should we say such things? But the point here is that we are mainly concerned with the rights of the minor; we are trying here to guard against certain contingencies that might operate against the interests of the minor. Maybe, in one or two cases, brothers may be found wanting in sympathy and responsibilities towards the minor and in such cases they should not be given extraordinary powers to deal with the property as they like. They should be more or less restricted in their dealings. That is all that we need here. Then somebody said that in such a contingency the brother would not probably take interest in looking after the interests of the minor. Good brothers should be more interested lh the welfare of their brothers than in the legal powers that they enjoy. That is how I view this matter. If law is in their favour, well and good; if it is not in their favour, they should go to, and satisfy, the court that their intentions as guardians are such as Would not warrant any action of any kind against them. It is open to them. Therefore, there is no difficulty that way at all. The fact remains that in a large number of cases the de *facto* guardians had behaved in an improper way and against the interests of the children. That is why public opinion in the country has been roused against such existing provisions of the law as make it possible for the so-called de facto guardians or the so-called guardians to behave against the interests of the minor children. We are guarding against such kind of abuse of authority and that is all that we find in this law.

Sir, a point has been made that there should be provision for de facto guardians. I do not think that there is any need to have such a provision. If the natural guardian is not there, there are guardians and there are people who want to act as guardians and they can go to court and satisfy the court and get the permission and the authority of the court to function as guardian. Of course, very rightly the point has been made that it may delay matters and it may create difficulties in the way of looking after the properties and all that. So I think that some kind of direction should be given so that no unnecessary delay is caused in such matters. It is a very right point to make that there are cases where unnecessary delay is made and that operates against the interests of the minor. I think in these matters prompt action is also called for and it may well be that in the interests of the minor quick actions have to be taken with regard to properties and the procedure should be such as would not cause any delay whatsoever. I think the hon. the Law Minister should look Into this matter and make such provisions, if necessary by adding a new-clause.

Then we are also very glad that the mother has been placed on an equal footing with the father with regard to this matter. Now some hon. gentlemen had talked in a rather patronising manner as if the women were claiming something which they are not entitled to claim. I think that way the hon. Mr. Kailash Bihari Lall was just telling us, as to what rights women enjoyed and all that sort of thing. I do not know if he had settled that account with his wife. If not I can tell.....

SHRI GULSHER AHMED: How can you say that?

SHRI S. N. MAZUMDAR (West Bengal): He wants to be enlightened.

SHRI BHUPESH GUPTA: I do not know that and I cannot say. If he had had an objective conversation on the subject with an open mind he would have seen the many rights that they

do not enjoy, that the female members are denied very many rights which are enjoyed by women elsewhere in a progressive society. I am very sorry if he has not been told about them. But that only shows the greatness of the women, not the wisdom of the hon. Member. Therefore, I say, let us not talk in that patronising manner. We are not at all....

SHRI KAIL ASH BIHARI LALL: May I ask that he should not take up advocacy of a subject of which he has got the least knowledge?

SHRI BHUPESH GUPTA: I take this only from you.....

DR. SHRIMATI SEETA PARMA-NAND: The greater detached point of view gives greater rights to a person to speak.

SHRI BHUPESH GUPTA: When such knowledgeable men are there, why should I bother myself in this matter? Now here let us not think that women are being given equal rights at all. Only certain old feudal or semi-feudal restrictions which are insulting to women are being just eliminated. It is not as if we are conferring on them certain very radical, revolutionary or progressive rights. Nothing of the kind. Such a law should have been there on our Statute Book half a century ago at least. Now we are behind times by half a century. When we are giving them some rights eliminating certain obnoxious things in our social life, one should not get up and say as if it is a revolutionary society. Nothing of ' the kind. We know that women .still would continue to suffer from the disabilities that are there in their way, and until and unless certain fundamental social reforms have been made, women's emancipation remains *A* distant cry. That Is what we want to say. Let us not exaggerate these things in order to say that we are inarching very fast or marching ahead of time. Nothing of the kind. Vfe are just undoing some of the mischief that exists in our society and in any case the things that do not fit in with the modern time*. That is about all.

Then, as you know, this law will apply only to a small section of .'be population, a small section of the Hindu population here in this country. Vast sections of the population will not be embraced by this law at all. Now that is a factor which has to be borne in mind. We hope that such measures will be extended to other sections of the community and I do not see as to why the lawyers should not be at pains to find out ways and means of covering joint family properties, co-parcenary properties within the orbit of this law. It seems to me that the hon. the Law Minister has taken it for granted that the coparcenary properties of the minor should not be touched at the moment. I am quite conscious of the difficulties that are there in the way of dealing with such properties under this law. But yet I feel that such properties should not be lost sight of and we should contrive legal measures which would bring them within the orbit of the benefits that are sought to be given in a provision like this.

Then about the age. I hope the hon. the Law Minister would consider the suggestions that have been made. Nobody seems to have been satisfied with the provision that the mother's right to the custody of the child should be restricted to five years only and after that she would not have that right. I do not think that this is a sound provision here. Now if you are dealing with a minor you just make up your mind as to what age the boy or girl is considered to be a minor, and then having decided it, you give tine -ight- to the mother. I think the suggestion that has been made that the age limit should be raised to twelve years is very sound and it should find acceptance on the part of the hon. the Law Minister. Now this little concession looks so beggarly that I think that here in the course of the debate he should have the courage to alter this thing to raise it to twelve year* at least in the case of a boy and a girl or with certain variations between a boy and a girl. But thr five year limit is absolutely unsatisfactory and I *th'H*. ho3». Mem-

[Shri Bhupesh Gupta.] bers from both sides of the House have tried to emphasise upon the Law Minister that it calls for a little change. The Rau Committee made it three years, we know that, but I think we have advanced a little further than the Rau Committee to raise it only by two years. I think we are moving much faster than the Rau Committee would have moved. Therefore I think that the age limit should be raised.

Then some hon. Member who was opposed even to raising the age limit said that it is the father who bears the expenditure for education and all that sort of thing and wanted to make out a case for the father. Now the champions of fathers at home are only trying to see that mothers do not have the natural right of custody of her children. That is what they are interested in. And, as far as the father is concerned, I think in a normal family that question does not arise. The question will arise only if there is any conflict in the family, if there is any disruption in the family. In such a case you can imagine very well what would happen to them if the children below the age of twelve are made over to the father instead of to the mother. You can imagine the situation. I am not saying that all fathers are bad and all that sort of thing but the natural inclination for a child up to the age of twelve would be to remain with the mother and it is not only a question of the care and affection of the mother. I think it is in the interests of the society that the custody of the children should be given to the mother up to that age and it is because they are most fit to look after the well-being of the children. After that age only their education and everything starts in the proper sense. So up to that age they are the most qualified to look after the well-being of the children. I am not making any reflection on the father whatsoever. All that T am saying is that the mother is the most suitable natural person to be entrusted with the custody of the children up to that age, and that is all that I want to say in this connection.

Then, Sir, it is said here that one ceases to be a natural guardian if he ceases to be a Hindu. Why are we saying all this thing? I mean, if one is a natural guardian we assume that certain relationship exists between the minor and the guardian. Now why he should cease to be a guardian just because he ceases to be a Hindu, I cannot see. Now naturally again this point may be liable to all kinds of interpretation in a court of law. Suppose a non-practising Hindu, who is not a Hindu in an orthodox sense, lives in an orthodox Hindu village, there the people may turn up before a court of law and say that for all practical purposes that gentleman has ceased to be a Hindu, and I do not know what the decree of the court will be, but that will create difficulties in the way.

Now, *one* may cease to be a Hindu or a Muslim or a Christian but Lhe father remains father, mother remains mother and the brother remains brother and the natural guardian appointed from the angle of the well-being of the child remains the natural guardian. If somebody thinks that having ceased to be a Hindu he is behaving in a manner which is contrary to the interests of the child, it is for the minor or for somebody acting on behalf of the minor t_0 go to the court of law and seek any legal ruling that may be provided for. But here the provision is made *ipso facto,* that is *to* say, the moment it is shown that he has ceased to be a Hindu, he ceases to be the guardian also. I think this should not be accepted. I do not know why this has been put in in this manner. Since we talk 30 much about secular State and since the whole approach is based on a certain healthy social outlook, we should not introduce religious elements in this dogmatic manner so that the benefits are somewhat cancelled by this provision. Therefore, I say that this provision also should not remain.

With regard to properties, a provl-

sion is made that when immovable properties are charged or alienated, the permission of the Court has to be sought by the natural guardian. I can quite understand it. But what would happen if, for instance, a guardian has to charge or alienate certain shares in a company? I am quite aware that the overwhelming majority of the people do not have the privilege of owning shares in a company but I am talking about those people who are slightly better off in society. What happens if the guardian wants to spend away the money that has been left there? We also find that in our society, ornaments, jewelleries and other things, even utensils, are left as a kind of asset for the minor children. What happens if such things are sought to be alienated? The difficulty is that there may be very justifiable grounds for alienating such things in the interests of the minor and if every time the person has to go to the court of law to seek permission, difficulties are bound to be there. At the same time there have also been cases when such movable properties have been alienated somewhat recklessly by the guardians, *de facto* or natural, and that has gone against the interests of the minor. What happens in such cases, I would like to know. I think therefore there is need for balancing the situation here. I cannot offhand suggest an amendment but I think some kind of a provision should be made which would guarantee against alienation or charging of properties even if they are not immovable properties, because experience shows thai some kind of restraint is called for at least in some cases.

As for other provisions, as I have said, they have been improved in the Joint Committee and much of the criticism that we made of the original Bill has been met in the amendments that have been adopted by the Joint Committee. That is why I say that there is not much to say on this from the purely social angle, but from the legal angle so many things can be said for and against and so many interpretations can be "made. I do not know if we can so arrange things even at this stage that the lawyers do not scramble over it when it becomes law.

Sir, the administration of tnis law is also very important. I know that the majority of the people will not be able to take advantage of this law because, situated as they are, it is not possible for them to seek redress from courts of law. That is our common experience and therefore I feel that some attention should be given to that question. At the same time I am conscious that the very fact that *we* have adopted such a measure, the very fact that such a measure has become a part of the law of the land would be a sufficient deterrent on those guardians who misbehave with regard to the property of minor children. At any rate they will think twice before dealing with the property of the minors or before misbehaving in respect of the interests of the minors. At the same time this will also eliminate the crowd of de facto guardians who take upon themselves the role of the natural guardians and assume plenary authorities with regard to the property of the minor. Now, that will be put a stop to and it is a very good thing and as hon. Members have pointed out, if the natural guardian Is not there, anybody can go to the court of law, whether he is a Hindu or a Muslim or anybody, and say that he wants to look after the interests of the minor or is already looking after the interests of the minor and that therefore he should be given the legal sanction. There is no difficulty there. Therefore, I think it is a very right thing that the host of *de facto* guardians have been eliminated and the natural guardianship has been restricted only to father and mother. As for others, let them take the consen* of the court when they are really interested in protecting the interest* of the minor.

Sir, I hope that some of the air.enaments which have been tabled and which are somewhat of a reactionary nature would be withdrawn because there is no point in delaying the pas-

[Shri Bhupesh Gupta.] sage of this Bill. If we pass it quickly here, it will go to the other House and before this session is over it can become law. It is no use pressing all the amendments. Some of them are reactionary and useless from the point of view of the minor, from the point of view of the mother and from the point of view of the society. I hope hon. Members will withdraw such amendments. Those amendments that are good ought to be considered objectively by the hon. Minister who should try to accommodate as many of them as possible because according to me that will improve the Bill. With these words I support this measure and whatever little reservation we have, we hope we will have no occasion to retain them after the hon. Minister has accepted some of the sound amendments given notice of from both sides of the House. We wish this Bill good luck and we hope it will be administered well in the interests of the minor and of the society.

SHBI J. N. KAUSHAL (PEPSU): Mr. Deputy Chairman, as a matter of fact most of the points which arise out of this Bill have been already covered by the speakers who have preceded me and I had little desire to speak. But although it seems that the Bill is of a non-controversial nature, from the trend of the discussion which has taken place in the House it is apparent that there are controversies on some of the provisions of the Bill. And those controversies mainly arise because of the experience which different peopb possess of the working of the law in a law court.

The first thing which I want to bring to the notice of this House is that this Bill has abolished the institution of de *facto* guardians in the sense that now any alienation made by a de *facto* guardian will not be recognised by a court of law. Previously, under the Hindu Law the powers of a *de facto* guardian for the alienation of the property were coextensive with the powers of the natural guardian and I am fortified in this observation of mine by Mulla who says that a *de facto* guardian has the same power of alienating the property of his ward as a natural guardian. Since the powers of the de facto guardian are being abolished, the other allied question which will at once present to us is whether it is wise to retain the natural guardians as was done under the Hindu Law, that is to say, whether the natural guardianship should be restricted only to the two relations, *i.e.,* the father and the mother. My own submission is that since we are trying to abolish the institution of *de facto* guardians, it is but meet and proper that the definition of a natural guardian should be enlarged.

We know that in a number of cases there are other relations who act as the guardian of the minor ward and it will be a very great hardship if in every case they shall have to approach a court of law for being appointed as a guardian. The argument which has been advanced from all sides of the House is that natural guardians can only be those who have some ties of affection for the ward and since the powers of the natural guardian are very wide under the existing law, the definition should not be enlarged. To meet that argument, I would draw the attention of the hon. Members to this provision of the Bill, wherein the powers of the natural guardian have also been very much restricted. Now, the natural guardian cannot alienate any immovable property, meaning thereby that they have now come to the level of a guardian appointed by the court. On the one hand, if we are curtailing the powers of the natural guardian—we are abolishing the institution of *de facto* guardian—then where is the sense in restricting the definition of a 'natural guardian' only to the two relations, the father and the mother. I would, therefore, urge —in order to make the Act more workable, in order that more guardians may not be asked to go to a court of law for their appointment— that the definition of the "natural guardian" should be enlarged so at to

include at least the grandfather, the grandmother, the maternal grandfather, the maternal grandmother and the maternal uncle. These are the relations who, we must all admit, have the same ties of affection for the minors as the father and the mother and there is no chance of misusing of the powers by these relations. Number one, because they have great affection for the ward they will not misuse the property of the ward; .and number two, their powers are also very much restricted because they have to approach the court for the alienation of immovable property. Therefore, the first contention which I want to advance before the House is that the House should at once agree to those amendments which seek to enlarge the definition of a natural guardian.

The other point to which I would like to draw the pointed attention of the House is that which has been made out by Mr. Jaswantraj Mehta in his minute of dissent which is appended to this Bill. He has pointed out that there are some categories of minors about whom no natural guardian is contemplated by this Bill. He has drawn the attention of the Select Committee to those four categories. He says:

> "I should like to observe that the Bill, as it now emerges, leaves a void so far as the question of providing a natural guardian for some important categories of minors are concerned. These categories include (1) children of minor fathers, :.n cases where the father would, according to the scheme of the Bill, be the natural guardian if he were not a minor, (2) children of minor mothers, in cases in which the mother would likewise be the natural guardian but for her minority, (3) married girls with minor husbands, and (4) minor widows."

Well, I entirely agree with this minute of dissent, because these are the four important categories of minors about whom this Bill does not provide for natural guardianship. So far as one of the categories is concerned, it is provided for in the Guardians and Wards Act and that category is married girls with minor husbands. It is contemplated in the Guardians and Wards Act that a minor husband can be the natural guardian of his minor wife, but since now this is going to be a Code so far as Hindu minority and guardianship is concerned, that provision in the Guardians and Wards Act will go because it is repugnant to the provi sions of this Bill. This point I will develop later on; also, whether this is a complete Code or, as the Law Minister thinks, it only talks of some minor matters so far as the Hindu guardians and wards are concerned. But for the moment I will try to impress upon the House that these four categories of minors should be provided for so far as the question of natural guardianship is concerned.

Then, the other point to which I want to draw the attention of the House is dealt with in clause 5, that is, regarding the custody of a minor who has not completed the age of five years, that should ordinarily be with the mother. On that matter different opinions have been expressed by different Members of the House and my own submission to the House is that so far as the question is concerned as to whether the mother is the proper custodian of the child or the father, there are no two opinions that till a certain age, it is the mother who is regarded as the proper custodian of the children. And as all Members have pointed out, these questions only arise whenever there is disruption between the father and the mother. Otherwise, normally when the family is going on smoothly, these questions do not present any difficulty. I am also one of those who axe of this view that the mother should be allowed to be the custodian of the children till that age when the child becomes fit to be put in the custody of the father. An opinion has been expressed that twelve years is the proper age. Well, I also think that

[Shri J. N. Kaushal.] this age of five years should be raised to twelve years; and in the case of girl, till she attains her majority or she is married, I think the mother's custody should be regarded as the proper custody.

SHRI R. C. GUPTA (Uttar Pradesh) : What happens when she changes her religion?

SHRI J. N. KAUSHAL: Regarding the question when the father changes his religion, I would draw the attention of hon. Members to the provisions of Hindu Law on the subject, so that we might know whether we are trying to change the existing position or we are trying to follow what is already contained in Hindu Law. On that matter, Mulla says:

"The fact that a father has changed his religion is of itself no reason for depriving him of the custody of his children. But if at the time of conversion, the father voluntarily abandons his parental rights and entrusts the custody of his child to another person in order that it may be maintained and educated by him, the court will not restore back the custody of the child to the father, if such a course is detrimental to the interests of the child. In such a case the Court should be guided by what it conceives to be best for the welfare and wellbeing of the child."

Well, since the Hindu law as it is administered in our courts contemplates that even though there is a change of religion, the father is not deprived of the custody of his children, I do not know why we should make a departure in this present Bill which we think is going to be a progressive measure. On the one hand, we feel that we have adopted a secular Constitution; we do not very much bother whether a person follows one religion or another. But on the other hand we think that if a father changes his religion, he should cease to be the natural guardian of his child. Well, I for one do not see eye to eye with this provision. I think the provision in the Hindu Law, the existing provision, is more salutary, because as has been said by the previous speaker also, the father will remain a father whether he is a Hindu or a Christian, or a Muslim. His ties of affection for his children will not change by the mere fact that he prefers to adopt another faith. I would, therefore, recommend to the House that this change which has been brought about by the present Bill is not of a progressive character. On the other hand, it would mean that we want to go back on the texts of Hindu Law which do not deprive a father of the custody of the children in spite of the change of religion. It is entirely different in the case of a mother, that has also been dealt with by the same learned commentator, where he says:

"A child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social status; and it is, therefore, ordinarily and in the absence of controlling circumstances, the duty of a guardian to train his infant ward in such religion. Therefore, where a Hindu mother changes her religion, the Court may, if it is in the interest of the minor, remove the child from the custody of the mother, and place the child under a Hindu guardian."

So, these are the texts of the Hindu law. I do not know whether we are actually advancing the cause of Hinduism by trying to go back upon these texts. My own submission is that change of religion should not be a ground for the deprivation of the custody of the natural guardians. *(.Interruption.)* The question of inheritance is entirely different from the question of guardianship. We are for the moment only considering as to who should be the proper guardian for the children. And my friend is confusing the rights of inheritance with which, for the moment, we are not at all concerned. The rights of inheritance are governed by an

entirely different code, whereas the rights of guardianship are governed by different considerations. As we know, in the whole scheme of the Guardians and Wards Act, the paramount consideration is the welfare of the child. And that is the only consideration. Now do we really feel that simply because the father or the mother has changed the religion, the ties of affection will be lessened? The Hindu texts have made a distinction between the father and the mother. But now we are trying to reverse the position, and we want to go back even beyond those texts, for which I feel there is no justification, especially when we cry hoarse that we have established a secular Constitution here, and therefore, by the mere change of religion we should not deprive any citizen of the custody of his wards. Why should the citizens be deprived of the custody of their wards? If they think that the new religion is to their liking, there is no reason why the natural guardians should be deprived of the custody of their children.

SHRI H. C. DASAPPA: In what faith would you like the minor to be brought up by the father?

SHRI J. N. KAUSHAL: Now the question is as to what is the faith in which the child should be brought up. Well, my respectful submission on this point is that when the father changes his religion, normally everybody would think that his children should also be brought up in the new faith to which he has gone. When the minor comes of age, it is for him to decide in which faith he wants to continue. The question of faith is a question which will have to be decided by the minor when he becomes major. Otherwise, it would be very harsh for the children to be deprived of their parental love and to be thrown into the custody of some other relations, when the father changes the religion. Why should they be deprived of their parental love? On the one hand, you are very keen about the faith of the child and on the other hand, you are trying to ignore hii welfare altogether. I do not think any other relation will have the same love for the child which his father or his mother has. And we are recognising this, because we feel that the natural guardianship should remain with the father and the mother. If the father and the mother change their religion, do you mean to say that they will lose all love for their children? I do not find any reasons at all why the parents should be deprived of the custody of their children and why the minors also should be deprived of their parental love. The question of religion or the question of faith will come in only when the children become of age, when it will be for them to decide in which faith they should remain. Therefore my submission is that this step is certainly a retrograde step. I have pointed out the texts of Hindu law. The Hindu law, as it stands, does not contemplate the deprivation of the custody from the parents in the case of change of religion.

Then, Sir, the other point which was very vehemently brought forward by Mr. Rajagopal Naidu is this. In clause 7, the powers of the natural guardians have been restricted in the sense that they cannot now mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of ' the immovable property of the minor, except with the previous permission of the court. Although all these restrictions are there, yet lease has been left out of this category. The only argument in this connection that the hon. Law Minister has advanced again and again is that leases are governed by different laws in the country, and he has been able to point out the State of Bombay only. Well, I wish to bring it to the notice of the hon. Minister that in the States of Punjab and PEPSU there are no restrictions on the power to grant a lease. A man can grant a lease for 99 years; he can grant a perpetual lease. And as we all know, a lease for 99 years is as good as a perpetual lease. Only because the instance of

[Shri J. N. Kaushal.] Bombay is present in the mind of the hon. Minister that is no reason lor excluding leases from the category of this law, especially when that provision exists in the Guardians and Wards Act. My submission to the House is that the whole sub-clause (2) will be nullified in the garb of leases. You nBed not sell the property, or you need not mortgage it, if you can get the same thing by giving it on a lease for an indefinite period or for a long term. And that point is also very clear, because we have specifically provided that if there is a general law and if there is a special law, and if both deal with the same subject, then it is an accepted principle of interpretation that the special law overrides the general law. Therefore, my submission to the hon. Minister is that the provision for leases should be re-enacted, as it was in the original Bill. And the Select Committee has not acted wisely by excluding that category, because the whole power of the natural guardians will be abused otherwise. And there is a very strong opinion in this House that no restrictions should be placed on the powers of the natural guardian, because one restriction is enough, that is to say, they have natural ties of love and affection, for their wards, and they are not going to misuse those powers. But by the present provision we will be able to find good purchasers, because they will feel that the title has become indefeasible, because the court has granted permission. On the other hand, that would be for the benefit of the minors also, because we know that in the courts of law there is a great temptation on the part of the minor also to come and seek the avoidance of any alienation which was made by his guardian. Although alienation might have been made for some good necessity, but he thinks probably that necessity will not be established in a court of law, and it may be possible for him to get back his property. Then I think the minors as well as the intending purchasers will know where they stand, and much of the avoidable litigation can be avoided. I therefore feel that Ihe question of lease should not be left out only because in Bombay a lease cannot be granted for more than 10 years. I think there may be a number of other States where no such law governs the leases.

Then, Sir, the other point was made by one of the hon. speakers. That was, whether it will be possible, under any given circumstances, after the passing of this Bill, to remove the natural guardians. The answer 4 P.M. is tried to be given to this observation by reading clause 13. My reading of this clause is that it has been drafted not in that manner in which it ought to have been drafted. If it deals wjth entirely two different subjects, as has been tried to be made out again and again by Mr. Dasappa, what is the sense in enacting one clause? If thr hon. Minister is also of this view, then he should readily accept that this clause should be drafted into two clauses, and unless this is drafted into two clauses, we cannot avoid the argument which has been so vehemently advanced by Mr. Gupta. I think there is a lot of sense in what Mr. Gupta has said. Since we are in a stage when we can remove any ambiguity, that ought to be done.

The other argument which was advanced by Mr. Gupta was that since there are only two contingencies contemplated under clause 5 in which a natural guardian will not be entitled to act as a natural guardian, it can be argued that all other contingencies are ruled out. I am in entire agreement with this. Look at the preamble of this Bill. It says, "to amend and codify certain parts of the law relating to minor and guardianship among Hindus". So far as certain parts which have been codified in this Bill are concerned, this law and this law alone will be looked into by the courts for that purpose, and since the other law is the general law, that law will not be looked into for the purpose of determining these points. Perhaps our intentions will be defeated if we do not amend the law suitably. The courts will not be able to give effact

to the provisions of the Guardians and Wards Act when they give effect to the provisions of this special law. Naturally when there is a special code on the subject, the general law goes away while interpreting the special points which have been dealt with in the special Act. Therefore I would respectfully submit that, when we are in a position to do it, these ambiguities should be removed, because otherwise the purposes for which we are framing this law are liable to be defeated. Thank you, Sir.

SHRI H. V. PATASKAR: Sir, I am glad that this measure which is primarily intended for the protection of the interests of the minors— of course at the present moment it is only confined to what are known as Hindus— has been well received. I am glad that the main provisions of this Bill, ratner the fundamentals thereof, with few exceptions, have been no doubt discussed very widely not from the point of view of leaving any of them out altogether but with a *view* to seeing whether we can modify them so as to make them more suitable for the conditions that exist today. From that point of view, the discussion was, I am very glad, of a very high level and very useful. With this, I will just try to say what I think are the main principles underlying this Bill and the objectives with which it has been put forth. If there is anything inconsistent in it with what we want to achieve, then I can only say that I shall be open to be convinced when the proper time comes for amendments, etc. If our objectives can be better achieved by any of the amendments suggested, then certainly I have kept my mind quite free to discuss them and accept any of them if it can improve the position. About 52 of them have been received up till now and they will be considered fully.

While considering this Bill, no doubt a good deal of time was taken up—I do not say unnaturally—by considerations as to Whether the rights given to man, i.e. the father, or to woman, i.e. the mother, are really proper or improper rights, whether their distribution is proper, etc. I would appeal to hon. Members that this is not the occasion to try to adjust the rights of the father and the mother or the rights of the man *versus* the woman. The fundamental principle underlying this Bill is that it seeks to safeguard the rights of the minor. That is the primary consideration. All other things may be according to individual likes or dislikes. Some may have a liking for the status of the father or some may have a liking for the status of the mother. I think we should not here mix up the question of the status of men and women in this matter for the very simple reason that the primary consideration must be as to how we are going to subserve the interests of the minor whose property is to be taken care of. The first thing to be looked into is, what is our idea in having this piece of legislation? The idea is that, as far as possible, wherever there is some property left to a minor—I will refer later on to the other question of Mitakshara and joint family property—it should be properly taken care of in the interests of the minor. It is not at all disputed that a minor is incapable of looking after his property himself, and therefore there must be somebody to look after his property. The main consideration from the point of view of justice, equity and natural justice, is that whatever belongs to the minor should as far as possible be preserved for him till the time he becomes a major. Afterwards, he will be the right person to decide as to what he ghould do with his property. The main idea underlying this Bill is that, as far as is humanly possible, we should try to see that his property is kept intact for him so that, when he becomes a major, he may be able to deal with it as he likes. His property during his minority, should be dealt with in such a manner that whatever has been left for the minor from his maternal uncle or any other person, is not frittered away in Lhe name of the minor'.? education or his health but is preserved for him till

[Shri H. V..Pataskar.] the time he becomes a major. That is the main point of view from which we should look at the Bill. Whatever amendments would lead to this will be attended to carefully.

The other point from which this Bill should be looked into is: What is this Bill intended for? What is its objective? I have made it perfectly clear and I have no doubt in my own mind that there is a general law relating to all minors whether they are Christians, Muslims, Parsis or Jews, and that is the Guardians and Wards Act. This applies to all without any distinction. That Act is in operation for the last 60 years or so, since 1890. That Act applies to all. Therefore, naturally the question may be asked as to why we should in the year 1955 try to bring forward a Bill which only deals with Hindu minors. There has been a good deal of discussion on this question from different angles. I for one would say here that the supreme right to take care of the interest of the minor is with the State and the State has exercised it for the last so many years through the courts —that is the way in which that power is exercised by the Sovereigns. Therefore, there is no desire absolutely to do anything by which this power of the State or the King wherever it may be and which is still being exercised by the court, should at all be taken away from them. If we wanted to do anything otherwise, that will not be in the right direction but what we are doing here is—before I go into the detailed examination of these provisions—that large portion of what is known as Hindus—my learned friend Mr. Kailash Bihari Lall objected to it but they are now known as such rightly or wrongly—they have come to develop a sort of law which is more or less, as I was saying in connection with the other Bill, a law which is not formed by any Code or Statute but a law which is the creation of judicial decisions in the country and that law does recognize that among the Hindus there are natural guardians. Who are they? They say they are only the father and mother and the idea underlying this measure is to recognise this fact that so far as this large number of people are concerned, who for so many years have come to be regarded as the natural guardians—the father and the mother—we should not interfere with that, as far as it is consistent with the modern times to do so. There are no natural guardians recognized as such under any other system — among the Christians or Parsees— of course so far as the Muslim law is concerned, probably there is some Hanafl law—I don't know what the case law on the subject is and what the position now is. But I heard the other day that there is one Hanafl law which says that the mother shall be the guardian. I will not say anything about that matter because I am not in a position to say now. But I know this that the Hindu law has recognized the father and mother as the natural guardians and so far as the courts in India are concerned it has been uniformly recognized for the last so many years. It is recognised by judicial decisions and it is thought that no harm would come when we want to have a Hindu Code for all Hindus, at any rate, then there should be some provision by which these natural guardians who are confined at present to father and mother, should be recognized for the time being. What form ultimately it will take when one uniform code has to be passed for the country is a different matter but I feel that this is only a small attempt to at least include this category in codifying this law. There are judicial opinions that father and mother are recognized as natural guardians and we are trying to codify that and it is not mere codification otherwise we could have only one provision that the father and mother will be guardians. It was also thought desirable, consistent with the principle or objective that the property of the minor should be preserved for him till he attains majority, that there should be some restrictions, which is the addition or change in this law. I am aware that at the present time the natural

guardians are the father and mother as recognized under the present law but their powers are also there and we know that there have been a number of cases where it was thought that they were necessary for the benefit of the minor. The principle underlying it is that we want to recognize these natural guardians for certain purposes but while allowing them certain latitude, it should not be left to them that they may deal with the minor's property in such a way that when the minor becomes a major, nothing is left with them. It may be the father or mother but still that has to be .guarded against.

Let us examine coolly when this question of guardianship arises. In what cases among the Hindus does it arise? Take the case of a normal family, if it is a joint Hindu family under the Mitakshara law—and I don't know what will happen when we change it—but for the time being we have stuck to the principle which is there .that so far as that interest is concerned because there is no attempt in this Bill to interfere with the other systems of law but we say so far as that is concerned, naturally the Karta of the family will be in charge and there will be no question of the father being the natural guardian, exercising any of his rights. If the father is the Karta, naturally he has all these rights. If instead of the father the uncle or the grand-father is the Karta, naui-rally he will have the rights and no question will arise. Of course, I don't say that this state of things should be allowed to be perpetual. No, it must change and it has been changed but that is not the main purpose of this Bill. It is not brought forward with that object. But so far as this case is concerned, they will go on. Supposing the father is the owner of the house, and he has sons and wife, then also no question will arise because the father and mother together are the guardians and when the father owns the property, where will be Hie question as to whether he is or is not the natural guardian? They may be recognized as such. Therefore that question will not arise because the minor will possess no property. Whatever it is, the father and mother are there and in normal cases—in 999 out of 1,000—in cases where there is property, I at least anticipate that the father and the mother together will conduct the family and the minor will be there and the natural love and affection and the instinct of preservation will be there and no complication need arise. It will only arise in cases where unfortunately the father dies and the mother alone lives, then naturally it is all important that the mother should have these rights of being the natural guardian of the minor. We know of instances where unfortunately, when women come, in the present state of society—I am not talking of the future—if they come to have to take care of their children, then so many things arise, so many difficulties arise, so many obstacles are put in their way on one ground or other. Therefore it is thought proper that the best person under those circumstances normally to be able to take care of that, will be the mother herself. Who else can love the child better? She may be illiterate or may not understand much, she may not have the capacity to manage properly but after all we know it is better to leave it to her and recognize her as the natural guardian instead of one who has very great experience of managing the properties and all that but who might look more to his own interest or some other interest than that of the minor. At least he will not be as careful of the interests of the minor as the wife or mother herself. Therefore to my mind, what we are doing in this Bill is that we are recognizing the natural rights of the father and mother. We might therefore leave aside the self-acquired property of the father where no question need arise; leave aside, for the time being at any rate, the joint family property to which the minor belongs. So it will arise more or less in cases where the father has left some property and the natural guardian naturally is the mother. Because no other natural guardians are

[Shri H. V. Pataskar.] being recognised and then it is thought that if the property is to be preserved for the minor, what we are trying to do is that it may be conserved. You may ask why not leave it to mother as to what should be done for management, etc. All that we will go into later but normally we don't expect that the mother should be driven to the court and get herself appointed as a guardian. Therefore this recognizes the right of the mother *to* be the natural guardian of the minor's property.

Of course, the father and the mother no doubt, have got natural love and affection for the children. But that love also comes to be influenced by events that may follow. Here I may just narrate one instance that recently came to my notice, of a good middle-class family with some property. The father also was a normal man, but unfortunately his wife died leaving behind her one or two sons. That wife had inherited considerable property from her father, that property was considerable, and the husband was comparatively a poor man. Of course, he had some means, but not much. And the young children were there and that property of the mother really belonged to them, because they got it from their mother and the father had no right to spend it. The father married again and he got three or four children by the second wife. I do not blame the man, but this father mixed up all the money and spent it on all the sons. He made no distinction between them. Unfortunately the minor children did not know anything then, because the mother had died and they did not know that what was being speht by the father was not his own. Ultimately, when the children came of age, there was enormous dispute. This is not only one instance, there will be many, but this one came to my notice recently and the father and his sons were on the worst terms. So, I say it would be safe to have some such provision to say that the father should not act as if the properly act ually belonged to him. He should only preserve it for his sons, for it really belonged to them, not to him. Of course, he will have natural love for the children. But so many things are happening and so many influences are at pay—the economic stress of life, so many other causes, the influence of the second Wife and of the other children and so on. I do not blame the father, it may happen in the case of the wife if there is a divorce. It may be a man or woman, it makes no difference. Both can be good or bad. The father can be good or bad. So also the mother can be good or bad, for the springs of human conduct are the same, whether we are men or women, whether we are fathers or mother-. The only point is, we do not base our provision on such immaterial things and what really belongs to the minor, that should be preserved for the minor till he or she attains majority. That is the purpose of these provisions and if there are any other reasons for which some other changes are needed, that is a different matter. The object of the Bill *1* have made quite clear. The object is not that we should try and scrap the whole Guardians and Wards Act. There is no such desire and if there is anything which shows such a result, we shall see what has to be done about it. We have recognised the natural guardian- and that is confined to only two—the father and the mother.

A great deal of argument was advanced by some hon. Members as to why we should not recognise the uncle or the grandfather or the maternal uncle and so on. Perhaps their own experiences and likes must have produced those suggestions. I do not mean that they are all bad. Those relations may be very guod guardians. Unfortunately, if there & neither the mother nor the father, somebody will have to take charge of the property; the uncle, the brother or the grandfather or grandmother or anybody else, has to be there. It is unfortunate that the boy or the girl has lost both the parents. There is no question of natural guardian. Suppose

we extend this term "natural guardian" to uncle, or some other relation, then we do not know where to stop. That is one difficulty, also whether it should be on the maternal side or the paternal side. So far as good people are concerned, there is nothing to prevent them from taking charge of minor, feeding him, giving him clothings, educating him. Of course, it may be argued, who in these days will undertake that sort of a thing? If that is the feeling of the near relations, that they look not with love and affection to the minor, but from the point of view of trying to get money out of the property and spend it, the matter has to be decided by the court. There are also people without means, in the present state of our society, and that also creates a question which should be decided by the court. That is the better way of doing it than by extending the limits of the natural guardian, who are only two even under the existing law. There are no such natural guardians in any other society and nothing happens in those societies. Their minors have not suffered because of that. There is the common single law in all civilized countries. But we are accustomed during the last so many years to natural guardians having some powers and when we take those away, we feel about it. But I think it would be a safe thing to realise that in such cases, the Guardians and Wards Act will be there. If there is a minor with property, then naturally somebody will come forward, maybe the uncle, the grandfather or grandmother. If he has real affection for the young children who have lost their parents, and if he has really good motives, then what prevents him from going to the court and getting himself declared as the guardian? What is there in it? Is there anything derogatory in it? Actually, an honest man will be glad about it, for he will say, "Why should I run the risk later on of being blamed that I mismanaged the property and all that? I take charge of the pro perty, because I love the minor, be cause I must look after the property

and I must preserve it for him." For this, the door is open, and the man can got himself declared guardian by the court. He will manage the property and keep accounts till such time as the children attain majority.

There is the other element. too, through the court the State is there which is responsible for this. I for one am not still at this stage prepared to think that any good results will be achieved by extending the limit* of natural guardians, which even now, in the exceptional law as it is administered in India, the Hindu Law, are only two, that is to say, the father and the mother.

SHRI R. C. GUPTA: The *de facto* guardian has gone.

SHRI H. V. PATASKAR: Moreover, it may so happen that the boy or girl is so unfortunate as to have some property and there is no natural guardian. The girl is an orphan and some property is left to her. Naturally there will be a large number of people, uncles, maternal and paternal, and others, who will come forward as guardians. Then again the same question comes up—whether it is desirable that we should in these days, have and allow *de facto* guardians to manage the property. What is the meaning of *de facto* guardian? Somebody interested in the child—maybe a girl or a boy—being an orphan, comes to take charge of the property and to manage it. It may be from good motives. It may be from, indifferent motives, or it may be from bad motives. We do not know. But unfortunately there is none to take care of the property and someone must come on the scene. I have known of instances where there has been dispute between the different relations as to who should be the guardian, and applications have been filed in the court. The maternal uncle says, "No, no, that uncle is bad, for though he is the brother of the late father, they, the brothers, were not at all on good term.;. So he should not be appointed." The other side says, "No, no. This man comes only from the mother's

[Shri H. V. Pataskar.] side and he comes from a long distance. He will not manage the property properly. So I should be appointed." As my lawyer friends, no doubt, know such cases are there and whenever there is the unfortunate case of orphans with property, there is a scramble for being appointed as the guardian, some may be from good motives, and some may be from bad motives.

Is it not, therefore, a safe rule, to have a normal law in such cases? If the man is good, then why should he worry? As I said, he will only be too glad, for instead of taking up the management of the property and subsequently be told that it was mismanaged, he will go to the court and get himself appointed, render accounts to the court every month, and if he has to dispose of part of the property for the education of the minor or some such thing, no court will come in his way. That is not our experience, for as soon as somebody is recognised as the guardian, then it is a formal matter and in his chamber the judge, when somebody puts in an application saying that he wants so much money for such and such ,a thing, and it should be sanctioned by the court, looks into the matter, satisfies himself and then sanctions it. That is safe also both from the point of view of the minor and that of the honest de *facto* guardian. And there is nothing to prevent him from functioning, whether he be of this religion or that religion, whether he is a paternal uncle or a maternal uncle. It is not the function *of* this Bill to deprive any proper person from assuming charge of the property of the minor orphan who has no natural guardian living. Even if they are there, if the father is there, for instance, but he is a profligate and is not looking to the interest of the minor, what do we do? We recognise that he is the natural guardian; but bey nd that we do not recognise him, as irremovable, one who cannot oe remo.jd by the court. That is one of the misconceptions which I will try to clear up when I come to the detailed provisions.

The idea is not that. We recognise natural guardians for the purpose of this Bill. We want to maintain the present position as it stands and,, therefore, I interrupted one of the hon. Members. At present we have the natural guardians and what is laid down now is this: In spite of the fact that natural guardian is there, if it is found that the natural guardian is not a desirable person or that he is not discharging his duties to the ward properly, anybody can apply—it is not confined "to the relations alone, any man, even a good neighbour can do that but the only thing is he must have the good of the minor at heart— to the court for redress. If there is any wording to show that this cannot i be done, I will be prepared to look into it. It does not mean that the natural guardian gets something more; on the contrary, he gets something less because there is a restriction upon him that he shall not dispose of property, etc. without the permission of the court.

DR. W. S. FARLINGAY: The question that I was trying to put to the hon. Minister was this. Now that we have got this particular Bill, what is the point in calling the father and the mother natural guardians? When you did not have this law, there was some points in calling them natural guardians but once you have this law, why call them natural guardians? They are simply guardians under the law.

SHRI H. V. PATASKAR: The point is that we recognise the natural guardians who are already there, though with some restrictions.

SHRI R. C. GUPTA: What is the need for such a recognition?

SHRI H. C. DASAPPA: As contrasted to testamentary and others.

SHRI H. V. PATASKAR: Is it desirable to create a state of affairs in which anybody and everybody could

come on the scene and be a de facto .'guardian of the ward and claim the 'iright even for disposing of the property. If the boy finds, after sixteen or eighteen years or even after : ten years, that the property was -disposed of for a song or for something else, that there was no necessity, this leads to enormous litigation and those of us who are lawyers know that it is very difficult to prove these things after ten or fifteen years. In the meantime, the property may have changed hands. The question «of consideration and benefit and all (these things arise. It becomes diffi-icult even from the unfortunate guar dian's point of view to prove things; if it were immediately after the transaction, he could have proved that the property was sold for a very good reason and for a very good price. If he was asked to prove ten years after, it becomes very difficult. The law of evidence is there. The property might have been sold for Rs. 2,000 and it might have been a good price and the guardian might have done the right thing. The price of land might have gone up or down; in that case, it becomes harmful to the interests of the guardian also. It is not desirable from any point that there should be power given, at any rate, to de *facto* guardians to deal with the property. If the *de facto* guardian is an honest man, he should be allowed to deal with the property; on the contrary, honest people will avoid taking any such responsibility, particularly when property is there. They might say, "Why do all these things and subsequently be subject to all sorts of difficulties?". They might just take care of the person of the minor. In the present provision, there is the safety valve that there is some third person before whom people could go and explain. That is the object with which this provision has been inserted and it is from this point of view that this provision should be looked at. As I was submitting, these are the real fundamentals for which this Bill has been brought forward.

There was some talk about our recognising the right of a father or mother to appoint a guardian by will, what is known as testamentary guardians. Why is it done? Supposing the father dies and the mother is the guardian. If unfortunately, she also dies leaving behind the minors, what would happen in that contingency? It is not desirable that people should come on the scene to do many things and even fight for guardianship or for property. It was thought desirable, especially as the natural guardians are limited to this narrow sphere of father and mother, that they should be given the right of appointing a guardian by will. That is also one reason why I would not like it to be extended.

DR. W. S. BARLINGAY: The husbands are also natural guardians

SHRI H. V. PATASKAR: Maybe, but it will be only in a very few cases. The husbands will be majors and, especially with the new laws coming into force, the girls will no longer be minors. The natural guardians—the father and the mother— should have the right of appointing somebody by will to look after the children after their death. After all, they will be in a better position to know who will look after the interest s-of the minor who unfortunately he or she has to leave behind. Therefore it is that these testamentory powers have been given. Do we want that there should be litigation as to who should be the guardian? It is natural that the person who is living and who is the natural guardian will be in a po^i tion to say whom he or she should entrust the property of the minor child. From that point of view, J. really fail to understand what is wrong with the idea of appointing testamentary guardians. After all, the father or the mother is the best, person to understand and choose and it will be very difficult for anybody afterwards to come in and say to

[Shri H. V. Pataskar.] the court as to who would be the proper person. There is none to speak on behalf of the unfortunate father or mother. If we look "at the problem dispassionately getting rid of the present idea on the matter, we will find that there is nothing wrong in it. On the contrary it is a saving clause that the natural guardian is given the right to decide as to who should be the guardian after his or her death.

SHRIMATI CHANDRAVATI LAKHANPAL: I want to put one specific question. There is a boy with no parents and the parents also had not appointed any guardian by will. What is the present position in such a case? Have the grand-parents, paternal or maternal, to go to the court to get themselves declared as guardians?

SHRI H. V. PATASKAR: Yes, they 7/ill have to go to the court even now. It is different in the case of joint families.

SHRI H. C. DASAPPA: What she says is about *de facto* guardians.

SHRI H. V. PATASKAR: I know, there is no harm in that. They would not be natural guardians, that is all. What is the position in respect of *de facto* guardians? We do not say that there shall not b_e any *de facto* guardians. That is another misconception. What is prevented is this that the *de facto* guardians shall not deal with property without the permission of the court. This is what 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". It does not mean that nobody shall act as a guardian. *De facto* guardians may be there; nobody can prevent that. Under the provisions of this clause we do not say that if the parents are dead nobody should be 'V guardian, That is not the idea.

The guardian may be appointed by the court. The idea is "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." I would like hon. Members to look at the proposition from that point of view. What is wrong in it? It is not as if we are throwing these unfortunate minors to the winds. We say that in the name of being a *de facto* guar.dian nobody shall deal with the property, and then if it is in the interests of the minor himself that the property has to be sold, etc. the remedy is there in the Guardians and Wards Act. He can get himself declared to be guardian of the property by approaching the courts for such purpose.. It is a fundamental principle. If we really want to see that whatever belongs to the minor should consistently with all other reasonable things which I have mentioned, belong and should be at the disposal of the minor when he becomes a major, then this is a healthy provision. Why should people be afraid merely bscause they have to go to court and take the permission of the court? I know it may take some time as many of my lawyer friends have themselves said. But do we want that the property of the minor should be left to be dealt with by anybody who calls himself a de *facto* guardian or do we want to say that in the case of these unfortunate boys their property shal-1 not be sold? There is nothing to prevent them from being the guardians. But if it comes to the disposal of the property of these unfortunate minors, well, that shall be decided on a reference to be made to some impartial independent authority, the court. It is suggested and I am also myself thinking and it is this. If there could be a provision made by which the period of the procedure involved in getting the decision of the court could be reduced or it could be made more simple than laid down in the Guardians and Wards Act, I shall be

prepared to consider it and it deserves our attention, but so far as the oresent Bill is concerned, we have thought it better to conform to the oresent provisions in the Guardians and Wards Act, as they exist. More or less these are based on the same analogy. Therefore, as I was saying, the whole question has been looked at from this underlying idea and it is that as far as possible what happens to belong to an unfortunate minor should continue undisturbed, unspoiled, unalienated, till he becomes a ma.ior, till he attains majority, and if at all in the meantime he is to be deprived of it, it should not be done at the sweet will of the guardian, whether it is the father or the mother or any *de facto* guardian, but it should be done after the natter has been tested before a court. Of course, if possible, we can make it as simple as we can. But if it is not there and if we allow the present state of things to continue where there are so many rulings as to what are the powers of the guardian in respect of the minor's person and property and so on, the same posi-1ion will continue and there will be the same large amount of litigation going on. So is it not better, instead of having all this litigation, all this trouble and all the causes of disputes, (hat the matter is decided by some independent authority and proof is obtained that there is the necessity to deal with the minor's property and who is competent to deal with it?

Then there are two or three other points of general importance which were raised during the discussion of this Bill apart from their details which I will come to later on. One of them is that it is a communal piece of legislation.

SHRI H. P. SAKSENA (Uttar Pradesh) : Yes.

SHRI H. V. PATASKAR: Yes, I know. No one would have '"been happier than mvself. if it were possible to bring forward a Bill which would be applicable to all communities in India.

SHRI -H. P. SAKSENA: How could the Guardians and Wards Act be applicable to all communities of India?

SHRI H. V. PATASKAR: Just hear me. I will refer to that if you have the patience.

Personally I think what this Bill seeks to do is something more than what the Guardians and Wards Act does. In the Guardians and Wards Act there is no recognition of natural guardians. As I said these natural guardians, namely, the father and the mother are there according to the Hindu law as it is administered so far as we people are concerned, and I would be only too happy if all the Members were to suggest that these natural guardians should not be recognised at all. But so far, even in spite of the fact that much progress has taken place in the ideas of Hindu comity or social ideas, still I do not think the time has come when we can say that we shall be governed by the common law and the right of parents recognised up till now by the Hindu law as natural guardians may be altogether abolished. That is the point. We cannot merely go theoretically. That is why these provisions were made in the Hindu Code Bill and the Hindu Code Bill, we know, has passed through so many stages, so many objections, right, wrong, valid, invalid and this therefore being a part of that Hindu Code Bill, as I said, it is thought safe in the interests of other more important parts, in the larger interests of what we want to achieve if at all there is to be a Hindu Code and that at least this part should be there. As a matter of fact, it is an improvement upon the existing position as it stands, with respect to the Hindu law, as it is administered. So, Sir, this charge of communal legislation, I do not know how far it is justified except on the ground that it is not uniform, and falls short

[Shri II. V. Pataskar.] of a uniform civil code applicable to all. As a matter of fact I have been listening during the last three days to both sides of the House, sometimes some people talking of Hindu as a religion and sometimes my learned friend Shri Kailash Bihari Lall saying that there are Hindu Christians, Hindu Muslims and all that. What is this idea of Hindu? As a matter of fact if we look a little into the history of this term and as to how it came, we will know that we are thinking, though learned as we are, of things which unless we look at them from the historical point of view, we are not sure and clear as to what we mean by 'Hindu'. 'Hindu' after all, now does not mean a particular type of worshippers. He can be - a *Vaishnavite;* he can be a *Shaivite;* he may be a Jain. He may be a believer in idols or in no idols. Now all sorts of people are now included among what we knew as 'Hindus'. And probably the whole trouble arises on account of the historical relations and Hinduism to my mind is not a religion in the sense in which Islam is a religion or Christianity is a religion. Hinduism more or less can be described as only a culture. Though it started in a different way, it is now called a religion to which some of my old *Sanatanists* want to cling and to narrow down the ideas contained in it. Whatever things were laid down, they were all for humanity. They wanted to lay down certain rules of conduct and behaviour in the* interests of society and that is what they did. But then naturally things changed. Now what is the present state? Even a Buddhist would not like to call himself a Hindu and a Sanatanist Hindu would not like that a Hindu is going to be a Buddhist and if he did so he would cease to be a Hindu. Nothing of the kind. Where are the Buddhists? Buddhism originated here. It flourished here and the present-day Hindus, many of them, had as their ancestors those who practised Buddhism. They have changed the form. That religion which was there was very comprehensive. This came to be narrowed subsequently because of the impact and in the name of our own ancient people who had no such narrow ideas some people are fighting. Their ideas were entirely different. They said that the whole Vishwa should be Arya and they said: कृण्वंतो विश्वम आर्यम। They had no idea of following this man or that man. Possibly all that is a later narrow interpretation. They wanted that all those things which went for the development of the human society and which they believed in those days were good for the human society should be applicable to all human beings. The original ideas were very liberal but unfortunately owing to the impact of other religions the ideas of Hinduism were given a narrow interpretation and there was a fight between religions. Of course it was all for a time. Otherwise where are those Buddhists in those large numbers today? We find them outside and in India they must have all changed their form of worship and their form of belief. So we have made the definition to include Buddhists and others. And throughout India there were various people who were all included in one culture, and that was what we call it today Hindu. The word 'Hindu' was not there itself. It is only after the impact of those who came from other parts, with some settled idea that theirs alone was the religion, that this word came into existence. What was happening then was not different from what is happening today. I do not blame anybody, because I have no intention of entering into a controversy. But then we also fell into the same mistake and we began to say that we were something different from what we were. It is for the historical reason that this term 'Hindu* and all this has come about. For centuries so many things happened. These people were very liberal. It is wrong to ascribe anything to those ancients, because their ideas of

dlmrma were entirely different. But we have to see what we should do at the present moment. There is no doubt that for historical reasons somethings have happened and some people came to some conclusions. Some people began to call themselves Hindus. There were others who began to call themselves Muslims. And still there were some others who began to call themselves Christians, and all those things have happened during the last so many centuries. And when did this word 'Hindu' come? It was after the Britishers came, as I said, about the seventeenth century, when they came and wanted to administer the law according to their own ideas, i.e.. the modern system of law. Before that probably everybody lived in his own way and followed his own type of worship, and so on. The king never worried whether he was the King of Kalinga or the King of the South. That was our history for a thousand years. It was only after the advent of the Britishers that this term 'Hindu' came to be known. They wanted that some law should be administered. And they did it. as I said, in the days of the East India Company. Then they tried to extend its scope. They were worried about their rights. ' And they got the right of Diwani over Bengal, Bihar and Orissa. And probably, if the 1857 incident had not occurred, there would have been a code uniformly applicable to all long before. It was being discussed. It was not from any bad motive. But when they came to 1857, they thought that it was dangerous to interfere with the personal laws of the people of this land. They kept away and they did not want to interfere with the personal laws of the people, because that was not their objective. And it was therefore that they modified all other systems of law, modified the whole of the other portion of the Hindu law which is now called the *smriti* law. But they thought that in the matter of marriage and inheritance, why not leave these people to themselves? They were thinking of doing this also, but at tnat time, whatever it may be, it must be agreed that they came to the conclusion that India was a land where people could be made to revolt against them by saying to some people that the pig's flesh was used, and to others that the cow's flesh was used. That is the history of this land. So they used to call them Gentiles. So, all this process was going on and so many changes took place. And the present law is a law of judiciary, and they also recognised as jurists that if there is any codified law, there must be judicial law. It may be haphazard, it may lead to chaotic conditions. And that is what happened. I have studied the whole thing, and the hon. Members may be aware that there is Ex-Judge of the Calcutta High Court who has given a very beautiful background of the law, as it has developed in India. It is worthwhile reading it, because we can get a clear perception as to how things happened in the past. First they were called Gentiles: then that word 'Gentile' was changed to 'Gentoo' which ultimately became 'Hindu'. Therefore this is not a word used with the object of having any communal legislations, or anything of that sort. We are now an independent people. We are not those handcuffed people as we were before. Therefore we should see as to what is our present attempt. Let us try to bring together in the Hindu fold at least the Buddhists, the Jainas the Lingayats and the Virashaivas. Even if we succeed in doing that, I think it will be a very great achievement. Even there I find that some questions are always raised. That is because some people do not adjust themselves to the idea that there should be a codification of law. Therefore, as I said, there is nothing communal about it. If we succeed at least in bringing all this large mass of people under one enactment, we should consider, apart from theoretical considerations, that we have achieved something. We have to see as to what is the practical solution. Shall we proceed, or shall we stop here till such time as

[Shri H. V. Pataskar.J we can make an effective law applicable to all? Shall we at least combine all this large mass of people, now known, rightly or wrongly, as Hindus under one enactment? That is the whole object underlying this Bill. And therefore, I would appeal to the hon. Members to look at this question from that point of view, and not to strike it down as communal. I think we should be content with a small measure of achievement which may be made by all these three or four parts. And I do not think there would be any difficulty in extending their scope to other parts of the country. Of course, while doing this, we must have an idea in view that ultimately we do want, as laid down in the Constitution, article 44, to have one uniform code for all Indians. In the Constitution it is given only as an ideal. Otherwise, was it not possible for them to say, "We shall pass immediately a law like this"? But no. Otherwise, we would have had to face more difficulties. It is from that point of view that I do not regard this as a communal legislation.

Then, Sir, the other point was made regarding the application of this law to Jammu and Kashmir. I do not want to take more time of the House

MB. DEPUTY CHAIRMAN: How much more time would you like to take?

SHRI H. V. PATASKAR: About half an hour.

MR. DEPUTY CHAIRMAN: Then you may continue tomorrow.

The house stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, U»P 5th April 1955.

RAJYA SABHA

Tuesday, 5th April 1955

The House met at eleven of the clock, MR. CHAIRMAN in the Chair.

ORAL ANSWERS TO QUESTIONS

TECHNICAL AND VOCATIONAL TRAINING

*505. SHRI M. VALIULLA: Will the Minister for REHABILITATION be pleased to state:

(a) the number of the children of displaced persons receiving technical and vocational training at present at he Centres under the control of the Central Government; and

(b) the amount given to each State for the above purpose?

THE MINISTER FOR REHABILITATION (SHRI MEHR CHAND KHANNA): (a) A statement is laid on the Table of the Sabha.

(b) Since the centres are run by the Central Government direct there is no question of any amount being given for the purpose to any of the State Governments.

STATEMENT

(In lakhs of Rs.)

	No. of trainees under training on 1-1-55	*Expenditure sanctioned for 1954-55*
A.—Centres run by Directorate General of Resettlement and Employment (Ministry of Labour) —		
(1) Punjab	161	1 12
(2) Delhi	118	0·78
(3) Bombay	34	0·41
(4) U.P.	689	4 24
		6·55
B.—Centres run by the Ministry of Rehabilitation—		
Training and Work Centre, Arab-ki-Sarai	177	3·14
C.— Centres run by the Ministry of Education—		
Nilokheri Polytechnic	175	1·25
	1,354	10·94

SHRI M. VALIULLA: May I know, Sir, if the minimum qualifications fixed for these children of displaced persons are lower than in the case of other people?

SHRI MEHR CHAND KHANNA: Sir, there are two kinds of centres: one run by the D.G.R.E. and the other by the State Governments. As far as the centres run by the D.G.R.E. are concerned, the qualifications and conditions for admission, as far as I know, are the same. As far as the State Governments are concerned, there are certain age limits.

SHRI M. VALIULLA: May I know what is the number of applicants for this training? I want to know how many applied.

SHRI MEHR CHAND KHANNA: I could not give this information off hand, but I am prepared to concede that the number Of persons who applied for admission is generally larger than those who are admitted.

SHRI BHUPESH GUPTA: May I know, Sir, the nature of technical training given at these centres?

SHRI MEHR CHAND KHANNA: Is the hon. Member referring to the centres run by the D.G.R.E. or the centres run by the State Governments?

SHRI BHUPESH GUPTA: The centres run by the Central Government.

SHRI MEHR CHAND KHANNA: These centres are run by the D.G.R.E. and generally the trades taught are of fitters, welders, mechanics, electricians and such kinds of vocation and trade.

SHRI BHUPESH GUPTA: May I know, Sir, if there is any corresponding arrangement for finding employment after the training period is over?