copy of each of the following Notifications under sub-section (4) of section 43B of the Sea Customs Act, 1878:

(i) Ministry of Finance (Revenue Division) Notification No. 31, dated the 26th February 1955, publishing certain amendments to the Customs Duties Drawback (Linoleum) Rules, 1954.

(ii) Ministry of Finance (Revenue Division) Notification No. 32, dated the 26th February 1955, publishing certain amendments to the Customs Duties Drawback (Dry Radio Batteries) Rules, 1954. [Placed in Library. *See* No. S.103/55 for (i) and (ii).]

THE HINDU MINORITY AND GUARDIANSHIP BILL, 1953

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, I beg to move:

"That the Bill to amend and codify certain parts of the law relating to minority and guardianship among Hindus, as reported by the Joint Committee of the Houses, be taken into consideration."

Sir, the Bill, as you know, is one of the parts of the lapsed Hindu Code and it is one of the most non-controversial parts of the same. Even as it is, this formed part of the original Hindu Code Bill which was before the Parliament in 1947. Then, it was referred to a Select Committee of the then Provisional Parliament in 1948 and it was considered there too. Then, this Bill was first introduced in this House and a motion for its circulation for eliciting public opinion was moved and we did obtain opinions from the different State Governments as well as the public. And then again the same Bill came before this House in another form, namely, for a motion for reference to a Joint Select Committee. At that time also it was discussed threadbare and subsequently it went to the Select Committee which presented its report on the 10th of March 1955. And the Select Committee also, as you will find, has taken great care to look into even the small matters that are provided for so far as this Bill is concerned and the report is with the hon. Members.

I will only refer to some of the main points that have been changed so far as the Select Committee report is concerned. As you know, this is a Bill which wants to recognise the natural guardians who are already recognised under the present state of Hindu law as such. So far as the questions of *de facto* guardians are concerned, they are going to be abolished because it had been found from experience that, instead of helping matters, whenever these *de facto* guardians come on the scene, it leads to the frittering away of the properties of the unfortunate minors Therefore, the main idea underlying this Bill is to remove these *de facto* guardians. The main problem which is raised in this Bill is with respect to recognition of the natural guardians and with respect to the taking away of the powers which are vested so far as *de facto* guardians are concerned.

Then, so far as the detailed provisions of this Bill are concerned, first of all you will find so far as clauses 1 and 2 are concerned that sub-clause (2) of clause 1 relates to the extent to which this Act applies and there is a minute of dissent regarding this sub-clause (2) which says, "It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories." Now, this is exactly the same as it was in the last Bill relating to succession which I moved, as well as the Hindu Marriage Bill which has been passed, in connection with which I think the same point was tried to be raised in one of the minutes of dissent by some Member. Another argument that is used now in one of the minutes of dissent written

by a Member of the Select Committee is the one by reasoning as I said, which amounts to reasoning by analogy. The argument is this. In respect of import and export some legislation has been passed which applies to the State of Jammu and Kashmir also. So why not pass this legislation with respect to minority and guardianship and have it applied to the State of Jammu and Kashmir? The point is, as I said the other day, we are in this matter governed by a sort of an agreement between that State and ourselves and which is embodied in an Order of the President which has been issued and we are to be governed by whatever is laid down therein. The matter that is covered in this Bill is what is covered in the Concurrent List and so far as this matter is concerned with respect to that Order which has been issued by the President, this is specifically kept outside the purview of legislation by this House. It is, therefore, that for the present we have to exclude Jammu and Kashmir from the operation of this Bill.

What we have, however, done is that it will apply to Hindus who are domiciled in these territories but who are outside such territories. That is, if some people go from here to Jammu and Kashmir and if their domicile still continues to be in the rest of India and not in Jammu and Kashmir, then this law, as with the other parts of the Hindu Code, will be applicable to them. So I think we need not spend much time on this point because we have provided the same phraseology as has been done in other measures of the Hindu Code.

With respect to clause 2, the matter has been discussed on several occasions at the time of the consideration of the other measures. It is necessary to have uniformity in our description of what we mean by the word 'Hindu' and the persons to whom this law will apply. This is the same thing and the changes that have been made in the Select Committee are only those which were necessitated by a very elaborate consideration at the time of the Hindu Marriage Bill in this House and it is exactly on those lines that changes have been made in clause 2.

So far as clause 3 is concerned, in the original Bill we tried to define a natural guardian by saying that it means any of the guardians referred to in section 5, but does not include this or that category. Thus in a negative way it was stated as to who were not natural guardians. The method adopted, and I think rightly and properly, by the Select Committee is to define the guardians themselves instead of having a negative definition. Therefore, we have said now that "guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes a natural guardian, or a guardian appointed by the will of the minor's father or mother, or a guardian appointed or declared by a court, or a person empowered to act as such by or under any enactment relating to any court of wards and that "natural guardian" means any of the guardians mentioned in section 5. What had been stated was rather in a negative form and what has been done now is to make it more positive. It was thought right by the Joint Committee that we should enumerate clearly the different categories of guardians.

In clause 4, there is no change. Clause 5 says that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property are in the case of a boy or an unmarried girl the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The one important change that has been made is in respect of the age of the minor. In the original Bill it was three years but it has now been raised to five years. Now it was the view of some Members of the Joint Committee who have attached their minutes of dissent that this should be the age of majority which means 18 years. It is a matter which will no doubt be considered in the House, but I think normally this period of five years is a

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period that should be sufficient for the mother to be in charge of the minor. There was also another idea that for girls we may have a different age limit. But all these matters were considered by the Joint Committee and we, ultimately, came to the conclusion that it would be enough for the time being if the age limit was raised from three to five years. Then, in proviso (b) to clause 5 in the original Bill we had stated, "if he has completely and finally renounced the world by becoming a hermit or an ascetic or a perpetual religious student." That was relating to the disqualification of a person from acting or continuing to act as a natural guardian of the minor. The expressions 'hermit', 'ascetic' and 'perpetual religious student' were more or less translations of the original Sanskrit words and so to convey our meaning clearly as to what we mean by these different words, we have added the Sanskrit equivalents in brackets. For instance, by 'hermit' we mean *vanaprastha*, by 'ascetic' we mean *yati* or *sanyasi* and by 'perpetual religious student' we mean *naishthika brahmchari*. That has been done for the purpose of making the meaning of these words clear.

Another important change made here is this. When we mentioned father and mother in connection with natural guardianship, it was thought that we must treat step-father and step-mother differently from father and mother. It may be that the step-father or the step-mother may be very good but probably not desirable from the point of view of becoming a guardian. So, that has been made clear by having an *Explanation* saying, "In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother." Of course, if they are all right, they could be appointed as guardians but we do not want to recognise them as natural guardians as such. That is the effect of the addition of this *Explanation*.

In clause 6 there has been no change except for an improvement in the phraseology of that clause.

Clause 7 relates to the powers of the natural guardian and I know that there will be a good deal of discussion about these powers. The Joint Committee has, however, approved the scheme underlying the present clause. The main point here is that it is not desirable that the natural guardian should be allowed to deal with the property of the minor without getting some sort of an order from the court. This matter will no doubt be discussed here and so I will not go into the details. Sub-clause (2) (b) of clause 7 of the original Bill has been omitted now. That related to leasing of the property and I was told that the law relating to leases was different in different parts of India and that it was desirable that there should be no such restriction on the powers of the natural guardian in regard to leasing of the property, though there might be justification for restricting the rights with respect to mortgage or charge or transfer by sale etc. It was thought that if this provision was there, probably it would lead not to the advantage of the minor but to his disadvantage particularly in the Punjab and other places. So that is one of the important changes.

Clause 8 relates to testamentary guardian and his powers. It says:

> (1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.
>
> (2) An appointment made under sub-section (1) shall have no effect if the father pre-deceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian."

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This is a very important change made in the existing provision. As we are all aware, this provision relates to the testamentary powers of a natural

guardian to appoint somebody else, by will,—some other person—as a guardian of the minor whose natural guardian he is. And then it was thought that the father should naturally have the right to appoint a guardian in respect of the person or property of the minor. As a matter of fact, if the mother was to survive the father, then so long as she is alive I think there is no reason why anybody else but the mother should come on the scene as the natural guardian of the boy. It has created many complications in the past; and it was thought that it might create complications in the future also, and, as we all know, looking to the natural principles of the law of affection, in the absence of the father, the mother is the most suitable person who could be the guardian of the boy. I can imagine cases, where, even during the life-time of the father she may be a better guardian, but in any case it is better that so long as the mother is alive she should be the guardian. Therefore, this provision has been added: "An appointment made under sub-section (*f*) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian." So, that is the new change made. Then, again, in sub-clause (3), (ii) is said:

> "A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both."

This is a new provision and it gives the Hindu widow or a Hindu mother the right to appoint a guardian by will. That is what is known in law as the testamentary guardian.

Then there is also an addition of a new sub-clause (4), which reads:

> "A Hindu mother 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."

This is a new provision and I think it fills a lacuna which was left in the original draft

Then, again, there is a new addition or some change effected in sub-clause (5). It says:

> "The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will."

This is the same principle which is underlying the Bill. It has been made a little more clear than what it originally was. I think with these very wholesome changes, clause 8 has been modified.

Then we come to clause 9. This probably is a matter which was also discussed for a long time in the Select Committee. There are some changes that have been made in respect of which there are some notices of amendments sent by some hon. Members and they will be considered in due time. Clause 9 reads:

> "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."

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With regard to the addition about the religion of an illegitimate child, naturally the mother's religion has been mentioned. But so far as the other matter is concerned, probably this might raise a little controversy, *viz.*, that "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.....". Now, 'religion' is rather a vague term. As a matter of fact, what we are going to do is that we want to make the whole law applicable to Hindus, that is, Sikhs, Jains, and others excepting Muslims, Parsis and Christians. That is to say, the law is being made applicable to all those who are Hindus. However, there was a good deal of controversy so far as this matter is concerned. The original clause—clause 10 in the draft—reads:

> "It shall be the duty of the guardian of a Hindu minor to bring up the minor as a Hindu."

Probably, I do not know, whether that was better or the revised clause is better. The idea is that we mean by 'Hindus' all those people who may be for the time being Sikhs, Buddhists, Jains or whatever they are. According to the clause as it stood originally, it would not have mattered—supposing the boy was born in a family where the religion of the father was Sikh. Then it is open to the father to bring up the boy in any other section of Hindus, for instance as a Jain or a Buddhist. Somehow or other, by a majority they decided that this should be changed to read as revised by the Select Committee. This would make it a little more restrictive and it will be open to the Members of this House whether they approve of it. I do not know. There were two extreme views which prevailed in the Select Committee Some said that it was an attack on those sects and some said the (old) clause 10 should be omitted because it was inconsistent with our secularism. Well, that is a different matter altogether, but as far as the clause then stood, it naturally covered under the term 'Hindu' all those people, whether they were Sikhs, or Jains or whether they were Virashaivas or Lingayats. Now, the revised clause is more or less restrictive in the sense that if a boy's father was a Sikh, then he must be brought up as a Sikh. That is the idea underlying the present change. I do not know what the House feels about it.....

SHRI H. P. SAKSENA (Uttar Pradesh): Here you separate the Sikhs from the Hindus.

SHRI S. N. MAZUMDAR (West Bengal): That was the controversy.

SHRI H. V. PATASKAR: In the Select Committee I was of opinion that if they did not want to keep the clause as it was, I had no objection to that clause being dropped altogether. But somehow or other that is the decision of the majority and in such matters we have to be guided not by our likes or dislikes but by what the majority says. So, that is the only important change from my point of view which might raise some sort of a controversy or discussion in the House. So, this is important.

Now, I come to clause 10, which reads:

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

There is nothing in it. Of course, it is an obvious proposition that a minor cannot act as the guardian of a minor. It was thought that there may be some husbands who would be minors, or even the mother may be a minor I think this is only to cover existing cases of a very rare character that this clause 10 is intended.

As regards clause 11, which reads:

> "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."

There is nothing wrong in it. Practically this is one of the least controversial parts of the Hindu Code. It deals only with the question of recognition. As I said in the beginning, there are only two things that are involved so far as this matter is concerned. By this Bill we recognize the natural guardians who have been recognised till now under the present Hindu law, as it is administered, as being the persons who have got some rights. In that case, while recognizing the natural guardians we also try to restrict their powers in view of the experience gained, by saying that they shall not alienate or transfer the property of the minor without putting the matter before some judge and getting his sanction. This is really in the interests of the minor. I am sure that it will serve a double purpose. In the first place, it will serve the purpose of the necessity of the same being judged at the time when the necessity arises. What happens now is this. Supposing there is a guardian who disposes of the property of the ward. Then the matter is raised after the minor attains majority. Then litigation starts a long time after the property is alienated. The litigation starts at a very late stage after all that has happened, probably when the minor himself had no evidence. At that time it is very difficult to get any adequate evidence. So, the matter could not be adequately judged. It is therefore, desirable, though it may cause some inconvenience, that the matter should be placed before a third party like a judge or somebody else who should decide whether it is really in the interest of the minor that this natural guardian should transfer or dispose of his property Well, I am sure that the point will be raised probably that when money is needed, this will mean some delay. But we must always remember that we are, in this case, dealing with the property which, as a matter of fact, belongs to the minor, not to the guardian himself. And it is the inherent right of a minor that till he attains the age of majority, whatever he has got by inheritance or by some other means, has to be protected. It is from that point of view that this provision has been inserted.

And then another thing will be that if there is no such restriction, what will happen is that the minor's property will fetch a very low price, because the purchaser of his property will always think that he is going to purchase something which has got a very great risk attached to it, and the property may be declared voidable. But in the other case, the minor's property will fetch a very good price, because the purchaser will be assured that there is already a decision of the court and that no other court is likely to set aside that decision. And, therefore, naturally, the property would attract a better price than what is now offered, if at all there is some need to sell the property of the minor. It is from this point of view only that this power is given, and I think this is a very important aspect of the question.

And then, Sir, the *de facto* guardian has no right 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. In this connection some argument has been put forward: Why not keep the *de facto* guardians? They might be brothers. And there are some hon. Members who have made the suggestion that we may go on including brothers and uncles. There is no objection to that. It may be that there are brothers or there are grand-fathers or other relations who may take very great care of the minors. Even a stranger can take care of an orphan But that is not the idea underlying the Bill. Nothing prevents anybody from being a guardian of the minor. But the only thing is that he will not be able to deal with his property.

DR. W. S BARLINGAY (Madhya Pradesh): May I bring to the notice of the hon. Minister that the wording "deal with" is a very wide wording,

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and it may include even management of property?

SHRI H. V. PATASKAR: We shall consider all these things when there are amendments to be considered. But, I think, for the time being that is the idea. As far as possible, the minor's property should be preserved till he attains the age of majority. Beyond that I have nothing to say. I, therefore, commend this motion for the acceptance of the House.

MR. CHAIRMAN: Motion moved:

> "That the Bill to amend and codify certain parts of the law relating to minority and guardianship among Hindus, as reported by the Joint Committee of the Houses, be taken into consideration."

[MR. DEPUTY CHAIRMAN in the Chair.]

DR. W. S. BARLINGAY: Mr. Deputy Chairman, at the outset I must congratulate the hon. Minister and the members of the Select Committee for reporting on this Bill so expeditiously. Sir, many of us here are extremely anxious that the entire Hindu Code should be enacted by the present Parliament as soon as possible. And this being a part of the original Hindu Code, it is only fit that we should be anxious to pass this Bill also.

The second thing that I wish to say is that several changes which the Select Committee has made in the original form of the Bill are all very desirable, because it has turned a very complicated law into a very simple one. I welcome, for instance, the very salutary change that has been made by the Select Committee to the effect that in all cases the age of majority shall be 18 years. Formerly, as it is very well known, in certain cases it used to be 21 years, and in certain others it used to be 18 years. Therefore, this change of making it uniformly 18 years is a change which is to be very much welcomed. Then there are other changes also which are extremely desirable. But since the matter has already been gone into by the Select Committee, I need not take the time of the House by simply repeating the arguments which have already been given by the Select Committee.

But there are one or two things to which I should like to draw the attention of the House. Sometimes, a doubt does cross my mind as to whether the Select Committee has after all not erred on the side of over-simplification. We do want that laws in this country should be as simple as possible. But nonetheless, we also want that the laws that will be enacted by the various Legislatures of this country should cover, as far as possible, all the various types of cases that occur in our society.

I feel that the present Bill in its present form, even after it has come from the Select Committee, errs on the side of over-simplification. I refer especially to the provisions with regard to *ad hoc* and *de facto* guardians. Formerly or rather till the day before this Bill will come into effect, the position of the *de facto* or *ad hoc* guardian is as follows: I shall read from a very authoritative book by D. F. Mulla himself:

> "A person who is not an *ad hoc* guardian and does not pose as a guardian for a particular purpose, but manages the affairs of the infant in the same way as a *de jure* guardian does, could be described as a *de facto* guardian although he is not a natural guardian or a guardian appointed by the Court. A *de facto* guardian has the same power of alienating the property of his ward as a natural guardian."

I need not go into the whole section of D. F. Mulla, but the point that I wish to make is that the present provision, *viz.* clause 11 of the Bill, it seems to me, will make the position of the minor a very difficult one in our society. Clause 11 reads like this:

> "After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the

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property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor."

In the first place, I could have understood this clause if it had not contained the phrase "or deal with". "Or deal with", I would remind the House, is a very very wide term. There is nothing here to prevent even the managing of the property coming within the meaning of this phrase "or deal with". If I am right in this, we are making the position of the minor extremely difficult. I would remind the House that according to the scheme of this Bill there are at present only two kinds of guardians—one, the natural guardian which includes of course the father and the mother, the adopted father and the adopted mother; and two, the testamentary guardian, *i.e.*, the guardian appointed by the will of the father or the mother. Then, after that, there is a big gap. You have a natural guardian or a testamentary guardian or in the alternative no guardian whatever. Now, this seems to me to be a very very difficult position, and if, for instance, even the grand-father or the grand-mother or any other people who are interested in the welfare of the minor are to be excluded. I do not know what the condition of the minor would be, especially, in these days when we find that the joint family is already crumbling up. After the father and the mother die, who is going to look after the minor, especially, as I said, when the institution of joint family is crumbling to pieces. You are trying to abolish the *de facto* or *ad hoc* guardian. To whom is the child to go? Who will look after the child? For instance, there may be a grand-father or grand-mother or a maternal uncle or some such relation of the minor, but you say that, unless that person actually goes to a court under the provisions of the Guardians and Wards Act, he will not be in a position even to deal with the property.

SHRI R. C. GUPTA (Uttar Pradesh): Even the paternal uncle is excluded.

DR. W. S. BARLINGAY: I entirely agree with my learned friend. It seems to me, therefore, that there is something fundamentally wrong with this scheme of guardianship envisaged in this Bill. Fundamental alterations will have to be made before we can accept the Bill in its present form.

Then, I beg to draw your attention to clause 5, proviso (a):

"Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu,....."

Apart from the question that this State is a secular State, it seems to me that this provision is really a very very retrograde provision. What is the position now? I will again read from a very authoritative book by Mulla:

"The fact that a father has changed his religion is of itself no reason for depriving him of the custody of his children."

That is the present position. I do not see any reason whatever why we should go back on that very salutary provision. After all, the mere fact that a father or a mother has changed his or her religion does not mean that he or she ceases to have interest in his or her minor child. What has change of religion to do with natural affection? These two concepts are entirely different, and I do not see the slightest reason why a mere change of religion should deprive a natural guardian of his or her natural right to look after his or her son or ward. As I said the other day, if I may say so without any offence whatsoever, we have certain legal Rip Van Winkles in our midst and this is at the root of all our troubles so far as the Hindu Code is concerned. I am really very sorry to say this. We expect our Law Department to be more

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progressive than this. We ought not to forget that times have changed and are changing very fast and the legal provisions that we make must try to keep pace with the changing times. We ought not to be sleeping like Rip Van Winkle and find ourselves in a new world when we wake up. I am sure the House will agree with me that certain very fundamental changes are necessary before we can accept the Bill in its present form.

SHRI P. S. RAJAGOPAL NAIDU (Madras): Mr. Deputy Chairman, as stated by the hon. mover of the Bill, it is a very non-controversial Bill and it is also simple in nature unlike the other pieces of Hindu law that have been introduced in this House and are in the stage of being passed in the other House. Though this Bill is simple in nature, yet there are one or two matters where I presume, from what the previous speaker has just now said, it will evoke a good lot of criticism and we will have to go through this Bill very carefully before this is made into law. This Bill deals with natural guardians and testamentary guardians. It deals with the appointment of guardian for the minor's own property. Then there is the other bigger question that will come up in due course in this House *viz.*, the appointment of guardian for the undivided property of the minor. This Bill deals only with the property owned by the minor, the property which absolutely belongs to the minor. Then this Bill completely does away with the *de facto* guardianship. My hon. friend Dr. Barlingay has advanced very able arguments for the retention of the *de facto* guardianship. I beg to differ from him. We had known the havoc played by the *de facto* guardians and *ad hoc* guardians. The *de facto* guardians under the existing law had the same powers as the natural guardians in the matter of dealing with the minor's property. We had known the various decisions of our courts and also how under the guise of the necessity of the minor and for the benefit of the minor the minor's property had been eaten away by the so-called *de facto* guardians. In my opinion—I don't generalise—but invariably this *de facto* guardian steps into the minor's property when he finds that the minor is helpless and tries to eat away the minor's property, tries to fatten himself at the cost of the minor's property. It is high time that we should completely do away with this *de facto* guardian. But while doing away with the *de facto* guardians, I am not going to the extent of suggesting that even in the case of natural guardians, that is, in the case of the father and the mother, when they want to sell or mortgage or do something with the minor's property for the benefit of the minor and for the necessity of the minor's welfare, these natural guardians also should go to a court of law. Sir, when I come to deal with clause 7, I shall deal with that clearly. I am glad that the age of the minor is restricted to 18 years under the provisions of this Bill. Originally as we all know, the Hindu law prescribed only 16 years as the age of majority. Then came the Indian Majority Act which prescribed 18 as the age of majority excepting when there was the appointment of a guardian by the court where the age of majority was extended to 21 years.

Now before I go into the details of this Bill, I have to say one or two things about the applicability of this Bill to all the communities in India. This Bill is made applicable to all communities excepting the Muslims, Christians and Parsees. I would like to ask this question as to why these communities should be excluded from the purview of this Bill. It has often been repeated on the floor of this House that it is high time that a uniform civil code has to be introduced in our country and it is one of the Directive Principles of State Policy, probably article 44, under which it is said that the State shall endeavour to have a uniform civil code. There may be something said against a uniform civil code being introduced in the matter of succession, marriage or divorce or some such matter but I don't

think there is any great danger or harm in having a uniform civil code at least in the matter of law of minority and guardianship. When we compare the present Bill with the provisions of the Muhammadan law, in very many respects it is the same in respect of minority and guardianship. We are also having at the same time the Guardians and Wards Act of the year 1890. We don't try to throw away or fail to observe the provisions of the Guardians and Wards Act. So, in the matter of appointment of guardians for the minors hereafter for Hindus and other communities that are mentioned in this Bill, the Hindu Minority and Guardianship Act also will be made applicable. And in the matter of appointment of court guardians, we have to resort—even in the case of Hindus and other communities—to the provisions of the Guardians and Wards Act and in the case of Muslims, wherever it does not come into conflict with the Guardians and Wards Act, one will have to look to the Muhammadan law. I ask this question. In a measure of this kind, in the matter of appointment of guardians, why should there be so many laws in our country—in the case of Muslims the Muhammadan law and in the case of appointment of a court guardian, the Guardians and Wards Act and in the matter of appointment of a guardian for Hindus, there should be this Minority and Guardianship Act? We must at least now make a beginning in this minor Bill *i.e.*, the Minority and Guardianship Bill, to have a uniform civil code for our country.

Then, again there is this vexed question of Hindu family system of Mitakshara law. This Bill deals with the appointment of guardians for the minor's own property. This Bill does not deal with the appointment of guardians for the coparcenary undivided interest of a Hindu minor in a Mitakshara Hindu family. Now, I ask the hon. Minister this. I have a grave doubt. What is the difference between the minor's undivided interest in a Hindu joint family and the minor's own property guarded by the father under the provisions of this law? In the former case the minor has a right by birth. His share is already there made distinct. In this case too there is separate property belonging to the minor. I don't think there is very great difference between the minor's undivided interest in a Mitakshara joint Hindu family and the minor's own property that is to be guarded by the father in his capacity as natural guardian. So I feel that we should not make a distinction between the minor's own property and the minor's undivided interest in a Hindu joint family. Probably, this question will be dealt with when we take up the question of retention of Hindu joint family or abolition of Hindu joint family. This is necessary so long as we have people with certain orthodox views in our country and who are for retention of the Mitakshara joint family system. I may warn the hon. Minister that when the other Bill comes, it will be affecting nearly four-fifths of the Hindu population of our land and there will be very many obstacles thrown in its way and that is going to be the most controversial Bill that is ever going to be introduced in the House. At least in this Bill, we shall endeavour to do away with the distinction between these two, namely, the minor's own property and the minor's undivided share in the Hindu joint family property. These are the two general observations that I wanted to make on this Bill.

SHRI J. S. BISHT (Uttar Pradesh): But what is the share of the minor in the Hindu joint family?

SHRI H. V. PATASKAR: May I ask my hon. friend one question? So long as the joint family is there and there is the *karta* of the family, how can we introduce the natural and *de facto* guardian? That is the difficulty. When a decision is taken on that point, that will be naturally incorporated in the Bill.

SHRI J. S. BISHT: Moreover, the minor's share is always fluctuating,

[Shri J. S. Bisht.]

we don't know whether it is one-fifth or one-fourth or one-third.

SHRI P. S. RAJAGOPAL NAIDU: We have, in fact, known of minor's share in Hindu joint families being disposed of for no benefit to the minor and for no legal necessity. We have seen minors filing suits to set aside alienations made by the father or by the manager of the Hindu joint family property.

SHRI J. S. BISHT: On the ground that it is not for a legal necessity.

SHRI P. S. RAJAGOPAL NAIDU: Such suits are filed. So what I suggest is, if the manager of the Hindu joint family, maybe the father or brother or anyone, if he wants to dispose of the minor's interest in the joint family's property, he should be asked to go to a court of law to justify the alienation that is proposed to be made by him. Why should not that be done? Such a safeguard has been provided in clause 7 of the Bill. I say that a similar safeguard should also be made with regard to the minor's share in the Hindu joint family property. The safeguard made in clause 7 of the Bill is to obviate difficulties of the purchaser in facing law courts. If the property is one over which there will be no litigation and if there is a certificate from the court to that effect, then purchasers will boldly come forward to purchase the property. In that way, we will be avoiding a lot of litigation. Similarly, if a certificate is to be got even by the manager of the Hindu joint family property, before he disposes of the minor's share in the joint family property, that will obviate all the difficulties. That is why I have made bold to make this suggestion.

Sir, coming now to the details of this Bill, as regards clause 2, I have no grievance against the definition of the term 'Hindu' as to who is a Hindu and all that. But I do not understand why we should introduce the definition of the term 'Hindu' and say to whom all this Bill will apply and thus make it so complicated and cumbersome. What I wish to suggest is that you may make it quite simple by saying to whom all this Bill will not apply, say that this Bill will not be made applicable to Muslims, Christians and Parsis—putting it in what may be called a negative way. The term 'Hindu' need not have been defined in the Bill. Instead of saying that a particular person will be a Hindu, all that you need say is: This Bill will not be applicable to so and so—Muslims, Christians and Parsis.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): But why should the hon. Member fight shy of the word 'Hindu'?

SHRI P. S. RAJAGOPAL NAIDU: Not fighting shy of the word, Sir. With great respect, I may point out that I am not fighting shy of it, I am proud that I am a Hindu and I do not fight shy of it at all. But why make this clause so cumbersome? Why make it so complicated? It is only for the purpose of making it simpler that I have advanced this argument.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): It is better to say whom all it includes, otherwise some may be left out.

SHRI P. S. RAJAGOPAL NAIDU: The next clause which I would like to deal with is clause 5. The Select Committee has, no doubt, increased the age from 3 to 5 years. But what I wish to suggest is that it should be further increased, at least in the case of minor boys to 7 years, and in the case of minor unmarried girls to the age of puberty or at least to 12 or 14 years, whatever it may be. Sir, if you compare this with the Muslim law, you find that the Hanafi Law provides for a period of 7 years for the minor boy and the age of puberty in the case of the minor girl. We have seen that it is only the mother that will take care of the child in the matter of nursing and all that, and after all, we have provided only for the custody

of the person of the minor. We are not here considering the female as the guardian of the property of the minor. When we deal with this matter, we are dealing only with the right of the mother for the custody of the minor child and I am sure there will be unanimity of opinion in this House, Sir, that this age should be increased from 5 to at least 7 years. There is no harm at all in the mother being the guardian of the person of the minor, not of the property and in the age being raised from 5 to 7 years.

Sir, as Dr. Barlingay has said, I do not understand why when a Hindu ceases to be a Hindu, he should cease to have custody of his son also. Why should he cease to be the guardian of his minor child? The law up to 1850, that is to say, before the Caste Disabilities Removal Act was passed, was that the father, when he lost his religion, lost also the custody of the child. But subsequent to the passage of that Act, in 1850, the law was that even if the father lost his religion, he did not lose custody of his child. And that is the law till today, though it has been stated by certain High Courts that the Caste Disabilities Removal Act will not be made applicable to the guardianship of minors. Even then, there is no harm in the father being the guardian of the minor child even when he has lost his religion. The courts have said that, at any rate, the mother, when she has lost her religion, shall not continue to be the guardian of the minor child. That is what the High Courts have said. But I do not understand, in a secular State like ours, why when a father loses his religion, he should also lose the custody of his minor child. Of course, it has been said by the hon. Minister that we have a provision in clause 13, and it is left to the court to appoint the same father, even after he has lost his religion, to be the guardian. But whatever it may be, that will entail somebody having to go to a court of law on behalf of the minor and have the guardian appointed after the father has lost his religion. That is why, considering all these things, I have tabled an amendment to delete from this clause 5, sub-clause (a) of the proviso namely, "if he has ceased to be a Hindu." I am sure, Sir, the House will consider this more carefully and by the time this Bill leaves this House these words shall not find a place in this Bill.

The most controversial of all clauses is clause 7 of the Bill. It is here that I feel that certain alterations will have to be made in the Bill. The powers of the natural guardian are very much restricted in this Bill. In fact, they are equated with the powers of the *de facto* guardian. That is the law which is now in existence, that is, if a court guardian should, for any reason, for the benefit of the minor or for any necessity of the minor, mortgage or charge or otherwise encumber the property, he has to go to a court of law and take the permission of the court to deal with the minor's property by way of mortgage or charge or otherwise transfer. In my opinion, Sir, that will lead to several hardships. I quite agree with the hon. Minister that such restrictions are imposed upon the testamentary guardians or upon court guardians. I can very well understand that, but I cannot understand such strict restrictions having been imposed even on the powers of a natural guardian to deal with the minor's property even if it is for the benefit or for legal necessity or some other word which is used here for evident advantage. I do not understand why a natural guardian like the father and the mother should be driven to a court of law to get a certificate from the court. We know that it is not a very easy process to go to a court of law. Supposing the father gets a good price for the property or suppose a good offer comes for the minor to get married immediately, if the boy has passed his 18th year by the time he goes to a court of law, which will have to issue notices, serve summons, publish in the gazette, and all that—that is what we are doing under the Guardians and Wards Act—and one year would have elapsed before the courts can come forward with a decision in all such matters. I feel personally that there should be no

[Shri P. S. Rajagopal Naidu.]

restriction imposed upon natural guardians in the matter of disposing of the minor's property for the legal necessity of the minor and for the benefit of the minor.

I do not understand under what circumstances this omission regarding leases has been made. It has been stated by the hon. Minister that various laws exist in various States and, therefore, if a measure of this sort finds a place in the Bill, it will lead to conflicts. That means, Sir, you restrict the power of a natural guardian under the present Bill from alienating property once and for all but you give him complete liberty to otherwise deal with the property, namely, by way of lease. Suppose the natural guardian leases the property for a long period, five years or ten years or twenty years; there is no limit of time provided under the Transfer of Property Act for anybody to lease property. Suppose the natural guardian leases property for a period of fifteen or twenty years, then there is no remedy at all for the minor. I feel, Sir, that there should be a sort of restriction and the provision that has been deleted by the Select Committee should be restored or some other similar provision should be included in the Bill.

I had read the speech of the hon. Law Minister, Shri C. C. Biswas, when he moved this Bill for reference to a Joint Select Committee.

SHRI S. N. MAZUMDAR: He has left.

SHRI P. S. RAJAGOPAL NAIDU: Yes, he has left.

At that time the question arose whether this restriction on the power of a natural guardian was opposed to the provisions contained in sections 27 and 29 of the Guardians and Wards Act. Under the Guardians and Wards Act there is no such restriction imposed upon the natural guardians but there is restriction imposed on testamentary and court guardians. While dealing with that, the Law Minister observed as follows—I am reading the relevant portions for the benefit of the House—"Clause 7 deals with the powers of natural guardians and some criticism has been levelled against this clause on the ground that it is somewhat restrictive. But this has to be read with section 29 of the Guardians and Wards Act. This clause follows, in so far as it goes, very largely the provisions contained in that section of the Guardians and Wards Act. Therefore, the complaint that the provisions are restrictive is not really justified. In any event, this provision could be considered in greater detail by the Joint Committee. It may be noticed that even in this clause, the fact that in the granting of permission to the natural guardian to do any of the acts mentioned in this clause, the advantage of the minor is the paramount consideration is again emphasised in sub-clause 4. You will find that clause 7 really lays down what acts the natural guardian shall not be permitted to do on behalf of the minor without the previous permission of the Court. He cannot:

> "(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or
>
> (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority."

The provisions of the Guardians and Wards Act are wider. Section 27 of that Act first lays down the duties of a guardian in these terms:

> "A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property."

He says down below, "You will find that these provisions are not reproduced in this Act." That is section 27

of the Guardians and Wards Act. The next sentence gives the reason. "The reason is, without their being incorporated in this Act, they will apply because the Guardians and Wards Act is of general application and is not superseded by anything which you find in this Bill." The hon. Law Minister has said that this Bill will not supersede the provisions of the Guardians and Wards Act. In other words, it has been said by the Law Minister that the provisions of section 27 of the Guardians and Wards Act will apply in this particular case. Section 27 of the Guardians and Wards Act does not place any such restriction on the natural guardian. Section 27 of the Guardians and Wards Act deals only with this particular aspect, namely that a natural guardian of a property will have to deal with the minor's property in the same way in which he deals with his own property. Subject to all such limitations, the natural guardian will have to deal with the minor's property as his own. That is why, Sir, I have a doubt in this matter. The doubt is, in the absence of a section like section 27, whether section 27 of the Guardians and Wards Act will apply. I would once again repeat the sentence from the hon. Law Minister's speech, Sir. "The reason is, without their being incorporated in this Act, they will apply because the Guardians and Wards Act is of general application and is not superseded by anything which you find in this Bill." I am sure the hon. Law Minister will clear my doubt in this regard. My doubt is this. When the Bill was originally referred to the Joint Select Committee, the powers of a natural guardian were not restricted to this extent. In such a case, the natural guardian need not go to a court of law to deal with the minor's property in case of necessity. According to the changes made by the Joint Committee, he has to go to a court of law. I am sure the mover of this Bill now will clear my doubt in this regard.

I am not able, Sir, to understand the meaning of the words "evident advantage" used in sub-clause 7(4), which reads: "No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor." We have known the case law with regard to necessity and benefit; some of us, who are lawyers, know how the courts have interpreted these words, necessity and benefit, right from the case of the Hunooman Persaud *v.* Mussumat Babooee to the present day. Thousands of cases have been decided by the courts and when new words are used, *viz.*, "evident advantage," it will lead to some more complications and the law courts may interpret these words in several ways.

1 P.M.

I wish, Sir, that the same word, namely, 'benefit' is used even in this case, because 'benefit' has been interpreted and we are now in the stage when we know what the meaning of the word 'benefit' is and the case law is very well settled on the point. If we use any word other than 'benefit' then that means we will be giving the start to a series of case laws and we do not know where it will lead to and where it will end.

MR. DEPUTY CHAIRMAN: You can continue after lunch, Mr. Naidu.

The House stands adjourned till 2.30.

The House then adjourned for lunch at one minute past one of the clock.

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

SHRI P. S. RAJAGOPAL NAIDU: Mr. Deputy Chairman, I was dealing with clause 7 before lunch.

SHRI RAJENDRA PRATAP SINHA (Bihar): The Treasury Benches are empty. There is not even a Parliamentary Secretary.

SEVERAL HON. MEMBERS: The Minister is coming.

MR. DEPUTY CHAIRMAN: He will be coming.

SHRI RAJENDRA PRATAP SINHA: It is a very great discourtesy to the House and I hope you will kindly take necessary action in the matter.

(Shri H. V. Pataskar entered the Chamber.)

MR. DEPUTY CHAIRMAN: We are all waiting for you, Mr. Pataskar.

SHRI H. V. PATASKAR: I am sorry, Sir.

SHRI P. S. RAJAGOPAL NAIDU: Sir, I was pointing out, from the speech of the hon. the Law Minister, that the Guardians and Wards Act is of general application and is not superseded by anything which you find in this Bill. When we read clause 7 we are able to understand that there is no difference between a natural guardian and any other guardian in the matter of the disposition of the minor's property either for necessity or for benefit. If the natural guardian were to dispose of the property of the minor for the benefit of the minor or for any legal necessity of the minor, according to what I am able to understand on a careful reading of clause 7, the natural guardian will have to go to a court of law and seek permission because clause 7 reads: "The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant." Sir, later, sub-clause (2) of clause 7 says: "The natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor." So it is very clear that whatever power the natural guardian has under sub-clause (1) is subject to the provisions of sub-clause (2) of clause 7. But why I am confused at the whole thing is because I find, after a reading of the hon. the Law Minister's speech, his saying that this Guardians and Wards Act is of general application and is not superseded by anything which you find in the Bill. If that is so, I have to take the hon. the mover of the Bill to two provisions in the Guardians and Wards Act. I am dealing with sections 27 and 29 of that Act. Section 27 deals with duties of guardian of property. This applies to the duties of a natural guardian. It only says that a guardian of the property of a ward has to deal with it as he would deal with if it were his own property. He has to use that much care which he would use in the matter of disposal of his own property. It is not stated in section 27 of the Guardians and Wards Act that he should go to a court of law even if he were to dispose of the property for the benefit of the minor or for the necessity of the minor. Only in section 29 it is stated that in particular circumstances, a guardian appointed by the court will have to go to a court of law if he were to mortgage or charge, or transfer by sale, gift, exchange or otherwise, the minor's property. Section 29 of the Guardians and Wards Act reads thus: "Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court, (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor." If the provisions of this Bill are subject to the provisions of the Guardians and Wards Act, I respectfully submit that the guardian will have power to mortgage, sell or otherwise alienate the property even without going to a court of law for a certificate from the court. I want the Law Minister, when he replies, to deal with this matter so that there may be no ambiguity about it.

MR. DEPUTY CHAIRMAN: Natural guardian is not excluded in that section. Apart from testamentary guardians all others have to obtain permission.

SHRI P. S. RAJAGOPAL NAIDU: Sir, section 27 deals with duties of guardian of property, section 28 with powers of testamentary guardian and section 29 with limitation of powers of guardian of property appointed or declared by the court.

MR. DEPUTY CHAIRMAN: If you read over that section again.....

SHRI P. S. RAJAGOPAL NAIDU: It runs like this: "Where a person other than a Collector, or other than a guardian appointed by will or other instrument" that is testamentary guardian "has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court mortgage, etc." So it specifically deals with powers of guardians appointed by the court while section 27 deals with the powers of guardians in general.

MR. DEPUTY CHAIRMAN: Even if he is a natural guardian if he is appointed by the court.....

SHRI P. S. RAJAGOPAL NAIDU: Sir, with great respect I would submit that a natural guardian is a natural guardian. He need not be appointed by a court.

SHRI H. V. PATASKAR: As soon as he is appointed by a court he becomes a court guardian.

SHRI P. S. RAJAGOPAL NAIDU: If he does not go to court he can do anything.

MR. DEPUTY CHAIRMAN: Even if he is a natural guardian if he is appointed by the court he has to obtain permission. Without going to court, nobody can do anything.

SHRI H. P. SAKSENA: Why should he go to court, Sir?

MR. DEPUTY CHAIRMAN: He is on his legs, Mr. Saksena.

SHRI P. S. RAJAGOPAL NAIDU: I think I have made my position very clear on this point and I do not think there is any doubt or ambiguity about this.

Then I was dealing with sub-clause (4) of clause 7 with reference to the meaning of the words 'evident advantage'. I tried to make some research during the lunch recess and to find out in which other enactment I could find those words, because as a student of Hindu law I did not find these words anywhere in the Hindu law. But I found similar words used in section 31 of the Guardians and Wards Act itself. It says: "Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward." So probably those words have been taken over here when drafting sub-clause (4) of clause 7. But I do not find much of a case law on this point. We are very much accustomed to hear much about the powers of the manager to charge the property of the minor, but that power is a limited and a qualified power. It can be used only in case of need or for the benefit of the estate. While defining what is necessity and what is benefit we have come across several phraseologies—actual pressure on the estate, danger to be averted from the estate, preservation of the estate and so on. By preservation of the estate I mean defence against hostile litigation to the estate, protection of it from injury or deterioration. These are all the various kinds of preservation. I am quoting from the learned commentator Mayne wherein the meaning of the words "benefit" and "necessity" has been given. But we are unable to come across these words "evident advantage" anywhere in case law. So, with a view to seeing that no fresh litigation will crop up in trying to interpret the meaning of the words "evident advantage," I would only submit

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that we change these words into a simple one as "benefit," *i.e.*, "except in case of necessity or of benefit to the minor."

SHRI H. V. PATASKAR: May I say this, Sir? The word "evident" here is used deliberately and it is for this reason. We want and we are going to limit the power of a natural guardian in certain respects in regard to the disposal of property and then we can understand "except in case of necessity.....". Necessity is obvious. But so far as 'benefit' is concerned, it might be remote, it might be contingent on so many things. What we intend under this clause is that the proceedings should be rather in the nature of something like a summary procedure where the court need not go into the details of all these remote advantages. But if, on the face of it, there is necessity, one can always find it out, *e.g.*, supposing the boy wants to study law, or marry or falls ill, some such thing. But in the case of an 'advantage', unless the advantage is evident, on the face of it, it is not desirable, at this stage, that somebody should deal with the minor's property because it is advantageous. For instance, take the case of a man who tries to dispose of property in one place saying it is in the interests of the minor that property should be purchased elsewhere. That is going to be prevented. The advantage must be evident on the face of it.....

SHRI A. DHARAM DAS (Uttar Pradesh): What is the legal definition of "evident"?

SHRI H. V. PATASKAR: That is not there.

SHRI P. S. RAJAGOPAL NAIDU: Sir, I do not want to confuse the House on this point. 'Advantage' would mean a positive benefit to the estate, but what is contemplated under sub-clause 7(2) is mortgage etc. It is all of a negative character. If there is pressure upon the estate or if there is any necessity for the minor's education or for his medical expenses or for other purposes, then the natural guardian is authorised to mortgage or charge or transfer by sale, gift, exchange, or otherwise. But what I am afraid is, if these words "evident advantage" are retained, this will be used by the natural guardian or interpreted by the law courts to mean for purposes which are advantageous to the minor's estate. For instance, suppose the minor's property has been acquired for a sum of one thousand rupees and there is an offer of two thousand rupees for that property, which is an advantage. The natural guardian will go to a court of law and get a certificate on the pretext of "evident advantage" to the minor's estate. So, he can sell the property. But what is contemplated under sub-clause 7(2) is not that contingency. That is why there is a danger of these words being misinterpreted. For any positive advantage of the minor's estate, the natural guardian will go to court of law and get a certificate. If the word "benefit" is there, then it would be interpreted by the court in a way in which that word has already been interpreted and understood, as there is abundant case law on the point. Otherwise, this would lead to fresh litigation and this would be interpreted in many ways. Even for positive advantage to the estate, the natural guardian will try to dispose of the property.

Then, Sir, I come to clause 8 of this Bill which is important, that is, the powers of testamentary guardians. I am glad that the Select Committee has made a great improvement on this clause and I am thoroughly satisfied with it. Originally, according to the Hindu law, it was only the father who had the power to appoint a guardian by testament or by will. The mother had absolutely no power and before this Bill went to the Select Committee, the father's power to appoint a testamentary guardian did not take effect as long as the mother was alive and it took effect only subsequent to the mother's death. According to this provision now, the father has got the power to appoint a guardian by way of a testament and that will have no

effect if the mother is alive, and if the father predeceases the mother and during the lifetime of the mother if the mother were to execute a separate testament or will appointing a guardian, the testament that has already been created by the father will have no effect. It is a very healthy principle and I heartily welcome the provision that is made in clause 8.

Then, Sir, clause 9 is a very simple one and if according to me clause 5, sub-clause (*a*) of the proviso is to be deleted, I am afraid this clause 9 will have to go. If the father changes his religion, according to sub-clause (*a*) of proviso to clause 5, that is, if he ceases to be a Hindu, he shall not be the guardian of his minor children. And clause 9 reads:

> "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."

The complication would be this. If clause 9 is retained as it is, if he ceases to be a Hindu, can he bring up the child as a Hindu, when he has embraced another religion? So, if sub-clause (*a*) of the proviso to clause 5 is to be deleted, then I think clause 9 also will have to be suitably amended because it goes without saying that the father would like to bring up his son—being the natural guardian if he is a father—,only in the religion to which he belongs at the time and not at the time of the birth of the child. So, I feel that clause 9 will have to be suitably amended if sub-clause (*a*) of proviso to clause 5 is amended or deleted.

Then, Sir, I am not able to understand what exactly is the meaning of this clause 10:

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

I mean it is natural that a minor is not at all competent to act as the guardian of the property of a minor. I do not know whether it is the intention of the framers of this Bill to cover cases where the husband happens to be a minor and the wife also happens to be a minor. Because according to the principles of Hindu law there are three kinds of natural guardians: the father, the mother and the husband—husband for his wife. Suppose the husband is a minor and the wife also happens to be a minor, then probably the husband can be a guardian of the wife, because that law is not changed even by this Bill. But the question is, after the passing of the Hindu Marriage Act and the Special Marriage Act, whether any Hindu can marry before his eighteenth year. When there is such a provision made in those Acts, I do not see why such a provision should be made here. I am not able to understand the purport of this clause 10.

MR. DEPUTY CHAIRMAN: Suppose the wife has some property from her parents, and the husband also is a minor, then it excludes such cases. Suppose a minor, mother has got a minor child, in such cases she cannot be a guardian under clause 10. That is the import. What is the difficulty?

SHRI P. S. RAJAGOPAL NAIDU: There is no difficulty. A minor is incompetent to act as guardian of the property of a minor. Probably it means, Sir, that if the husband is the minor, he cannot be the guardian of the property of the minor. But it is better to make it clear.

MR. DEPUTY CHAIRMAN: It is quite clear. What is the ambiguity about it?

SHRI P. S. RAJAGOPAL NAIDU: I do not now see any ambiguity. Now it has been made clear.

[Shri P. S. Rajagopal Naidu.]

Then, Sir, Dr. Barlingay was dealing with the words "deal with" in clause 11, which reads as follows:

> "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."

My friend wanted that these words should be deleted. But I say that these are the two important words in the entire Bill, because "deal with" would mean intermeddling with a minor's estate. That would mean that it is only a *de facto* guardian or an *ad hoc* guardian who can deal with the property of a minor. Disposing of, or selling away, would mean intermeddling. So, Sir, if we want to do away with the *de facto* guardians, we have to retain these two words "deal with" in clause 11.

Then, Sir, I think I have dealt with almost all the provisions of this Bill. Now coming to the last clause, clause 13, it seems to me that this clause gives the courts a discretion, taking into account the welfare of the minor, to appoint anybody as the guardian. The appointment of the guardian is left to the discretion of the courts. And we have no doubt, Sir, that the courts have been discharging their duties properly in the matter of appointments of guardians to the minors. As one who has some experience of all the appointments of these guardians in the law courts by the District Judges, I find that they have taken the utmost care and pains in trying to summon the minors and in trying to interview the minors to find out what their intention is, whether they would like to remain with the father or the mother or with anybody else. And it was only after going through all this procedure and taking into account the utmost interest of the minors, that the law courts have been appointing guardians to the minors' estates. But that does not mean that even in the case of natural guardians, if they want to deal with the minors' property for the benefit of the minors, the father and the mother should go to a court of law and should take permission of the court. That, in effect, would mean opening the flood gates of litigation. And suppose we are going to do away with the Hindu Mitakshara joint family system, then the entire country will have only the Dayabhaga system. That means, if a minor son will have any property in the family, then, of course, the father who is to be the natural guardian, will have to go to a court of law to deal with the minor's property. With these few observations, Sir, I have done.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, I cannot quite say that I welcome this Bill at this stage, because without the overall picture that the House is going finally to have of the Succession Bill and of the position particularly of women under this law and even in the joint family system, to deal with this Bill would lead to some sort of confusion, and it would rather be difficult to take a proper decision. We have unavoidably delayed the progress of the Hindu Succession Bill on which the other sections of the Hindu Code depend, even the Marriage Bill is premature from that point of view. It is said that सर्वारम्भे तण्डुला: प्रस्थमूला: The significance of money is stressed as the foundation of all plans and that is why *tandula*—rice—is supposed to be auspicious or necessary in the beginning of everything. The position of an individual in respect of property helps to determine the correct position of that individual in other aspects of the law. But, Sir, it is no use crying over spilt milk, and we should look, under the circumstances, to the brighter side of things. It is said that every cloud has its silver lining, and as such, even in this Bill I see a little streak of silver lining. And as far as women are concerned, I think, it has advanced their position to some extent, particularly in recognising the right of a woman to the custody of her child up to the age of five years. But that is not enough. We have amend-

ments to say that it should be up to 12 years, and with that I will shortly deal.

Sir, even at this stage, taking the opportunity of saying something with regard to the progress of the Hindu Code, I would point out that the Government should do everything in its power not only not to postpone the passing of the Bill to that last date, namely, of the life of the present Parliament, but if possible, it should pass it before the end of this year. And there are, however, valid reasons for that, Sir, apart from the psychological atmosphere that would be there then, and the election fever and the selection of candidates which might create feelings, but there is always such a heavy agenda in respect of other legislation, that it might happen that there might not be enough time to give to the consideration of the Hindu Succession Bill and the Marriage Bill also in the other House. I am particularly concerned with the Hindu Succession Bill. And from that point of view, I would, taking this opportunity of the matter being before the House, again like to urge upon the Law Minister that he should do everything in his power to see that the Hindu Succession Bill is passed before the end of this year. If necessary, even a special session may be called to dispose of this question.

It was said, Sir, that this was a Bill over which there would not be much controversy. I quite agree with that view. But I feel that if this Bill had not been introduced at all, and if the Government had brought forward one or two clauses, the object of the present Bill would have been adequately met. This I had already said when this Bill came here for the Select Committee motion. But now that the Government is committed to it, it is no use saying this, and the Government may perhaps use this Bill later on for another purpose. The object of article 44 of the Constitution is to bring forward a uniform civil code, and this Hindu Minority and Guardianship Bill, when it is enacted as a law, might well be used for inviting the other communities to take this as a model civil code which can be applied to them also, because of the importance that is given here to natural guardianship. That is a point, I think, which they should also welcome.

Sir, with regard to the other clauses, I think there is not much to be said, because the Select Committee seems to have gone into great details, and I find that most of the points made at the time when the Bill was referred to the Select Committee have been considered, and from the underlinings in the Bill, we find that the Bill has been greatly modified. The Law Minister deserves to be congratulated for having got out this report in an expeditious manner, and to the satisfaction of most of the people, and, Sir, the indication that it has met with the approval of most of the hon. Members is to be found in the fact that there are very few amendments on this Bill. And that is a matter of satisfaction.

3 P.M.

There is only one other point with which I would like to deal, and that is with regard to clause 5 regarding the natural guardian of a Hindu minor. Under (a) the mother will be the guardian only until the age of five years. There are certain amendments in this respect but I would not like to speak about them in detail now. The age mentioned here has necessarily to be raised to twelve, because the physical developmet of the child and also the development of its character will not be complete by that time. It should go even beyond twelve years but we have to find a golden mean when our society would not be prepared to give guardianship to the mother entirely, even when the father is alive, up to the age of 18, and so at least till the age of twelve it is absolutely necessary to give recognition to the mother as the only guardian. There is no reason to make any distinction between a boy and a girl in this respect, because boys as well as girls need the attention of the mother to the same extent. With these few remarks, I would like to support this Bill.

SHRI KISHEN CHAND (Hyderabad): Mr. Deputy Chairman, this is a non-controversial Bill and I certainly agree with most of it except a few points which I will try to explain. The criticism that I offer will be with the sole intention of improving the Bill and not in the sense of finding fault with this very nicely worded and nicely drawn-up Bill.

First of all, I come to clause 5. Here the natural guardians are restricted only to the father and the mother. I submit that the grand-father and the grand-mother, both paternal and maternal, and the maternal uncle are just as good natural guardians as the father and the mother. It looks very odd that, if the father and mother are not alive but the grand-father and grand-mother are alive, to refer the matter to a court for it to decide. In that case there may be other persons going to court, and if the grand-father and grand-mother are not active enough and do not go to the court, it is quite possible that the court may appoint some other guardian. We should not establish new traditions. At least in the South where there is the matriarchal system, the maternal grand-father and grand-mother occupy a very special position and the maternal uncle also occupies a very special position in society. Therefore, I do not see any reason why the list of natural guardians should be limited only to the father and the mother. I have, therefore, sent in amendments to the effect that after the father and the mother, the paternal grand-father, the paternal grand-mother, the maternal grand-father, the maternal grand-mother and the maternal uncle should be added as natural guardians in this sequence, that means that if the preceding guardian is not alive, he will be the guardian.

DR. W. S. BARLINGAY: What about the elder brother?

SHRI KISHEN CHAND: I would certainly like the elder brother to take of his younger brother, but after all this involves a question of property, and all records of the courts are standing evidence to the fact that very often the elder brothers have taken possession of the property of the younger brother. Therefore, I would not consider an elder brother as a natural guardian, though according to the Shastras he is like a father; in spite of that I would prefer the grand-father and the grand mother to an elder brother. After all, our experience in life is there. If the grand-father and the grand-mother are alive, they will be more suitable as natural guardians than an elder brother. Probably the difference in age between the elder brother and the younger brother may not be big enough to give him maturity of mind. Therefore, I would not include him in the list of natural guardians. Of course, he may come in as a guardian if the courts so decide, but he should not be included in the list of natural guardians.

With regard to clause 5(c) "in the case of a married girl—the husband", I would say that it is possible that a minor girl may become a widow, and when she becomes a widow, the husband cannot be the guardian, and so after the husband, the father of the husband should be considered to be the natural guardian. You cannot change the structure of Hindu society by bringing in such legislation, and in our society, if the husband is not alive, the natural guardian is the father of the husband, and I would like to add that here.

Then, there is some controversy about clause (a) of the proviso "if he has ceased to be a Hindu". I think two or three hon. Members who have spoken before me have said that the scope of this Bill should be excluded. There is no reason why Muslims, Christians, etc. should not come under this Bill and the Bill be called the Indian Minority and Guardianship Bill instead of the Hindu Minority and Guardianship Bill, because in their religion there are no distinctive laws about guardianship. After all

the father and the mother will be the natural guardian in any religion, even though religions often have different laws of succession.

SHRI P. S. RAJAGOPAL NAIDU: The mother is not the natural guardian under that Muslim law.

SHRI KISHEN CHAND: If there is to be any uniform law, there must be some sort of give and take. If the majority of the people think that the father and the mother should be the natural guardians, it can be adopted. Here this Bill is called the Hindu Minority and Guardianship Bill. That means that the stress here is on the word 'Hindu'; and so, if a person chooses to give up his Hindu religion, naturally this Bill cannot apply to him. I certainly think that the clause here is right. If a guardian ceases to be a Hindu, he should not continue to be a natural guardian. It has been stated in a subsequent clause that the minor has to be brought up in the religion of his father. So long as you do not have a common law applicable to all citizens of India, naturally till such time, any Hindu minor will be governed by this Bill, and therefore, this is a very essential clause to safeguard the interests of the minor. Ours is a secular State but that does not mean that this is a godless State. It does mean that the people of this country will continue to follow their religion and I do not see any reason why in the name of secularism we should insist on a Hindu minor being brought up in any other religion. Naturally, if the guardian ceases to be a Hindu, he will have adopted a new faith, and we all know that people who adopt a new faith, are generally very fanatical about the new faith which they have adopted. The result will be that you will perforce by asking the minor to adopt the religion of his guardian. Therefore in the interests of continuity of tradition and religious belief, it is very essential that this clause should be retained in its present form

Then I come to clause 7. Here also I maintain that in a Mitakshara family, the Hindu guardian can dispose of the property of the minor, provided he makes a statement that the selling or the mortgaging of the property is in the interest of the minor. We know, Sir, that any property of a Muslim minor is sold with the greatest difficulty, because the new purchaser always suffers from the fear that legal complications might arise at a later date when the minor attains majority and he applies to the court that the sale was not done in the best interest of the minor. Therefore, the property of a Muslim minor is sold with great difficulty and at a lower price. But up to now, in the case of a Hindu minor, his property could be sold by the natural guardian without any interference, without any conditions. Of course, property is now slowly and gradually dwindling and in the case of Hindus, in 999 cases out of 1,000 the property is possibly inherited from the father or the grandfather or when the partition of the Mitakshara family takes place. Only then does a minor get any property, apart from the property which his father or mother will be giving him. And there will be only one in a million where the minor may have earned some property or money. As in the case of the child cinema star, such minors may have earned their own property, but their number will be extremely small. Barring such cases, in all other situations, the property belongs to the family and I do not see any reason to distrust the natural guardian to the extent of saying that he must take the permission of the court. I have sent in certain amendments to the effect that the natural guardian should have full authority and full power to dispose of, mortgage or in any way encumber the property of the minor, because, as I said, in the case of the natural guardian, we have said that only such persons will become the natural guardians who have so much love and regard for the minor, that they will not misuse the property.

DR. SHRIMATI SEETA PARMANAND: They may have bad habits. for instance, the father may be a drunkard.

SHRI KISHEN CHAND: Exceptional cases there may be and in such exceptional cases, the father should not be a guardian at all. Why have such a natural guardian? I would not have such a father as the natural guardian. There should be no such natural guardian and.....

DR. W. S. BARLINGAY: There should be a provision for his removal.

SHRI KISHEN CHAND: That is a good suggestion. There should be a provision for his removal as natural guardian of the minor, if the natural guardian has certain habits that are detrimental to the proper growth of the minor. Such a natural guardian should be removed by the court from guardianship of the minor. But from a fear that the natural guardian may have bad habits, you should not prescribe certain restrictions on the transfer of property of the minor. In the case of testamentary guardians or in the case of *de facto* guardians, if you have restrictions, it is quite all right. But in the case of the natural guardian, if you put down conditions and when, as has been pointed out by Mr. Rajagopal Naidu this morning, it sometimes takes one year to get the permission of the court, it will be a great hardship. It takes one year, while you know that the value of property goes up or comes down at very short intervals. Therefore, in the interest of the minor, it is very essential that the property if it has to be sold, it should be sold in the best market conditions and at the best possible price. Therefore, I would submit that there should be no restrictions about the disposal of the property. Shri Rajagopal Naidu was trying to make a distinction which I could not understand, due to the presence of sub-clause 7(5) and the reference to the Guardians and Wards Act, 1890. I would submit that that clause only governs the procedure to be followed in the courts. Sub-clause 7(3) is very clear, for.....

SHRI P. S. RAJAGOPAL NAIDU: But I never dealt with sub-clause 7(5).

SHRI KISHEN CHAND: The hon. Member was talking about the Guardians and Wards Act, 1890 and section 29 of that Act. Am I wrong?

SHRI P. S. RAJAGOPAL NAIDU: I never mentioned anything about sub-clause 7(5).

SHRI KISHEN CHAND: But in sub-clause 7(5) there is mention of the Guardians and Wards Act, 1890 and the hon. Member was referring to section 29; that is why I am referring here to that sub-clause. What I submit is that clause 7 relates to the procedure to be followed in the courts. If there is a specific clause to the effect that the natural guardian shall not, without the previous permission of the court, mortgage of transfer or do any such thing, then it is clear that the power of the guardian is unduly restricted, whether the guardian is a natural guardian or a *de facto* guardian. Therefore, in the amendments which I have sent in, I have tried to make it clear that there should be distinction between the natural guardian and that *de facto* guardian and the natural guardian should be able to dispose of the property.

Then there is to be another amendment to the effect that the *de facto* guardian may not be able to dispose of the property, may not be able to lease the property. He should certainly look after the property, maintain it in a proper condition and carry out the necessary repairs etc. And if you do not give him powers even for that, and if even for the small amount required for the repairs, he has to approach the court. It means that you want the property of the minor

to really crumble down by neglect. Therefore, I think an amendment has to be brought in by the hon. Minister to that effect.

Sir, the lady Member who spoke before me stressed the point that the custody of the child if the child is below the age of 12 should rest with the mother. Sir, I beg to disagree from that point of view.

DR. SHRIMATI SEETA PARMANAND: That is but natural.

SHRI KISHEN CHAND: Sir, in our society women being less educated than men, it is possible that the child when it attains the age of going to school.....

SHRIMATI PARVATHI KRISHNAN (Madras): But they are more cultured.

SHRI KISHEN CHAND: ..... the child may not get the same attention from the mother as from the father in the matter of education. So this restriction of the age up to 5 years, is very proper and right as has been done in the Bill. Up to the age of 5, the child is in the home environment when he must enjoy the love and affection of the mother which is more important in that period and the custody of the person of the minor has to be in the hands of the mother. But after the age of 5 has been attained, when the love and affection of the mother are not so important for the development of the minor child, especially if the minor child happens to be a boy, then he wants more healthy and strenuous outlook and proper guidance in his education. Therefore, I think it is very essential that the custody of the person of the child should be with the father.

DR. W. S. BARLINGAY: And in the case of girls? They stand on a different footing.

SHRI KISHEN CHAND: In the case of girls also. We want compulsory primary education in this country for all children. So till such time as the mothers are educated, till such time as mothers are able to guide their dauhgters' education, I think it is essential that whether the minors, the boys or girls, beyond the age of 5, the custody of their person should be with the father.

DR. SHRIMATI SEETA PARMANAND: Is the father able to guide their education in all cases?

SHRI KISHEN CHAND: Sir, the percentage of literacy in the case of men is slightly more than in the case of women. I do not say that all are literate in our country. It is after all a question of relativity.

If the father is alive, then he will be the guardian, the natural guardian of the property and of everything. If the mother is alive, she is the guardian of the person of the minor. To make a distinction and say that the mother is the custodian of the person of the child and the father the custodian of everything else is, I think, a little far fetched. I do not see any reason for creating bad blood between the father and the mother by saying that the person of the child is controlled by the mother because, if the father is dead then the mother is the natural guardian and gets custody of the property as well as the person of the child. It is only when the father and the mother are alive that this happens and to make a distinction that the father can look after so many things and the mother will look after so many other things is trying to create in the mind of the child a sort of distinction between the father and the mother which I do not think is at all healthy and should never be allowed by law.

SHRI H. P. SAKSENA: Do you contemplate that the father and the mother will be living like poles asunder and the child will be put either under the custody of the mother or the father?

SHRI KISHEN CHAND: I am not contemplating anything. I am just reading out the clause in the Bill: "in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of minor who has not completed the age of five years shall ordinarily be with the mother.". This is what the Bill says. If there is no distinction between the father and the mother then there is no need for this proviso at all. If the father and the mother are living happily together, then it is quite immaterial whether the father has got the custody of the child or the mother. In that case, you should really delete this clause but if you retain this clause, it applies to the case when the father and mother are alive and there is some sort of difference between the father and the mother. You want to entrust the person of the minor to the mother while the property of the minor would be with the father. In such a case, Sir, I submit that this restriction of five years is quite enough. As I pointed out, up to the age of five years, affection and the service of the mother is very necessary for the proper growth of the child but after five years, it does not play the same part in the growth of the child and therefore, I think it is not essential.

Therefore, Sir, with these suggestions for improvement, I support the Bill.

SHRIMATI PARVATHI KRISHNAN: Mr. Deputy Chairman, I would like to begin by saying that I feel that the changes that have been made by the Joint Select Committee in the original Bill are really very welcome, particularly the two points in the Bill that strike one on first reading. One is the provision which gives equal status to women in regard to the appointment of testamentary guardians and the second, Sir, is the uniformity about the age of majority. These are the two points which, in my opinion, make this Bill very welcome to us.

I would like to touch very briefly on one or two points for which I have already tabled amendments—that is why I say briefly. These points, after incorporation would make the Bill an almost perfect measure which indeed would be a historic thing both for the Government and for the Opposition. Firstly, with regard to custody. So often I have felt that whenever measures of social reform come up before this House, Mr. Kishen Chand has a knack of making speeches which remind us of the proverbial Curate's egg, good in parts and bad in others. The bad parts are so bad that I feel they reveal the stand of conservative and reactionary opinion in the country today. When he dealt with the question of the custody of the child, it was amazing and indeed most astonishing to hear a Member, on the floor of Parliament, putting forward the thesis that women, because they are illiterate, cannot fulfil their duties and their obligations towards children in the new India, in the growing India, whereas men, even if they are illiterate, are better and more capable. It is really astonishing, Sir, that we have this argument trotted out again and again on the floor of the House and I was rather pained to hear him.

DR. SHRIMATI SEETA PARMANAND: Old habits die hard.

SHRIMATI PARVATHI KRISHNAN: It means that in spite of all this great singing of hymns and of hallelujah to Bharat Mata—one's country is called the mother land—yet, when it comes to the question of custody of the child, who is supposed to look after the children? It is the father who comes to the forefront.

SHRI KISHEN CHAND: After five years.

SHRIMATI PARVATHI KRISHNAN: I am not interested in arguing as to whether it is after five years or before five but the point is about the principle to be laid down. So long as the

child's nappies have to be washed, so long as the child has to be nursed, so long as it has to be given the oil-baths and all these things, then, of course, let the mother bother herself, rocking the cradle of the child, and the father has a merry time looking after business, but the minute the child has to go to school, the minute other responsibilities come up, then it is only the father who has to look after the child, not the mother. She can go and rock the cradle of the next child. This sort of idea is really obnoxious to any self-respecting citizen of this country, leave aside the women. I am not, Sir, I maintain, speaking just as a woman but am speaking as a self-respecting citizen of the Republic of India and it is really painful to hear this argument again and again.

SHRI KISHEN CHAND: The 45 members of the Committee did not realise what you have said.

SHRIMATI PARVATHI KRISHNAN: It is not that I am casting any slur on the collective wisdom of the Select Committee but am only trying to put forwad a point of view and my reaction to this particular line of argument. I do not know if the Select Committee's argument was based on literacy or illiteracy; if it was so, Sir, then I am sure I will have to change and withdraw some of the compliments that I have already paid to it. Talking of the vast majority of the women in our country being illiterate and their being incapable of looking after the interests of their children, how is it that we can forget the thousands of women who have sacrificed all that they have had for the cause of the freedom of the country? Now, why did they do it? They did it because they realised that only in a free India could all the problems and all the desires that they had for their children be really fulfilled and really reach fruition. It is because of this, Sir, that they fought in the cause of freedom and it is also because of this that they are best fitted to look after their children, to look after the desires of their children and to give to their children all that care that is necessary in the formative years of life. It is for this reason, again, Sir, that I feel that the custody of the child should be with the mother for a longer period than already fixed by the Joint Select Committee. I have tabled an amendment to the same effect.

The next point that I would like to touch upon before I conclude is the question of the change of religion, that is (*a*) of the proviso in clause 5. I cannot understand why the minute a father or mother or the natural guardian changes religion it should be taken for granted that the guardian does not or will not have any more feelings for the children or will not be a fit guardian for the children. Why is it that we have to tag on the question of religion and caste and province and so on even to property? It is really amazing, Sir, that the minute the question of property comes up, then you find this thing tagged on. Why? When we think in terms of our children being looked after, when we think in terms of the welfare of our children, we think in terms of the future generation of our country. What we want is that our children should be looked after in a manner that will be most fitting, that would enable them to become responsible citizens of the new and the free India. It is with this in mind that we bring forward social legislations, that we bring forward all legislation, to create a life in our country which will enable our children to grow to their fullest stature. When this is the case, Sir, why should it be taken for granted that a father—the natural guardian—if he changes his religion also changes every bit of his temperament, changes the affection which he has for the minor and so on? I feel, Sir, that, in a country which claims to be a secular State, leaving a phrase like this on the statute book will certainly

[Shrimati Parvathi Krishnan.]

militate against the movement that is growing for a uniform civil code throughout this country. As far as possible, if we could avoid in this measure all these particular aspects which are easily avoidable, why not do it? Sir, when the Hindu Marriage Bill came up here, there was a clause there which made divorce permissible where one party or the other had changed religion. It is not made obligatory that the moment the husband or the wife changes over to some other religion divorce should take place. Why is it that it is there? It is because it is left open to the wife or the husband, as the case may be, to make up her or his mind in that case and because we feel in the interests of the family as a whole that every effort should be made for the family to continue as a unit. Nobody is in favour of families being broken up and nobody is in favour of natural guardians being separated from their children, fathers and mothers being separated from their children. Therefore, Sir, it is these two points that I would like to bring once again to the attention of the hon. the Law Minister.

Dr. Seeta Parmanand was unlucky enough to have the Government napping when she was speaking, but I hope I have been luckier. The hon. Minister said that this was the least controversial of all the measures to codify the Hindu law, and I would appeal to him to make this not the least controversial of all the measures but to make it the completely non-controversial measure to have been brought before Parliament.

SHRI H. C. DASAPPA (Mysore): I am very happy to see, Sir, that the Bill has undergone a substantial change in the Select Committee and a good many of the suggestions which we made at the time of its reference have been incorporated in this Bill as it has emerged from the Select Committee. Particularly, I refer to clause 5 and clause 7, and also clause 8 which, I believe, has undergone a very radical change and all for the better. Before referring to certain points of my own I would like to discuss certain points raised by my hon. friends. I agree, Sir, with the almost unanimous suggestion made that the time has arrived when we should give up this idea of piecemeal legislation. Whatever justification there was in the days gone by, I think that justification has totally disappeared today when there is a clamour for having one consolidated code. I quite see, Sir, that the time for having one uniform civil code for the whole of India, for people belonging to all classes and creeds may yet be a little distant but not far too distant. But, at any rate, so far as the question of having one uniform code for the whole of the Hindus, I think it is well within the range of practicability, immediate practicability today. So I envisage, in a very short time, before, I suppose, a couple of years, that all these various measures which deal with the rights of Hindus, both men and women, will soon come under one consolidated law. I think that will simplify the law on the point and will also eliminate the amount of confusion and overlapping that there still is in the matter of these different pieces of legislation.

Then, Sir, I would refer to the suggestion made by some hon. friends why this rather cumbersome definition of the 'Hindu' is to be found in this Bill. I quite see it is a little long-winded but I think it would not be proper for any statute or piece of legislation to have a definition in a negative form and when we talk of a law like this, the Hindu Minority and Guardianship Bill, we cannot simply say that it applies to all citizens of India who are not this, that and the other.

SHRI P. S. RAJAGOPAL NAIDU: It would be reasonable to have it like that because the Hindus form 80 per cent. or 90 per cent. of the population of the country.

SHRI H. C. DASAPPA: I quite see, but the simple fact is that it does not become a piece of legislation to say that this does not apply to the Christians, Muslims, Parsis and Jews but to all else, I mean, that is not a form which anybody would appreciate. And, therefore, in conformity with other pieces of legislation, where a similar definition is given, I think this is there and we can very well allow it to stand as it is. But, Sir, that does not go to the root of the question. The other point is the one referred to by my hon. friend, Mr. Naidu, who in a very comprehensive speech brought out practically most of the issues that might be deemed to be controversial. He referred to the point which has cropped up again and again with respect of most of similar pieces of legislation and that is that the joint family properties are exempted from the operation of some of these Bills. Only the other day we had the Bill which went under what I called a highly pretentious name, the Hindu Succession Bill, but which in fact refers to intestate succession only and does not provide for the large number of inheritances that accrue by way of survivorship and partition of coparcenary rights. Now, here also we find that in the case of that large section of property applicable to large sections of people, that is the joint family property, this Bill which chooses to appoint or deal with guardians of person and property excludes that joint family property, and the reason is fairly obvious. I do not find fault with the hon. Minister for not having included the property rights of minors also in this Bill because there the whole law is different and there is no question of dealing with the property of a minor as such when he is a coparcener, where there are non-minors or adults. There the right to manage the property vests in the *karta* or manager, whoever that be. Therefore no law that we can enact, can ever bring.....

SHRI P. S. RAJAGOPAL NAIDU: The *karta's* right is limited.

SHRI H. C. DASAPPA: It is no doubt a limited right but we cannot superimpose any other guardian with regard to the property there when there is a *karta* functioning unless under certain conditions, that is, when all the coparceners are minors then, of course, a guardian must come into play in such a case. If, for instance, there are two minors, who are brothers, who are the only co-parceners in the estate, then somebody else has got to manage the property and there is no other adult manager available in the coparcenary.

SHRI P. S. RAJAGOPAL NAIDU: There is difference between the father being the *karta* of the family and the brother being the *karta* of the family.

SHRI H. C. DASAPPA: What I say is, whoever is the manager according to coparcenary rights, it is only the *karta* whether it is the father or a paternal uncle or a brother, whoever it is, it is only that person who can be the manager of the property and nobody else under any law that is now existing can be the manager of the joint family property. But what I envisage is where you have got, for instance, coparceners who are all minors, then there must be a provision for the appointment of a guardian. Unfortunately, I do not know whether this Bill contemplates a case like that. It is not quite clear to me that this does not apply to a case where all the coparceners alive are minors. I believe there can be cases like that and I wish the Committee had applied its mind to this aspect of the case. Then, when one of the minors ~~between a minor~~ becomes a major he has got to be invested with the sole rights of management of the joint family property and I wish this was made clear in the Bill itself.

There is another thing even with regard to minors in a joint family property. Whatever the rights of the *karta* or the manager of the joint family property may be with regard

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to the property of the minor, there is I think even today a provision in the Hindu law for the appointment of a guardian for the person of the minor even in a coparcenary. My submission is even that should have been made clear.

SHRI P. S. RAJAGOPAL NAIDU: That is only in extraordinary cases when the High Court is invested with powers under section 151.

MR. DEPUTY CHAIRMAN: Clause 12 is quite clear. It says that where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest. It is already there. If there is an adult member as manager, no question of guardianship arises.

SHRI H. C. DASAPPA: At the same time as I said, when there is more than one minor in the joint family and there is no adult *karta*, it does not become clear though under this we may stress the point a bit.

MR. DEPUTY CHAIRMAN: Then there is the proviso also: "Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest."

SHRI H. C. DASAPPA: That is not my point. Having said that as the preamble, let me proceed to the other point, namely, that there is provision under the Hindu law for the appointment of a guardian where a joint family property consists of only minors. But what I was saying is the corollary to that, that is, when one of the minors becomes major the entire right to manage the joint family property must vest in him, and the guardianship should cease automatically.

MR. DEPUTY CHAIRMAN: It is so according to the present law.

SHRI H. C. DASAPPA: If the natural corollary had also been mentioned in this Bill, that would have been very good. When once you have a court guardian appointed for the undivided interests of the minors, then what would happen in the contingency stated?

SHRI R. C. GUPTA: He will cease to be the guardian.

SHRI H. C. DASAPPA: Yes; as soon as one of the minors of a joint family property becomes a major, the court guardian should cease but the question is not clearly stated, that is, whether a person appointed guardian not only for the minor who becomes a major but for the other minors also who would continue to be minors would automatically get away from the scene.

MR. DEPUTY CHAIRMAN: Certainly, he does.

SHRI H. C. DASAPPA: As I said it is a corollary and it should have been mentioned here because as I said when the court guardian is there appointed for the minor as a whole, the mere fact that one of them has become a major cannot be taken to mean that the consequences will flow from it. There is no reference as to when that guardian goes out of the scene. It would have been better if we had stated it specifically. This senior minor who becomes a major will deal with the property as a *karta* or manager and his rights are any day much more than those of a court guardian.

SHRI R. C. GUPTA: That is the law.

SHRI H. C. DASAPPA: May be, but it is necesary to mention it here.

DR. R. P. DUBE (Madhya Pradesh): What is the present law?

MR. DEPUTY CHAIRMAN: In a joint family property as soon as the

eldest member becomes a major, automatically he becomes the manager of the property.

DR. R. P. DUBE: What happens to the court guardian?

MR. DEPUTY CHAIRMAN: He goes out of the scene. (*Interruptions.*)

SHRI H. C. DASAPPA: It would have made the position more clear if we had stated it specifically. That way, there is no necessity for this clause 12 either. That is the present law. Why should they have this clause 12 at all? I would like an explanation from the Minister why there should have been this clause 12 at all. What I say is it is a corollary. When you choose to make a mention as in clause 12 you must also make mention of the consequences that flow, that is the contingency of one of the minors becoming a major. That would have been a complete thing. In fact, I was not dealing very much with the question of property. I was referring to the person of the minor in a joint family. It may be that the *karta* or the manager may choose to exercise the rights not only over the property but also over the person of the minor. It is all right when it is the case of father. But when the father is not there, then very often the question arises as to who should have the custody of the minors. I say it should be open for the mother to have the custody of the children and I hope the provisions here with regard to the rights of a mother to have the custody of the children would apply to minors in a coparcenary also. I want it to be made quite clear. I am sorry I may not have carefully read the details but I feel that this does not purport to deal with the case of custody of minors in a coparcenary. I wish that this law should provide for that also. It is very necessary.

SHRI H. V. PATASKAR: May I refer my hon. friend to clause 5 which refers to person as well as property?

MR. DEPUTY CHAIRMAN: Yes the mother is the guardian. Clauses 10, 11 and 12 refer only to property

SHRI H. C. DASAPPA: I am sorry but to me it does not seem to be clear. If it is the interpretation that in the case of coparceners where there are minors the guardian shall be the mother in the absence of the father, that must be well understood and there should be no dispute about that point. Because tomorrow.....

SHRI H. V. PATASKAR: It is quite clear there.

SHRI H. C. DASAPPA: It might come into conflict with the rights of *karta* or the manager of a joint family property when he claims not only to be the guardian of the property but also of the person of the coparceners.

MR. DEPUTY CHAIRMAN: Even now, can the manager of a family sustain a petition in a court of law as against the mother? Can he maintain a petition for the custody of the minor?

SHRI H. C. DASAPPA: I do not know. I am not very sure, I have to brush up my knowledge of law. Under coparcenary law they can go out and claim separate maintenance, if the custody of the minor is taken out of the *karta*.

MR. DEPUTY CHAIRMAN: Where is the question of maintenance?

SHRI H. C. DASAPPA: I am sorry, Sir. If for instance the mother is to have the custody of the children, then they have got to be provided for. I think the present law provides that where the mother has custody of the minor children separately she can claim separate maintenance in order to rear up these children on proper lines. That is a thing which I can not be sure of, but I think this is a thing which the hon. Minister may look into, for instance under clause 5(a). Under clause 5(a), as my friend, Mr. Kishen Chand, said, so

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long as the father and mother are friendly, the issue itself is not there; it does not present itself; there is no problem. The insistence upon giving the custody of the minor children—whether up to five years or three years of whatever it is—to the mother only arises when the father and the mother do not pull on very well together. Now, I ask the hon. Minister to tell me whether in such a case where the father has given up or abandoned his wife and the wife has got custody of the minor children younger than five years, and be it noted that the mother's custody cannot be disputed, whether it does not create an obligation on the part of the father to provide for the minor child or minor children who are in the possession of the mother. I take it that it must provide for maintenance.

SHRI H. V. PATASKAR: Maintenance is a separate thing.

MR. DEPUTY CHAIRMAN: This provides for exceptional cases.

SHRI H. C. DASAPPA: I am sorry, I have a different motion on legislating in this matter. You cannot saddle the responsibility of having the custody of the minor children on the mother and not provide for it.

SHRI H. V. PATASKAR: Then, in that case the mother can proceed against the father for maintenance. It cannot come under this Bill.

SHRI H. C. DASAPPA: Then we must go to the question of maintenance.

SHRI H. P. SAKSENA: Of course.

SHRI H. C. DASAPPA: My hon. friend says, "Of course".

MR. DEPUTY CHAIRMAN: Suppose there is a divorce and the question of guardianship comes in.

SHRI H. C. DASAPPA: I am not referring to divorce, Sir.

MR. DEPUTY CHAIRMAN: It is only for such cases that this section provides.

SHRI H. C. DASAPPA: That is why I said again and again and at every step you will find that it is far better to have one consolidated code. Whenever we have the case of a mother having the minor's custody, we have got to go to some other chapter on maintenance, and look up the law; for example, are the wife and the minor children in her custody entitled to maintenance?

MR. DEPUTY CHAIRMAN: You may be sure that when all these Acts are passed subsequently there will be another Bill consolidating them wherein certain changes will have to be made.

SHRI H. V. PATASKAR: I may inform hon. Members that it has been decided by Government that as soon as all the parts of this Hindu Code are passed, we will try to put them in one code and whatever is necessary in order to make the different parts conform with each other will be done.

DR. R. P. DUBE: When?

SHRI H. V. PATASKAR: The whole thing depends upon you; as soon as you enable the Government to go through these.

SHRI H. C. DASAPPA: That is excellent.

SHRI H. V. PATASKAR: In fact, all our efforts are directed towards that.

DR. R. P. DUBE: Will it happen in the life time of this Parliament?

SHRI H. V. PATASKAR: It depends upon you, not upon the Government. The Government is in your hands.

SHRI H. C. DASAPPA: So, Sir, gradually the hon. the Law Minister is coming to this inescapable point of view that we must have a consolidated code.

SHRI H. P. SAKSENA: It is essential to go still further to the stage where we have got a code which is applicable to all the citizens of India.

SHRI H. V. PATASKAR: The next stage will be that.

SHRI H. C. DASAPPA: That is the next stage. Now, Sir, let me proceed to certain other points here. With regard to this clause 5(a) there has been a lot of discussion, that is, for how long could a minor be in the custody of the mother, whether it should be five years or seven years or longer still, twelve years. And then again whether there should be any difference between a minor boy and a minor girl. I think that this five year period is a good enough period so far as the boys are concerned for this very simple reason that we have got to think of their education and various things. And I think it is the father who can really take good care of his sons after five years. But so far as girls are concerned—I am afraid the lady Members have all disappeared. I wanted to say something pleasing to them—I am of opinion that so long as she is a minor—whether she is under five years or twelve years or above five years or twelve years—she must be in the custody of her mother .....

SHRI H. P. SAKSENA: And unmarried too, you mean?

SHRI H. C. DASAPPA: Obviously. The moment she marries, the husband gets the claim, I am not disputing that point. My point is that the minor girl must be in the custody of the mother and it will be all to her advantage. I see that there are certain amendments saying that in the case of an unmarried girl, she must be in the custody of the mother till she is 12 years old, some say till 7 years, others say till puberty. But my case is that the necessity for the girl to remain in the custody of the mother becomes infinitely greater after puberty, after she is 12, than before that. It would be very wrong for us to leave the unmarried minor girl with the father who has got thousand pre-occupations and has possibly so many things to pay attention to, especially when he is not living with his wife. So, it would be very unfair to bring this minor girl in the house of the father or leave her with the father when he is unable to look after the girl. Therefore, I would suggest an amendment to the effect that the minor girl, till she is married, must be in the custody of the mother. Now, I am not making a very extravagant statement. Even now it is more or less like that. Sir, let us take our own daily lives. Who brings up the children, in fact, whether boys or girls?

MR. DEPUTY CHAIRMAN: A lady Member is coming!

(Shrimati Lakshmi Menon entered the Chamber.)

SHRI H. C. DASAPPA: The lady Members do not know what exactly is to their own advantage. What I say is that even today whether it is boys or girls in a family, it is the mother who brings them up—even grown-ups. That is all within our experience and I am sure it is not going to be denied by hon. Members. But I say this that in the case of a girl it is but proper that she must remain in the custody of the mother until she is married. There is absolutely no doubt that that would be the best in the circumstances.

SHRI GULSHER AHMED (Vindhya Pradesh): What about the boys? Tell us something about the boys.

SHRI H. C. DASAPPA: I would also add that I am not altogether alone in this viewpoint. My hon. friend will feel greatly happy to see this reference in the Muslim law. Under Shafi law, Sir, you find

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this thing relating to guardianship. It has been observed under Shafi law that the mother is entitled to the custody of her daughter, even after she has attained puberty, and until she is married. So we have got a very strong support to our view. And I am sure the Muslim law is a law which very sensible people must have enacted, and I think, we had better accept it. I think, Sir, an amendment to this effect would be very helpful here.

SHRI GULSHER AHMED: What about the boys? You have not said anything.

SHRI H. C. DASAPPA: I do not mind the present clause remaining so far as the boys are concerned.

Then, Sir, I find that the proviso under clause 5 has been animadverted on by Mr. Naidu and by some other hon. friends, including Mrs. Parvathi Krishnan. The proviso reads as follows:—

> "Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section, if he has ceased to be a Hindu....."

Sir, there is an attempt to have this clause deleted on the specious plea that we are a secular State, and that the change of religion on the part of either of the parents, the father or the mother, should not be visited with the change in guardianship. I think that practical experience and wisdom can only dictate one course, and that is this. When a person changes his religion, he very often does it for various reasons, and not necessarily because he feels an over-powering desire to adopt a new faith in preference to his own. He may be getting other advantages from his new faith. That thing has not to be lost sight of. And to shut our eyes to that is to shut our eyes to actual realities and actual facts. Now, if a father changes his faith for any such reason, would it be right for us to see that his minor children, who may have got a lot of relations, are torn away from his entire society and brought up in a foreign faith? Would that be right, correct and fair to the minors? That is the point which we have got to consider. Now, supposing the mother is also alive, and the child is six years old. The mother is there in the old faith. The child was there with her till its fifth year. Now, would it be right for us to say that merely because the father has chosen to abandon his wife and adopted a different faith, this child, with all its brothers and other relations—there may be elder brothers, there may be elder sisters, there may be younger brothers and younger sisters, there may be uncles and so on and so forth—should be torn away from all its family circles, and should be transplanted in some foreign faith?

SHRI P. S. RAJAGOPAL NAIDU: What does the Special Marriage Act provide?

SHRI H. C. DASAPPA: The Special Marriage Act does not deal with the religion of the children.

DR. W. S. BARLINGAY: May I point out to the hon. Member that there are two different provisions in this Bill? That distinction has got to be made.

SHRI H. C. DASAPPA: Yes, yes, I will come to that. I have not lost sight of that fact. I am now discussing both clause 5(*a*) and clause 9. They are inter-related.

DR. W. S. BARLINGAY: They are not necessarily inter-related. That is the point.

SHRI H. C. DASAPPA: I admit that they are not necessarily inter-related. But here I am dealing with both the clauses together. I do not want to deal with clause 9 separately. If he ceases to be a Hindu, should he continue as guardian? That is the question. (*Interruption.*) Sir, I do not dispute the fact that when a court

appoints a guardian, it can appoint anybody as a guardian. The powers of the court to appoint a court guardian are not in the least circumscribed. I do not deny that. But the point is whether the hon. Minister would like that the moment he ceases to be a Hindu, he must rush to the court and get himself appointed as a guardian. Is that the idea? Or is it the idea that he loses his right of natural guardianship, and along with it, any right to be appointed as a court guardian? Now, what is the meaning here in the context? Is it not that the moment he changes his religion, he ceases to be a natural guardian, and normally speaking, loses the right of guardianship in general? (*Interruption.*) I know that these are all simple axiomatic points in law. I have already said that nothing prevents any man of any faith from being appointed as a court guardian to a minor. He may be a Hindu; he may be a Parsi, or he may be a Muslim. But here the point is this. When he ceases to be a natural guardian, the next in succession to be appointed.....

MR. DEPUTY CHAIRMAN: The wording that has been provided here is that "no person shall be entitled to act as the natural guardian of a minor." So the court will interpret it in a proper way. The court will not appoint him as a guardian.

SHRI H. C. DASAPPA: But the hon. Law Minister thinks that it only prevents him from acting as a natural guardian, thereby suggesting that he may be appointed by the court as the guardian. That is what the Law Minister thinks. I am more inclined to accept your ruling, Sir. It is, therefore, that I say that the clause should remain as it is, and we need not become *ultra* radical and try to find something very retrogressive in this particular suggestion.

MR. DEPUTY CHAIRMAN: So you are not converted by Mrs. Parvathi Krishnan.

SHRI H. C. DASAPPA: It is rather difficult. Even her own father, I do not think, has been able to convert her, and much less a brother like me.

Now, Sir, let me deal with clause 9 which says: "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....." It is a very well-drafted and a very cautiously-drafted clause. They have wisely used the words "the religion to which the father belonged at the time of the minor's birth". And I have already said that the proviso to clause 5 applies with even greater force to this clause which says that it shall be the duty of the guardian, whoever he may be and of whatever faith he may be, to bring up the child in the faith of the father at the time of the minor's birth. And that is a very good point. Let us take a concrete instance. For some reason or other the court appoints a man of a different faith, a Muslim or a Christian or somebody else, as the guardian of the minor, and he is entrusted with the custody of the property as well as the person of the minor. In what faith is the child to be brought up? That is the question I ask. What should be the faith or should there be no faith? Or should it be a case of agnosticism? Sir, I may belong to a more conservative school, but I do believe that a certain amount of religious training, background and education in the catholic sense, in the broadest sense, is absolutely necessary, a thing which is greatly missing in our whole educational system. I have not the slightest doubt about it. The fundamental principle by which we are proceeding here is that the guardian should exercise the same care, the same attention, as the father or the natural guardian. In such a case, does it not put an obligation on the guardian or does it not make it incumbent on him to bring up the child in the faith to which it belonged at the time of its birth? I am sorry I cannot subscribe to the view of those friends who think that proviso (a) of clause 5 and clause 9 are incompatible with modern conceptions, that they are retrogressive

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in character. In my view, the framers of this Bill have not only been very realistic but they have taken the wisest and the most correct step in the circumstances of the case.

Then I come to clause 7, a very important one, where for some reason or another, the Select Committee has omitted sub-clause (2) (*b*) of the original Bill.

MR. DEPUTY CHAIRMAN: The reason has been stated.

> "They have, however, omitted sub-clause (2) (*b*), as its retention may create difficulties in the light of special laws in force in certain States relating to leases of property. In the opinion of the Joint Committee, the omission of sub-clause (2) (*b*) will not be material in view of the general provisions contained in sub-clause (1)."

SHRI H. C. DASAPPA: I am very grateful to the Chair for pointing this out. It is worth while reading the original sub-clause (2) (b). It reads:

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

I am entirely in agreement with my friend, Mr. Naidu, in saying that it is a great mistake to omit this clause from the Bill. Sir, The Guardians and Wards Act of 1929 provides:

> "Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the court—
>
> (a) mortgage or charge, or transfer by sale, gift,.....
>
> (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor."

I take it that this Act will be in complete force and effective and operative, and now only with regard to the Hindus who form the vast population of this country, which includes Jains, Buddhists, Sikhs, and so on, this only safeguard in respect of the property of a minor is being removed. Hardly any reason has been given for it.

MR. DEPUTY CHAIRMAN: The reason is there. Even under the Guardians and Wards Act any lease is governed by the particular Rent Control Act that is prevalent and different States have got different provisions.

SHRI H. C. DASAPPA: I want to know from the hon. the Law Minister whether he can prevent me from making a 99 year lease of the property of a minor, now that he has removed the only safeguard?

SHRI H. V. PATASKAR: Even at the time of making my motion this morning, I said that clause 7 (2) (b) had been omitted for the simple reason that there are different laws in respect of lease in different States. For instance, I gave the specific case of Bombay where you cannot have a lease of agricultural land for less than ten years. Then I pointed out that in Punjab also there are certain similar laws. Therefore, it will not be proper and desirable, from the point of view of the better management of the property of a minor, that we should put any restriction on the right to lease, because it will be governed by the different laws existing in different States. Therefore, we thought that the purpose would be served by having (a) only, which says: "The natural guardian shall not, without the previous permission of the Court mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor." So far as the question of lease is concerned, as it is difficult to find out one common formula which

will apply to all cases, it has been thought that this small latitude should be left.

MR. DEPUTY CHAIRMAN: Lease is governed by the Transfer of Property Act. What I think, Mr. Pataskar, is that the different Rent Control Acts do not allow any lease of property without the permission of the Rent Controller.

SHRI H. C. DASAPPA: That is with regard to house property.

SHRI H. V. PATASKAR: Even with regard to agricultural land.

SHRI H. C. DASAPPA: One type is agricultural property and the other is house property. There may be various pieces of legislation in the various States no doubt. That is true, but we do not know whether every State nas provided laws to deal with this subject in full providing for all contingencies. There may be some differences. Let me explain to the hon. Minister. The tendency in the States is that the leases should not be short-term leases, that there should be some security of tenure. That is the tendency. And if the lessee fulfils the terms of the lease then he must not be disturbed from the tenure thereafter, and the lease must be made renewable and so on. If anything, these leases have been in favour of the lessee and not so much in favour of the landlords. That is a well-known thing. If that is so, then my point is, why should we take off this one safeguard that was there in the interest of the minor and allow room for speculations and subsequent litigation which would arise by the action of the guardian, if he chooses to create long-term leases, say for 20 years and more. Is that right? (*Interruption.*) There are cases where whatever the lease may be, whether from year to year or for a fixed period, if the landlord or the owner himself chooses to cultivate it or reside in a building then the lease is terminable. If that is so, then why should we saddle the poor minor with leases that may go on for 30 or 40 years and.....

SHRI H. V. PATASKAR: May I invite the attention of my hon. friend to the fact that sub-clause (2) follows sub-clause (1) which gives the guardian certain power to do certain acts which are necessary or reasonable and proper for the benefit of the minor? It authorises him to do only such acts as are necessary or reasonable and proper for the benefit of the minor. And in sub-clause (2) we proceed to lay down certain things which he should not do and this is the overriding clause and so he should not give a lease for 30 or 40 years. The action should be reasonable and for the benefit of the minor.

SHRI H. C. DASAPPA: I hope the hon. Minister will give us the credit of having read the Bill. If that be so, then why not have only one simple clause to say that the guardian should do everything for the benefit of the minor, everything that is necessary, that is reasonable and proper? Will that be sufficient? Is that sufficient to prevent a lease being given for 10 years or 20 years? There has to be some period put down. There is this great lacuna and I do hope that the hon. Minister will incorporate the same provision that obtains in the Guardians and Wards Act here also.

SHRI H. V. PATASKAR: What I pointed out was not my view only, but the Select Committee have expressed it in their report and in their opinion the omission of sub-clause (2) (b) will not be material, in view of the general provision contained in sub-clause (1). Of course, it is open to this House to change it.

SHRI H. C. DASAPPA: May I most humbly and most respectfully.....

MR. DEPUTY CHAIRMAN: What is the provision in sub-clause (1)?

SHRI H. C. DASAPPA: That the guardian must do all acts that are necessary or reasonable and proper for the benefit of the minor. And the hon. Minister says that the general provision is enough to safeguard the interest of the minor.

SHRI H. V. PATASKAR: Particularly in view of the fact that the laws of leases are different in the different States.

SHRI H. C. DASAPPA: I am afraid, Sir, that very few can agree with the hon. Minister or the hon. Members who were on the Select Committee in this respect.

MR. DEPUTY CHAIRMAN: Can he give a permanent lease, say for 99 years?

SHRI H. V. PATASKAR: He cannot. What he is expected to do is something in order to benefit the minor, the acts must be necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate. Of course, I admit it is only a general provision. And then specifically, he should be prevented from doing certain things and therefore, in sub-clause (2) we say: "The natural guardian shall not" do certain things. That is the counterpart of the other.

SHRI H. C. DASAPPA: And so .....

SHRI H. V. PATASKAR: Just let me have two minutes, I am trying to clear the point. Sub-clause (2) says specifically what the natural guardian shall not do without the previous permission of the Court—"mortgage or charge, or transfer by sale" etc., etc. But when we came to sub-clause 2(b) we found that it was impossible to retain the previous provision that he shall not "lease any part of such property for a term exceeding five years". Take the State of Bombay, for instance. Suppose he is a natural guardian and then you can by this Act prevent him from leasing the land for more than 5 years, and that.....

MR. DEPUTY CHAIRMAN: But in some States the law is, if the lease is for more than 5 years, then no tenant can be disturbed afterwards.

SHRI H. V. PATASKAR: That is what I understand.

MR. DEPUTY CHAIRMAN: And unless you provide for such a contingency, you may be placing the minor in an awkward position. And that is what Mr. Dasappa asks for.

SHRI H. C. DASAPPA: May I humbly.....

SHRI P. S. RAJAGOPAL NAIDU: The Deputy Chairman agrees with you.

SHRI H. C. DASAPPA: Yes, that is what I am glad to see.

MR. DEPUTY CHAIRMAN: But does not "lease" come under "transfer"?

SHRI H. C. DASAPPA: Sir, no word has created more havoc than this word "otherwize" For that reason.....

SHRI H. V. PATASKAR: I am not arguing here as an advocate, I was only trying to show what was agreed to by the Select Committee when their attention was drawn to this. We wanted to proceed and lay down the positive injunction as to what the natural guardian should not do. We examined the Bill and it said that he should not "lease any part of such property for a term exceeding five years". Then it was brought to our notice that particularly in the State of Bombay where the period is ten years there would be difficulties. Suppose the clause remained as it was. Then the property cannot be leased out. Then suppose there is no other way in which the minor's interest can be saved, except by leasing out a part of the property. There will be difficulty. And these laws differ from State to State and.....

MR. DEPUTY CHAIRMAN: If you take out that sub-clause as you have done, then it means that the guardian can lease it?

SHRI H. V. PATASKAR: He can, but not in such a way as will not be in the interest of the minor or in a way that is not "reasonable and proper for the benefit of the minor."

MR. DEPUTY CHAIRMAN: But that is the general clause.

SHRI H. V. PATASKAR: But as I said the lease laws differ from State to State and they may be changed from time to time also.

MR. DEPUTY CHAIRMAN: You may re-examine the question.

SHRI H. C. DASAPPA: Sir, I would humbly submit that as per your suggestion, this matter may be re-examined. I have no doubt in my mind that the elimination of this provision is going to land us in considerable trouble and will affect the interest of the minor adversely.

Let me, first of all, answer this point about the Bombay law. The hon. Minister says that in Bombay no lease can be granted for less than ten years. Then am I to understand that in Bombay all landlords are bound to lease out their lands for at least ten years?

SHRI H. V. PATASKAR: Yes.

SHRI H. C. DASAPPA: That means that the landlord cannot cultivate it himself?

SHRI H. V. PATASKAR: Himself cultivating the land is quite different.

SHRI H. C. DASAPPA: Then when the minor becomes the major, can he not cultivate the land?

SHRI H. V. PATASKAR: Supposing the father is the guardian and the property belongs to the guardian. It may be that it was inherited from the grandfather, living some 200 miles off. If it is family property, there is no question. But if it is not, you penalise him for not cultivating it.

SHRI H. C. DASAPPA: Let me answer the first point. When the minor becomes the major, do you want him to cultivate the land or not? Are you going to prevent him from cultivating his own land?

SHRI R. C. GUPTA: But agricultural land in any State is governed by the State law and not by the Central law.

MR. DEPUTY CHAIRMAN: As far as the minor is concerned, it is this law which will have the over-riding power.

SHRI H. C. DASAPPA: Sir, these are matters which require a considerable amount of thinking and re-thinking and examining, but I am afraid they have been dealt with in a very light-hearted and cavalier fashion.

SHRI H. V. PATASKAR: No, no.

SHRI H. C. DASAPPA: Problems arise, the moment you say that it is open to the natural guardian to lease out as long as he pleases. The Law Minister has said that in Bombay there is a piece of legislation by which you cannot lease out land for less than ten years. That in fact, invites the natural guardian to lease the land for over ten years. Is that not so? He can lease it out for 20 or 25 years, and he can do so for longer periods which can enable the lessee to go on from generation to generation and the minor and the minor's heirs and successors have to be bound by it and this is a law that can create a situation so hopeless and unreasonable as that.

Then, Sir, I ask the other question.

MR. DEPUTY CHAIRMAN: Anyway, it will be a voidable transaction under sub-clause (3).

SHRI H. C. DASAPPA: I will answer that point also, Sir. It is very easy. Here is a poor minor who has got to face a lease of so many years and he has got to have it declared voidable. That means he has got to go to a court. What a beautiful piece of legislation we are enacting in the interests of the minor, to drive those minors to the courts the moment they become majors. I am sorry, Sir, I cannot agree to such an enactment.

He did not answer the other point. If a minor has got his property and

[Shri H. C. Dasappa.]

he chooses to till the land, what happens?

SHRI B. K. P. SINHA (Bihar): It will be voidable-contravention of sub-clause (1) or (2).

SHRI H. C. DASAPPA: Sub-clause (2) (b) is not there.

SHRI B. K. P. SINHA: Mr. Deputy Chairman, I will relate one example. I have the same fears as Mr. Dasappa. In one of the big estates in Bihar—the proprietor was a minor and the manager was an Englishman—valuable mining properties were leased for 999 years at a very small rent to some English firms. That lease holds good even now.

MR. DEPUTY CHAIRMAN: The Government would have taken over the properties under the Zamindari Abolition.

SHRI B. K. P. SINHA: No, Sir, the lease holds good. It is for 999 years.

SHRI P. S. RAJAGOPAL NAIDU: Even Governments will not last for 999 years.

SHRI B. K. P. SINHA: The mines are with the mine-owners.

SHRI RAJENDRA PRATAP SINHA: I will just support Mr. Dasappa. In Bihar, if you give agricultural land even for one year, it would be impossible to take back from the tenant.

SHRI H. C. DASAPPA: I think, Mr. Sinha, the Chair knows this fact very well. Once you give possession of lands, it is a hard job to get it back even if the lease be for a year. That is a different point.

I would ask the hon. Minister another question. Suppose I am the minor and I have got to till the soil myself as soon as I become a major. If, according to the Minister, there should be an indefinite lease or a long lease, what will be the position of the minor?

SHRI H. V. PATASKAR: He can revoke it.

SHRI H. C. DASAPPA: How can he?

SHRI H. V. PATASKAR: Sub-clause (3).

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

MR. DEPUTY CHAIRMAN: You want him to go to court.

SHRI H. C. DASAPPA: He wants me to go to court with a very doubtful claim because sub-clause (2) (b) has been removed and the courts will interpret that the idea of removing this sub-clause (2) (b) was to enable the natural guardian to make over long leases. If there was any chance of this being declared voidable and the minor getting some relief, that is effectively neutralised by the deletion of that sub-clause.

I am afraid, Sir, that it does not need much argument to convince the hon. House that that sub-clause is very desirable and ought to have been retained.

Certain points were raised by my friend Mr. Naidu with regard to the phraseology of clause 11. That clause says that 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 think Dr. Barlingay also referred to it. I am afraid, Sir, I cannot entirely agree with that because the term "deal with" is a well known term in connection with the nature of right that a guardian has got to exercise, whether natural, testamentary or court guardian. That is the expression which I believe is to be found in the Guardians and Wards Act. I think section 27 has got identical phraseology. Section 27 of the Guardians and Wards Act says,

"A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence etc.....would deal with it". I am supporting the hon. Minister here, Sir. So, the expression, "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 etc.,....." need not create any difficulties in implementing the provisions of the Bill.

Some hon. Members wanted clause 10 to disappear but then I think Sir, you were good enough to state why it should be there. It should be there. Mr. Kishen Chand was referring to this idea which may I say is born of common sense namely, if the father and mother are to be the natural guardians, why not the father's father or the father's mother or the mother's father or mother's mother and so on? That is what he said but the answer is simple namely, even today, under the Hindu law, none other than the father and the mother are entitled to be natural guardians. The father is entitled to be the natural guardian. So, even according to the present Hindu law, the grand-father, either paternal or maternal, and the grandmother, paternal or maternal, are not entitled to be natural guardians.

SHRI RAJENDRA PRATAP SINHA: But they are *de facto* guardians.

SHRI H. C. DASAPPA: There are so many *de factos*.

SHRI RAJENDRA PRATAP SINHA: They are all removed now.

SHRI H. C. DASAPPA: The whole of the *de facto* guardians go. Therefore, it would be nothing very strange if we do not find mention of grandparents on either side as natural guardians here.

I think that some of these amendments had better be considered closely by the hon. Minister and be incorporated in the Bill.

I would beg of your good self to kindly permit some of us to send in some more amendments even though it is rather late. I would be extremely grateful.

SHRI S. N. DWIVEDY (Orissa): If you give an undertaking that you will not withdraw it.

MR. DEPUTY CHAIRMAN: If they are sent in by this evening, they will be accepted.

SHRI H. C. DASAPPA: Thank you, Sir.

I am grateful to the hon. Minister for having brought this Bill in this rather improved style and I hope it will have a safe passage.

SHRI R. C. GUPTA: This Bill is really a supplementary Bill to two others, Hindu Marriage Bill and the Hindu Intestate Succession Bill and, therefore, it was necessary for Government to bring forward such a measure.

The question is. Is there anything to be said with regard to the merits of some of the provisions contained in this Bill? Practically, every clause has been criticised in this House and I would not like to repeat what has been said already but there are some salient features on which I would like to speak a few words. The one point that has not been referred to so far by any hon. Member of this House is this. This Bill does not say what will happen if the natural guardians are available but if they are unfit to act as such or are unfit to be allowed to continue as natural guardians. This is a very important matter. Supposing, the father of a minor boy is ailing or is a profligate or is a person of loose character or is a gambler or is unfit otherwise. What will happen if such a father is alive? It is not definitely specified in the Bill that a person other than a natural guardian should be appointed in such a contingency. I hope the Law Minister would kindly make a note of this and satisfy the

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House as to what will happen in a case where a natural guardian is alive but he is unfit to continue to act as a natural guardian.

[THE VICE-CHAIRMAN, (SHRIMATI PARVATHI KRISHNAN) in the Chair.]

Will it be possible for any other relation to come forward and apply to the court for the appointment as a guardian? In my opinion there is a possibility of such an application being opposed on the ground that the natural guardian is alive and no other person can be appointed by the court. This is a point which I hope the hon. Minister will consider.

SHRI T. D. PUSTAKE (Madhya Bharat): There are the inherent rights of the court and in such cases the court can appoint one.

SHRI R. C. GUPTA: After the enactment of this Bill I think those inherent rights will not be recognised because this Bill gives a definite power to the father to act as a natural guardian so long as he is alive and the question is when the natural guardian is in existence whether a court guardian can be appointed.

SHRI H. C. DASAPPA: Section 19 of the Guradians and Wards Act does provide for this contingency, I think.

SHRI R. C. GUPTA: I wish the point to be cleared by the hon. Minister. After the passing of this Bill section 19 would have no application. That is my submission. My point is, if a natural guardian is alive and somehow or other he is incapable of acting as such and he is not a fit person to be allowed to continue as such, will the court be competent to appoint any other suitable person as a guardian?

SHRI H. V. PATASKAR: The court will be quite competent. What we are trying to do in this Bill is only to recognise the natural guardians which are a special feature of the Hindu law and this section in the Guardians and Wards Act is applicable to all people. There is nothing to affect that. What we are trying to do so far as this Bill is concerned is to recognise the fact that the father and the mother only can be the natural guardians of a minor Hindu, that it does not take away any of the father's right because even now if the father, the natural guardian, is considered unfit to act as such, then anybody else can be appointed by the court.

SHRI R. C GUPTA: I think this view is open to doubt because under this Bill a person who is the natural guardian has got certain definite powers. Now that man will be entitled to exercise those powers so long as he continues to be the natural guardian and he continues as such till his death.

SHRI T. D. PUSTAKE: Subject to the supervision of the court.

SHRI R. C. GUPTA: It does not seem to be the case so far as the provisions of the Bill are concerned. I hope the hon. Minister will consider it and if necessary some clause should be inserted in this Bill so that in a fit and proper case the court shall be competent to appoint some other person as a guardian under section 19 of the Guardians and Wards Act. This is what I suggest. Otherwise, there are bound to be tremendous difficulties in the way of suitable persons being appointed as guardians when the natural guardian is alive but unfit to act. That is one point.

The other point that has been contended for by several Members is with regard to sub-clause (a) in the proviso to clause 5 which reads: "Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section if he has ceased to be a Hindu". My impression is that this clause means one thing and one thing only, namely, that if the father has changed his religion, then he ceases to be a natural guardian and the court will be competent to appoint somebody else as a guardian and he naturally forfeits his

right of natural guardianship. This is the only disability attached to him in the matter of his acting as a natural guardian and if that be so the court will be competent in proper proceedings for the appointment of a guardian to appoint the same father who has changed his religion as a guardian and he will then be a guardian appointed by the court though he ceases to be a natural guardian. Therefore, this clause may be allowed to remain as it is as it does not altogether deprive the father who has changed his religion of the custody of his child or his property provided he is fit enough and the court considers him proper for such appointment.

Now along with this clause I may take up clause 9. Clause 9 as amended by the Select Committee seems to me to be quite in order. It does not conflict with the clause which I have just now dealt with. This clause emphasises that the minor child shall be brought up in the religion of his father on the date of the minor's birth. This is very proper that the guardian should bring him up in the religion of his birth. Now supposing a Christian is appointed the guardian of a minor girl and he is permitted to bring her up in any religion he likes, what will happen? Will it be proper for the court, will it be proper for the society to allow such a minor to be brought up in some other religion than the religion of the girl in which she was born. I think this clause 9 is all right except in respect of one point which requires consideration. This clause says "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". This leaves a *lacuna* and it is this. Supposing the minor at the time of his birth was a Hindu and subsequently his father changed his religion and became a Christian and then again he changed his religion what will happen? Will not the date on which the father gets re-converted to another religion be also an important date? This is a further point which I hope the hon. Minister for Law will take into consideration. Otherwise, I have no objection to the clause.

With regard to clause 7, sub-clause (2) there has been a great deal of argument as to what should be the powers of the natural guardian, whether permission of court for transfer of property is necessary or not and whether the natural guardian should be permitted to transfer property without any permission whatsoever. Argument has also been advanced that if a natural guardian is compelled to obtain permission from the court a great deal of time will be wasted, money will be expended and all that. It is true that a great deal of time will be spent and some money will also be spent, but will it not be in the interests of the minor that such an enquiry should be made and the guardian should be made to apply to the court and place his case before the impartial court as to why he wants to transfer the property, and if the verdict of the court is in favour of the transfer then only the transfer should be permitted. So, so far as this sub-clause (2) is concerned, I think it is a good and salutary clause and should be allowed to stand.

Then with regard to leases something has been said. I do not know, Sir, whether the words "transfer by sale, gift, exchange or otherwise" covers the case of a 'lease' or not. 'Lease' as defined in the Transfer of Property Act is a transfer of interest in an immovable property. This clause obviously should govern the case of leases also but Mr. Dasappa who spoke just before me has made out a strong point and he gave some reasons for it. I agree with his reasons. One of the reasons which he advanced was this. Sub-clause (2) (b) of clause 7 which was in the Bill as originally introduced has been omitted. It is likely to be argued before courts of law that the intention of the Legislature in deleting that clause was that leases should be excluded from the purview of this section. In other words, there should be no need to

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obtain permission for making leases. If the courts hold that this interpretation is correct, the result would not be very desirable. Leases may be for five years, for ten years or may be perpetual and a perpetual lease is as good a mortgage or sale. If a natural guardian is not authorised to mortgage the property why should he be authorised to lease the property permanently? The Law Minister while intervening in the debate said that in sub-clause (1) there were certain words which should protect the interests of the minor fully but I submit that those words are very general. If those words are enough to protect the interests of the minor, then sub-clause (2) becomes wholly unnecessary. To my mind those words are absolutely general and they will not protect the interests of the minor. Hence it seems to me essential that the provision which was there in the original Bill and which had been taken from the Guardians and Wards Act should find a place here also and that the rights of the minors' leases should be protected. The Joint Committee probably deleted this clause on the assumption that in the various States there are different laws. So far as the leases of immovable property of the nature of house property are concerned, they are governed by the Transfer of Property Act and the Transfer of Property Act is an all India Act. So far as the house property is concerned, the leases shall be governed by the Transfer of Property Act and the State Legislatures cannot interfere. So far as agricultural land is concerned, it is a matter falling within the jurisdiction of the States. Here what we are legislating may be said to be for both the Centre as well as for the States. So far as the house property is concerned, the Bombay regulations will not affect the matter but so far as agricultural land is concerned there will be two laws, the Central laws and the provincial laws and with regard to a particular matter within the competence of the Provincial Legislature, the laws of the State shall prevail as against the law of the Centre. Therefore, there will be no difficulty if we restore that clause with regard to leases.

With regard to clause 11, I have to say a few words. Mr. Kishen Chand and some other Members have suggested that the words "or deal with" in this clause should be deleted because a *de facto* guardian is being debarred from exercising all the powers that he has exercised so far. We should remember in this connection that the definition of the natural guardian is too much restricted. It is true, as has been mentioned by Mr. Dasappa, that under the present law the father and the mother are the only natural guardians, but when we are altering the entire law, is it not necessary to widen the scope and include more relations so that they may be taken into the category of natural guardians and the necessity of getting them appointed by a court of law obviated? It is, therefore, necessary in the first instance to widen the scope of natural guardians so as to include some other near relations who at present generally in 90 per cent of the cases act as *de facto* guardians. The question, therefore, is, either remove this clause altogether and let things remain as they are—then there will be no difficulty—or if you want to have this clause, if you want to do away with *de facto* guardians and at the same time you want to restrict the definition of the natural guardians to only father and mother, then it is absolutely essential that these words "or deal with" must go. Mr. Dasappa's argument that these words find a place in the Guardians and Wards Act does not take us far. Nobody questions the use of these words. The question is what is the meaning of these words. If these words are allowed to stand as they are, the effect would be that the *de facto* guardians—the nearest relations brother, uncle, grandfather or grandmother—will be deprived of the power of management. "Deal with" means and includes the management of the estate. Therefore, we should not take any hasty action in

this matter. It is true that the powers of a *de facto* guardian should be limited so far as the power of transfer is concerned, but so far as the power of management is concerned, it should not be restricted and these *de facto* guardians should be allowed to supervise the estates. If the idea is to do away with the *de facto* guardians, in that case the only alternative is to widen the scope of the definition of the natural guardian and include some more relations who could be called natural guardians. There is no other way out of this.

SHRI H. C. DASAPPA: In any case there is now the safety clause under 7(2). This is a point which you can make use of in your favour.

SHRI R. C. GUPTA: Thank you very much. I was just coming to it. Now, the natural guardian also will have to obtain permission for any transfer.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): Will you be taking more time?

SHRI R. C. GUPTA: Yes, Madam.

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN): 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 Thursday, the 31st March 1955.