April 1954 to January 1955. The number of candidates supplied in response to regional and All-India notification as well as through direct inter-Exchange clearance was 4,482 for 1953-54 and 4,183 for 1954-55 (Jan.)

**CENTRAL STORAGE DEPOT AT COCHIN**

346. SHRI M. VALIULLA: Will the Minister for FOOD AND AGRICULTURE be pleased to state:

(a) the capacity of the Central Storage Depot at Cochin; and

(b) the stock of foodgrains at present stored there?

THE MINISTER FOR FOOD AND AGRICULTURE (SHRI A. P. JAIN): (a) 21,000 tons.

(b) 18,810 tons of rice.

**ANIMAL HUSBANDRY**

347. SHRI M. VALIULLA: Will the Minister for FOOD AND AGRICULTURE be pleased to state:

(al the number of zones in which India has been divided by the Indian Council of Agricultural Research for the development of animal husbandry; and

(b) the places where the head offices of these zones are located?

THE MINISTER FOR FOOD AND AGRICULTURE (SHRI A. P. JAIN): (a) Four.

(b) There are no zonal offices apart from the headquarters of Indian Council of Agricultural Research in New Delhi.

## PAPER LAID ON THE TABLE

**ANNUAL REPORT OF INDIAN COUNCIL OF AGRICULTURAL RESEARCH FOR 1952-53**

THE DEPUTY MINISTER FOR FOOD AND AGRICULTURE (SHRI M. V. KRISHNAPPA): Sir, on behalf of Dr. Punjabrao S. Deshmukh, I beg to lay on the Table a copy of the Annual Report of the Indian Council of Agricultural Research for the year 1952-53. [Placed in Library. *See* No. S-94/55.J

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

SHRI R. C. GUPTA (Uttar Pradesh): Sir, I dealt with clause 11 of the Bill yesterday. I will now deal with clause 12 of the Bill. Clause 12 of the Bill reads: "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:

"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."

The hon. Minister while speaking on the Hindu Succession Bill the other day pointed out that the joint family is about to disappear. That was the observation which he made. And now, very rightly also, the impression created at least in my mind—and I think on the minds of other Members of this House also—was that he is in favour of the system of Daya-bhaga law as it is prevalent in Bengal. It is equally true that the joint Hindu family, as contemplated by the Mitak-shara law is in its last stages. It is breaking up. Attacks on this old system of law from all sides are visible. The trend of recent legislation is to break up altogether the joint Hindu family. The taxation laws that have been passed recently are also evidence of the fact that the joint Hindu family system is going to disappear in the very near future, but, in this Bill, clause 12. protects the joint Hindu family in

this manner that if a minor happens to be a member of a joint Hindu family then no person can be appointed as a guardian. I do not object to this clause if the joint Hindu family is to remain but, if the joint Hindu family is going to disappear, is it not proper to consider that the scope of the natural guardians as defined in clause 5 of the Bill be widened so as to include all the coparceners of a joint Hindu family amongst the likely guardians of a minor belonging to a joint Hindu family? If it is amended this way, the scope of the natural guardians is naturally widened and the coparceners of the same family will look after the interests of the minor in a better way 1 the guardians appointed by a court of law.

There is another point, Sir. If a guardian is appointed by a court, he has certain restricted powers. Clause 7 of this Bill gives wider powers to a natural guardian than to a guardian appointed by a court of law. Now, if a member of the coparcenary is entitled, by a suitable amendment, to be included in the definition of natu ral guardians, then it will not he necessary for a member of a joint Hindu family to apply to the court for appointment of a guardian. But at the same time by virtue of the fact that he becomes a natural guardian he will have to exercise only those powers which are conferr ed by this Bill under clause 5, that is, he will have to obtain permission of the court while disposing of the property by way of mortgage or charge, or transfer by sale, gift, exchange or otherwise. He will not be competent to transfer the property to any outsider without an express permission of a court of law. Now, Sir, my submission is: Why not adopt the same procedure here? Let it be quite clear that even in a joint Hindu family a member of a coparcenary body can *ipso facto* become a natural guardian but if he wants to dispose of the property he should obtain the permission as required by clause 5 of the Bill. There will be no difficulty so far as this matter is concerned and the rights of the minors would be very well protected. Therefore my suggestion is that this point may be considered by the hon. Minister that even in a joint Hindu family members of the coparcenary body should be entitled to become natural guardians but they must be subjected to the restrictions imposed by clause 5 of the Bill, that is, they should not be permitted to dispose of the minor's property without the express permission of the court. There is one other advantage in this. At the moment if a member of the coparcenary body or even the Karta of the joint Hindu family wants to dispose of the property then he can do so under the present law only for legal necessity. Now the intending purchaser is not always sure that in a suit filed by the minor after attaining majority the latter will not succeed in proving that the disposal of the property was not for legal necessity. He may succeed or may not succeed but the effect is that whenever the Karta of a family disposes of the property by certain alienation he does not get the full price. Therefore if the members of a coparcenary body are included in the •definition of "natural guardian" and they are subjected to the restriction that they will also have to obtain permission before they dispose of the property of the minor, then the property will fetch a higher value and the intending purchaser will easily purchase it because he will be sure he will not. have to face the risk of a litigation coming after a long number of years when the minor attains majority and files a suit. This is a suggestion, Sir, that I would like to make regarding this clause. If it is not considered necessary that this clause should be amended as I have suggested, then I would make another suggestion and it is this that the right of the High Court has been acceded to by the proviso to clause 12

[Shri R. C. Gupta.] according to which the High Court can appoint a guardian even in the case of a joint Hindu family. Why should not this right be given to other competent courts as defined in this Bill? Therefore, Sir, my suggestion is that if the word "ordinarily" be placed after the word "shall" in the third line of this clause 12—it will read thus: "no guardian shall ordinarily be appointed for the minor In respect of such undivided interest" —my purpose would be served to a certain extent, because in hard cases the civil courts would be competent to appoint a guardian even in a case of a joint Hindu family. It is known to everybody who has anything to do with the law courts that in numerous cases of bank deposits, deposits in Government Treasury or while dealing with withdrawal of the amounts due under policies of insurance, these difficulties come up every day and members of a joint Hindu family sometimes are driven to make false statements even before courts of law and declare that the particular member was not a member of the joint Hindu family or that that property did not belong to the joint Hindu family. Therefore it would be a very good thing if the word "ordinarily" be placed in line 3 of clause 12 so that the civil court in suitable and hard cases may also appoint guardians in a joint Hindu family governed by tine law of Mitakshara.

I have a little more to say with regard to clause 9. Clause 9 of the Bill reads: "It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion which the father belonged at the time of the minor's birth....." I dealt with this clause yesterday in my speech. I wish to point out to the hon. Minister that if a minor is a Hindu on the date when the father is converted to another faith, what will happen to that minor. On the date when the father ceases to be a Hindu and is converted either to Christianity or some other religion. if this clause is allowed to stand, mis boy may be brought up not as a Hindu but as a Christian or Jew, as the case may be, provided the father, when the boy was born, was a Christian or a Jew. There are numerous cases of this type that a man is a Christian on a particular date when the son was born but subsequently he became a Hindu and on the date of his conversion both the father and the son were all Hindu. Now if this clause is allow ed to remain, what will be the effect? The father may become a Christian but the boy was a Hindu on the date when the father was converted, he will be brought up as a Christian against his will. Of course if the son also wants to become a Christian, it does not matter; it is all right, but if.....

PANDIT S. S. N. TANKHA (Uttar Pradesh): May I interrupt my hon. friend to point out to him that the words here are "to bring up the minor in the religion to which the father belonged at the time of the minor's birth". The words being "at the time of the minor's birth" and therefore if at the time of the minor's birth the father was a Hindu, then the child must necessarily be brought up as a Hindu; but if he belonged to another religion then the child will have to be brought up in that other religion.

SHRI R. C. GUPTA: My friend has not probably grasped what I wish to say. Let me make my point clear by illustration. Supposing A was a Christian when the minor B was born. Now after the birth of minor B the whole family becomes Hindu and on the date of conversion of the father both of them were Hindus but the father has embraced Christianity and the son has not embraced Christianity. The effect of this clause, if allowed to stand, will be that the son against his will will be forcibly brought up as a Christian although he has not embraced Christianity and does not want to become a Christian but wants to

remain a Hindu. That is the difficulty which I wish to point out in the provision that the minor will be brought up in the religion to which the father belonged at the time of the minor's birth. On the date of the minor's birth he was a Christian and on the date of conversion he was a Hindu and therefore the real difficulty will remain and a Hindu will be forced to be brought up as a Christian against his will. Of course if he wants to become a Christian there is an end of the matter.

DR. R. P. DUBE (Madhya Pradesh) : What happens in a case like this? Supposing a man was a Hindu when a child was born and then he turned a Christian. Nov/ if the father is given the custody he will become a Christian.

SHRI R. C. GUPTA: No, no. I may also point out one other matter in this connection to the hon. Minister, namely, that under this Bill it is quite possible that a non-Hindu may be appointed as a guardian.

SHRIMATI LILAVATI MUNSHI (Bombay): May I point out in this connection Explanation (iii) in clause 2 which says "any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion". It is provided for there.

SHRI R. C. GUPTA: That does not serve the purpose.

SHRI B. K. P. SINHA (Bihar): That does not matter; that is a definition.

SHRI R. C. GUPTA: Now, I wish to place before the hon. Minister one other point for his consideration. Under this Bill a non-Hindu can be appointed as a guardian of a Hindu minor even if that minor is a girl. Will it not be proper that there should be a clause in this Bill that if a Hindu minor is to be brought up under the guardianship of somebody, then he must be brought up under a Hindu guardian? There is no dearth of suitable Hindu guardians. Therefore if a clause to this effect is provided in this Bill that if for a Hindu boy or a girl a guardian is to be appointed, he should be a Hindu and nobody else, I think that would serve the purpose to a very great extent and the rights of the minor will be better protected.

There is one other matter which requires a little more consideration. Yesterday I submitted that it is necessary that some amendment to clause 5 should be made. While I was speaking on this clause the hon. Minister intervened and said that under section 19 of the Guardians and Wards Act the natural guardian, whether mother or father, can be removed and any other suitable person appointed in her or his place. I have my own grave doubts on this matter and I will most respectfully submit with all humility that the hon. Minister should reconsider this position. He agrees with me that there are a number of cases in which it may be necessary not to allow a natural guardian to continue to act as natural guardian when it is not in the interests of the minor. There are a lot of cases in which the fattier is a profligate or a gambler and he should not be allowed to act as natural guardian. There is no difference in that matter; the hon. Minister entirely agrees with me. Supposing for a moment that his interpretation of law is correct that under section 19 of the Guardians and Wards Act it is competent for a court to remove the natural guardian and appoint another guardian, is it not proper that the point should be clarified and made absolutely clear beyond the pale of controversy? Otherwise, there would be lot of litigation and I submit again that there is likelihood of a contrary view being held by courts than what the hon. Minister's opinion is. I will give two reasons for that. Section 19 of the Guardians and Wards Act would apply if there is nothing inconsistent in this Bill. This Bill for the first time gives statutory recognition to the natural guardian. If that is so, then we

[Shri R. C. Gupta.] shall have to be governed by the provisions in this Bill so far as they are not inconsistent with the Guardians and Wards Act. If we turn to sub-clause (b) of clause 4 it says: "Any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions made in this Act." If there is any provision which is inconsistent with the provisions of section 19 of the Guardians and Wards Act, then the Guardians and Wards Act will not apply. My submission is that there is such a provision which is inconsistent with section 19 of the Guardians and Wards Act.

SHRI B. K. P. SINHA: Clause 13 is there by which the court is empowered to have a different guardian.

SHRI R. C. GUPTA: I will deal with that clause also. Clause 5 says that father and mother are the two natural guardians of the minor and then there is the proviso—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, or if he has completely and finally renounced the world by becoming a hermit or an ascetic. So this clause 5 specifies two disabilities and they are if the father has ceased to be a Hindu and secondly if he has become a hermit or an ascetic. These are the two legal disabilities under which a natural guardian shall not be allowed to remain as natural guardian. Therefore if you want to deprive the natural guardian of the custody of the minor in case the guardian is a profligate, y«u will have to provide for that contingency also. You have provided for two disabilities; you have not provided for the third disability. The law provides that the natural guardian's right of guardianship can only be taken away if these two disabilities are there; otherwise the natural guardian shall remain natural guardian.

SHRI H. C. DASAPPA (Mysore): But clause 13 applies not only to natural guardians but to all guardians, testamentary as well as court guardians.

SHRI R. C. GUPTA: I am coming to that. In my opinion clause 13 does not apply to natural guardians. It applies to others. There is no quarrel so far as the real object is concerned. The only point is whether there would be any difficulty in the interpretation and whether that would not be a difficult question of law to answer. These days we are faced with different interpretations by different courts. If there is even a likelihood that the High Courts may take different views on this question, then it is essential that the matter should be clarified and put beyond the pale of controversy. The legislators are blamed every day by the law courts that legislation is being made in such a way that it leaves scope for different interpretations. And here in this case it will not be an absurd accusation. It is an argument full of weight. The interpretation put by the hon. Minister may be correct but my submission is that it would be much better if this point is made clear.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR) : May I ask one question? What this Bill proposes to do is to recognise what is already in existence. So far as Hindus are concerned what we are trying to do is to codify and say that the natural guardians will be so and so. The natural guardians are there recognised under the Hindu law and there has been no difficulty found up till now in the matter of appointing any other suitable person as guard ian under the Guardians and Wards Act. We are not going to do any thing here by which those provisions will be affected. We only recog- nise what is already admitted and

What is already being administered as part of the present Hindu law. So I do not think there will be any difficulty.

SHRI R. C. GUPTA: I submit that the hon. Law Minister has not given due weight to what I have said and what I meant to say. I have already answered that objection of his. Up to this time, according to pure Hindu law, a father or mother is the natural guardian. But today we are giving statutory recognition to a natural guardian. We shall have to be governed in future by this Bill, so far as the provisions of this Bill are not inconsistent with the Guardians and Wards Act.

SHRI H. V. PATASKAR: Would you tell us that amongst Hindus there can be natural guardians or there cannot be?

SHRI M. GOVINDA REDDY (Mysore): Does this preclude the appointment of a court guardian?

SHRI R. C. GUPTA: Under the Hindu law as it stands today, there is no prohibition; a natural guardian if he is unfit, anybody else can be appointed. But today you are laying down these two sub-clauses in that proviso and you say that these are the two disabilities when a natural guardian shall not be allowed to act as a natural guardian. If you provide a third category also, then your point would be quite clear.

SHRI A. DHARAM DAS (Uttar Pradesh) : Is it likely to come into conflict with section 19 of the Guardians and Wards Act?

SHRI R. C. GUPTA: No, it will not, if you remove this proviso altogether. It might probably be more acceptable if section 19 of the Guardians and Wards Act is left intact. But if you provide these two disabilities and not the third one, then perhaps you will have to meet cogent arguments on behalf of the adversary. Is there any provision in this Bill that if the father or the mother is a profligate, is a person unfit to be appointed as a guardian, then he or she will cease to be a guardian. He will continue to be a natural guardian so long as he or she is alive.

SHRI H. C. DASAPPA: I shall only read this which is in clause 13:

> "..... no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor."

This is very specific.

SHRI R. C. GUPTA: I am just coming to clause 13 of the Bill. It does not solve this difficulty. I will just elaborate this point. Clause 13 to my mind applies to the case of a guardian to be appointed by a court of law.

SHRI H. V. PATASKAR: Is there any difficulty now according to the hon. Member? Now, there is a natural guardian, the father, according to Hindu law and supposing the father is a profligate, is there any difficulty?

SHRI R. C. GUPTA: No.

SHRI H. V. PATASKAR: Surely, there is no difficulty.

SHRI J. S. BISHT (Uttar Pradesh): If you remove sub-clause (b) o! clause 4, there will be no difficulty. (Interruptions.)

MR. CHAIRMAN: I say, let him continue. Please do not interrupt.

SHRI R. C. GUPTA: This is a point which has struck me and my views may be absolutely wrong, hopelessly wrong, but I put this point for your consideration with all the humility that I can command. Suppose if you go to a court of law, you find that there will be tremendous difficulty in getting another

[Shri R. C. Gupta.] person appointed in the face of a natural guardian who is absolutely unfit on all hands to continue to be a natural guardian what should you do? Should you not clarify what your real intention is?

Now, Sir, with regard to clause 13, I submit that it only applies to the case of a person when he is to be appointed as a guardian by court. It does not apply to a natural guardian. The words are:

> "In the appointment or declara tion of any person as guardian of a Hindu minor by a Court, the wel fare of the minor shall be the paramount consideration ....."

A natural guardian does not require to be appointed. He is there by virtue of the relationship, that is, he is a father or she is a mother. So, no question of appointment arises, no question of declaration arises, because by virtue of the law under clause 5, the father or the mother is the guardian. Therefore, this clause 13 presupposes this fact that in the appointment or the declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

SHRI P. S. RAJAGOPAL NAIDU (Madras): What about the declaration as between the father and the mother?

SHRI R. C. GUPTA: There is no question of declaration, apart from appointment.

SHRI H. C. DASAPPA: This clause 13 is a general clause.

SHRI R. C. GUPTA: A general clause will not exclude a specific clause, unless there is express pro vision excluding the specific clause. Now, here if you read the opening words: "In the appointment or declaration of any person as guardian of a Hindu minor by a court....."

SHRI H. C. DASAPPA: That is only the first part of the clause.

SHRI R. C. GUPTA: ".....the welfare of the minor shall be the paramount consideration and no per son shall be entitled to the guard ianship, ____"

SHRI H. C. DASAPPA: That is general.

SHRI R. C. GUPTA: Well, the court will decide this case on the ground:

> ".....and no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor."

That is, when the court is called upon to appoint a guardian, the court shall consider this question. If it is not that, it has got a specific and clear authority that in case a natural guardian is there by virtue of his relationship, the court will have to recognize him. The court will be called upon to consider this question only when the court is approached by a person when there is no natural guardian for the appointment.

This is all I wish to say, Sir.

SHRIMATI LILAVATI MUNSHI: Sir, I am glad that the Report of the Select Committee has come before the House and Government has ful filled its pledge of considering all the aspects of the Hindu Law .....

DR. SHRIMATI SEETA PARMA-NAND (Madhya Pradesh): Not yet.

SHRIMATI LILAVATI MUNSHI: This is one of the things. It is true that the Government has brought this Bill and in the Select Committee many improvements have been made. The principle underlying the Bill is more or less agreed to unanimously

in this House. So far as the principle is concerned, there is hardly any disunity. I am glad also that yesterday the hon. Minister said that, after the Bill is passed, he is going to bring a consolidated Bill and that is all to the good. Really we, women, were fighting for many things —fcr succession, for monogamy, divorce, guardianship, vote, equality, everything.

SHRI B. K. P. SINHA: We also fought for you.

SHRIMATI LILAVATI MUNSHI: We are thankful to you. Almost everything we have got—we have vote, equality of law, we have got guardianship .....

SHRI H. P. SAKSENA (Uttar Pradesh): Success on all fronts.

SHRIMATI LILAVATI MUNSHI: I am very glad that you appreciate it and so after some time we would not know what to fight for. Because we are really getting what is good for the society and good for women. First of all, I welcome the Bill and whatever has been said by the hon. Minister. And I shall now come to a few points which strike me, although most of tihem have been urged here by some Members or other. However, everyone has his or her point of view and here I should like to urge some of my points.

My first point, Sir, is about clause 1 which says that this law extends to the whole of India except the State of Jammu and Kashmir. The State of Jammu and Kashmir has been excluded from the operation of this Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, this Bill has not been made applicable to the Hindus residing in the State of Jammu and Kashmir, although it applies to all the Hindus in other parts of the world. Now, what I want to urge is that this is a benevolent measure, and the religion and the customs of the Hiadus residing in the State of Jammu and Kashmir are the same as those of the Hindus residing in India. Their problems are also more or less the same. And besides, this Bill is not a political Bill. I can understand the exclusion of the Hindus of Kashmir, if we are encroaching upon the rights of that State, or if we are taking away something from it But this is a social Bill; this is a benevolent Bill, and I therefore do not see any reason why the provisions of this Bill should not be extended to the State of Jammu and Kashmir. I am sure that even if you were to consult the Government of Jammu and Kashmir, they would accept this Bill gladly. In this connection, I may point out that only recently the scope of one Bill has been extended to the State of Jammu and Kashmir.

SHRI H. V. PATASKAR: As I explained yesterday, there is no harm in extending the scope of this Bill to the State of Jammu and Kashmir, but the difficulty is that we have no legislative capacity with regard to that State till today, under the President's Order, to legislate for that State. That is the only difficulty.

SHRIMATI LILAVATI MUNSHI: If we had the legislative capacity in regard to one matter, which we hava already.....

SHRI H. V. PATASKAR: That has been conceded to us under the agreement.

SHRIMATI LILAVATI MUNSHI: And besides, Sir, only recently, when the Harijan Bill went to the Select Committee, this same clause was there also, and I am happy to say that in the Select Committee this clause was removed, and Kashmir was included in the matter of application of the provisions of that Bill. It was argued that the benfits which were going to be enjoyed by the Harijans of India should also be enjoyed by the Harijans of Kashmir. I am sure that

[Shrimati Lilavati Munshi.] If you consult the Government of Jammu & Kashmir, they would raise no objection to this measure being applied to them. And to my mind, Sir, the scope of this Bill should be extended to the State of Jammu and Kashmir also. There is no reason why it should not be done.

Then, Sir, I come to clause 3. I am glad that the definition of "minor" has been given here once and for all, saying that "minor" means a person who has not completed the age of eighteen years. The age of minority is not 18 or 21 years, but it is 18 years, which, I think, will operate all through, if it is accepted here.

Now, Sir, the most contentious clause here is the clause about natural guardianship. I think there is much in what people say about the natural guardianship. I had myself been brought up by my grandmother, because my mother had died when I was only a child. I feel that there are innumerable children which are being brought up by their grandparents, by their uncles or by their other relations. I think there is much in what the people say that it is no use taking away the responsibility from everyone, because then they will not feel themselves responsible for the welfare of such children. Today, they feel, if there is a child in the house, that they must do something about it, otherwise the child will be an orphan. And I think there is much in what has been said about this matter. But then there is another thing also. It has been said that up to the age of 5 years the child shall remain in the custody of the mother, and after that, in the custody of the father. Sir, much has been said about this. But let us look at this point a little dispassionately. When the mother and the father, both, are alive, why does the question of custody arise at all? Because of various reasons. Supposing there is a divorce between the father and the mother, then one never Knows what happens. Maybe, one of the party may be the guilty party. Supposing the mother is the guilty party, then are you going to leave the child in the custody of the mother? In the same way, supposing the father is the guilty party, or supposing he is leading a life which is not good for a child to witness, are you going to make him the custodian of the child? To my mind, whoever is a fit person between the two should be given the custody of the child. All fathers are not good, and all mothers are not good. There are cases on both sides. That is how these quarrels arise. So. Sir, I do believe that if the mother is good, the custody of the girl at least should be with her up to the age of 12 years, or even up to the age of 18 years— the age of majority, because the father will not know what to do with the girl, as he has to go out to earn and to do so many other things. And the girl of five or six or ten years cannot be left alone in the house, or at the mercy of somebody. Or supposing the father is married again. Then there will be a step-mother who may ill-treat the child. All these are important human questions, and you cannot just dispose them off by saying that up to this age the custody of the child should be with the father or with the mother. And so, to my mind, this problem can be solved only if the custody of the child is given to the person who is a fit person, and that can be decided by the court or by the family, or by some one else. But I do not think that there should be a hard and fast rule in this respect. The matter should be decided in the interest of the child and not as this provision has been made.....

SHRI J. S. BISHT: This provision is only for natural guardians.

SHRIMATI LILAVATI MUNSHI: Yes, but the natural guardians are the father and the mother. So. I am talking about the father and tfie mother. And. if one of them is dead, then the question does not arise; whoever is the surviving person, will get the custody of the child.

SHRI H. V. PATASKAR: So long as the mother and the father are I there, unless they begin to fight and the question of custody comes over, this will not arise.

SHRIMATI LILAVATI MUNSHI: The law of divorce is coming into ' operation very shortly, and such I cases will increase. Formerly, it was only in the case of a quarrel, but now in the case of separation and in other cases, decisions will have to be taken.

Then, there is a definition given here of a *naishtika brahmachari* as a perpetual religious student. A perpetual religious student may be a *brahmachari* or may not be a *brahmachari.* One can become a perpetual religious student but still one can continue to be a *grihastha. Brahmachari* is quite different from perpetual religious student. Perhaps the Government could look into this again and give the correct translation for this term.

Then clause 7, sub-clause (2) says that '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.' Suppose the child is ill and good medical treatment will have to be given. Surely the property should be capable of being sold and the medical attendance given. I do not know why our lawyer friends here are more worried about the property of the minor than about his welfare. Most of the arguments here relate only to property. After all, if the child is well cared for and if it grows up into a healthy citizen, then whether it has property or not is a secondary question. That is how I look at the problem, but here our lawyer friends are worried only about the minor's property.

SHRI J. S. BISHT: In the courts the fight goes on only for the property

SHRI A. DHARAM DAS: The welfare of the child will be looked after according to the law applicable to him.

SHRIMATI LILAVATI MUNSHI: The welfare of the child seems to consist of only looking after its property and not his person. Suppose he gets into bad company. He can squander away the whole thing, or he can murder so many people. There the guardian is not responsible, but if he is ill and needs medical care, then the guardian cannot sell his property and do the needful for him. Anything might happen to the person of the minor, but only his property should not be sold.

SHRI H. V. PATASKAR: In that case, they will not leave anything for the minor.

SHRIMATI LILAVATI MUNSHI: If the father or the mother is going to do it, what sort of society you are going to create in our country? When we are giving a certain direction to the society, when we are creating a new society, we should seriously consider what sort of society we are creating. That is a big question into which I need not go now, but this is an aspect which should be considered in the interests of the minor. Suppose the minor has got to be educated or he is a brilliant boy and has to be sent abroad for studies, or he is ill and needs medical treatment. The property has to be sold. Some such provision should be there in the interests of the minor himself.

Then I come to clause 9 about which my hon. friend, Mr. Rajagopal Naidu, had some quarrel yesterday. Even our hon. Minister said that the term "religion" is a very vague term, because it is said here that the guardian of a Hindu minor will bring the minor up in the religion to which the father belonged at the time of the minor's birth and, in the case of an illegitimate child, in the religion to which the mother belonged at the time of the minor's birth. I do

[Shrimati Lilavati Munshi.] not see how the word 'religion' is a vague term. There are many definitions into which I need not go into now. We are certainly a secular State, but what is the meaning of a secular State? It is that each one is free to follow his own religion. When we are still not able to bring forward a common law for all the people of this country, when this Bill is only for one section of the community, it is only right that this clause should be there. After all this Bill is only for Hindus and so naturally this clause must be there. Why does a conversion take place? It is not always on account of conviction that the other religion is better. Sometimes, it is on account of temptation, sometimes on account of coercion and sometimes on account of force of circumstances. Indeed there are so many reasons why people change their religion. Do you mean to say that the illiterate people who get converted do it because they have real faith in the other religion? No, that is not the case. I do not know whether we are here to encourage conversion from one side to the other. We are here to protect the rights of the minor who is born of Hindu parents, and so, I think that this clause is very necessary. There is nothing vague about this and I think it should be retained. The previous speaker, Mr. Gupta, said that at the time of the birth of the minor, the father may be a Hindu and later on he may get converted and then become a Hindu again or something like that. In fact, I did not understand much of what he said. If we read clause 13 along with explanation (3) of clause 2, there is no difficulty. Besides, if at the time of the minor's birth he was a Hindu, then naturally the child is a Hindu. What is the difficulty about it? I really do not understand it.

PANDIT S. S. N. TANKHA: Supposing the father at the time of the minor's birth belonged to some other religion subsequently, after a time becomes a Hindu but then again later becomes a convert to some other religion, what is to happen in such a caser

MR. DEPUTY CHAIRMAN: It is not this law which will apply to that child. This is only a Hindu Minority and Guardianship Bill.

SHRIMATI LILAVATI MUNSHI: You cannot have it both ways. We should be fair to every community.

MR. DEPUTY CHAIRMAN: I think that in that case the general guardianship law will apply, not the Hindu Minority and Guardianship Bill.

SHRIMATI LILAVATI MUNSHI: There are so many other things which I would like to speak about, but I would leave them to my lawyer friends. I am not a lawyer. These are some of the thoughts which I wanted to share with the House. Thank you.

**श्री कन्हैयालाल दाँ० बैद्य** (मध्य भारत): उप-सभापति महोदय, मैं इस कानून का हृदय से समर्थन करता हूं, किन्तु कुछ बातें हैं जिन पर मैं इस समय कुछ कहना चाहूंगा।

हम धर्म-निरपेक्ष राज्य के पक्षपाती हैं। हमने एक ऐसा विधान बनाया है जिसके द्वारा हम एक वर्ग-विहीन और जाति-विहीन समाज की रचना करना चाहते हैं। अभी अभी राष्ट्रपति जी ने भी जब दोनों संसद्-सदनों के बीच उद्घाटन भाषण दिया था तो उसमें भी उन्होंने इस बात की व्याख्या की थी कि हम एक समाजवादी ढांचे की राज्यव्यवस्था की रचना करना चाहते हैं। यह कानून एक वर्गविशेष, हिन्दू माइनारिटी और गार्डियनशिप बिल, के नाम पर लाया जा रहा है । इसका अर्थ यह माना जा सकता है कि हम उस वर्ग-विहीन, जाति-विहीन समाज की रचना, वर्तमान् समाज के ढांचे को उसी रूप में कायम रख कर, करना चाहते हैं । उसी भावना को ध्यान में रखते हुए हम यह बिल ला रहे हैं ।

अभी माननीय श्री गुप्ता जब बोल रहे थे तो माननीय कानून मंत्री ने बीच में उठकर कुछ

धाराओं का स्पष्टीकरण करते हुए कहा था कि हिंदू ला और दूसरे कानूनों में नैचुरल गार्डियन की जो व्याख्या दी हुई हैं उसको इस कानून द्वारा स्वीकार करते हैं, अर्थात् इस कानून द्वारा हम कोई क्रांतिकारी परिवर्तन नहीं कर रहे हैं। समाज की आज की व्यवस्था में यदि हम वर्तमान कानूनों के द्वारा संविधान के आदर्शों को सामने रखते हुए उसी स्वरूप को कायम रखते हैं तो मैं नहीं समझ सकता कि संविधान में जिन उद्देश्यों का समावेश हमने किया हैं उन्हें क्या हम जिस प्रकार की सामाजिक क्रांति के उद्देश्य को ले कर चल रहे हैं उससे पूरा कर सकेंगे।

दूसरी बड़ी महत्व की बात जो इस सारे कानून को पढ़ने के बाद सामने आती हैं वह यह हैं कि हम सम्पत्ति का अधिकार उन्हीं के लिए मानते हैं जिनके पास सम्पत्ति हैं। केवल उन्हीं लोगों को रक्षण देने की व्यवस्था उसमें की गई हैं। आज इस देश में जो सम्पत्ति-विहीन व्यक्ति हैं उसके विषय में हमारी जो नीति हैं वह परम्परागत वही पुरानी नीति चली आ रही हैं। जिसके पास सम्पत्ति होगी उसको इस कानून द्वारा रक्षण प्राप्त करने की सुविधा होगी, न्यायालय में भी उसी व्यक्ति की बातों को सुनने के लिए गुंजाइश रहेगी, अन्यथा सम्पत्ति-विहीन आदमी कहीं का नहीं रहेगा क्योंकि उसको न माइनारिटी के नाम पर रक्षण मिलेगा, न उसका कोई गार्डियन होगा। जिस नैचुरल गार्डियन की व्याख्या इस कानून में की गई हैं वह भी उस बच्चे का रक्षण नहीं करेगा और सरकार भी उसके लिए कोई व्यवस्था नहीं करने जा रही हैं, और इससे तो मुझे ऐसा आभास होता हैं कि हम इस कानून द्वारा इस देश की जनता के लिए एक बड़ी विचित्र व्यवस्था करने जा रहे हैं।

**श्री एच० पी० सक्सेना** : माता-पिता तो गार्डियन की हैसियत से रक्षा करेंगे।

**श्री कन्हैयालाल वॉ० वैद्य** : करते ही वही हैं। लेकिन बहुत से माता-पिता ऐसे होते हैं जो अपने बच्चों को छोड़ कर चल देते हैं। देश के अन्दर लाखों और करोड़ों बच्चे आज ऐसे हैं जिनको माता-पिता के होते हुए भी रक्षण प्राप्त नहीं होता, वे पशुवत, जीवन व्यतीत करते हैं, न उनको शिक्षण प्राप्त होता हैं, न उनके स्वास्थ्य की ओर ध्यान दिया जाता हैं। छोटे छोटे होटलों में चाइल्ड लेबर के नाम पर बालकों का इतना अधिक शोषण होता हैं कि वे अकाल में अपना जीवन समाप्त कर देते हैं।

इस कानून में दो बातें दी हुई हैं कि माइनर बच्चे के पर्सन और सम्पत्ति दोनों के रक्षण की व्यवस्था हैं। मगर ऐसे माइनर बच्चे जो सम्पत्ति-विहीन हैं उनका रक्षण कैसे होगा, उनके रक्षण की कोई व्यवस्था कानून में नहीं हैं। सम्पत्ति हैं तो रक्षण हैं अन्यथा सम्पत्ति विहीन के लिए समाज के अन्दर कोई गुंजाइश नहीं हैं। फिर यह वैलफेयर राज्य कैसा? जब हम वैलफेयर राज्य की कल्पना करते हैं तो क्या हमारी सरकार की यह जिम्मेदारी नहीं होती कि वह सम्पत्ति विहीन लोगों के नाबालिग बच्चों को भी ध्यान में रख कर नैचुरल गार्डियन बनने का भार अपने ऊपर ले। इसलिए मैं यह सुझाव देना चाहूंगा कि नैचुरल गार्डियन की व्याख्या में इस बात का भी स्पष्टीकरण होना चाहिए। यदि आप हिन्दू समाज की व्यवस्था में कोई दखल नहीं देना चाहते और इस प्रकार टुकड़े टुकड़े में कानूनों को लाकर उसको एक नया स्वरूप दे देना चाहते हैं, किन्तु आमूल परिवर्तन कर के कोई क्रांतिकारी चीज नहीं करना चाहते हैं, तो मैं समझता हूं कि हिन्दू समाज की जो प्राचीन व्यवस्था चली आ रही हैं उससे न तो इस देश की जनता का कल्याण होने वाला हैं और न जिस नए जनकल्याणकारी राज्य की आप स्थापना करना चाहते हैं, उसके समाज के लिए ही यह सहायक सिद्ध होने वाला हैं। उसका आपको एक क्रान्तिकारी ढंग से इलाज करना चाहिए। वह इलाज यह हैं, जैसा कि सदन के बहुत से सदस्यों ने कहा हैं कि सारे देश के लिए एक सिविल कोड बनाया जाए और उसे समान रूप से सारे देश में लागू किया जाए। उसमें इस बात का प्रश्न नहीं होना चाहिए कि यह बच्चा हिन्दू हैं, मुसलमान हैं या ईसाई का बच्चा हैं या अमुक

[श्री कन्हैयालाल दाँ० वैद्य]

उसका विधाता होगा। जब हम सब इस देश के नागरिक हैं और सब ने संविधान को समान रूप से स्वीकार किया है, जब हम इस बात को मानते हैं, विश्वास रखते हैं कि देश में वर्गहीन समाज या जातिहीन समाज, क्लासलैस सोसाइटी हो तो हमें सारे देश के लिए एक सा कानून लाना चाहिए। जब हम समाजवादी ढंग के समाज की रचना करने जा रहे हैं तो हम क्यों सम्पत्ति वालों के लिए ही हर प्रकार के संरक्षण का प्रबन्ध कर रहे हैं। आज हम देखते हैं कि कानून द्वारा ही सम्पत्ति वालों को हर प्रकार का संरक्षण दिया जाता है। आज आप इस बिल द्वारा उन सम्पत्ति वाले माइनरों को संरक्षण दे रहे हैं जिनके पास काफी सम्पत्ति है किन्तु जिन माइनरों के पास सम्पत्ति नहीं है, उनका आप किसी प्रकार से भी संरक्षण नहीं कर रहे हैं। आज इस तरह के माइनरों का संरक्षण करने वाला कोई नहीं है, वे सब विधर्मियों के पंजों में जा रहे हैं।

आज देश के प्रान्तों की हालत को देखिए, वहां पर एक नई स्थिति का निर्माण हो रहा है। आप पाएंगे कि हमारे देश के ऐसे बच्चे जो कि समाज के अंग हैं, भुखमरी और गरीबी के कारण और अन्य अभावों के कारण धर्मपरिवर्तन करने के लिए विवश हो जाते हैं। हमारे देश में कई तरह के रीति-रिवाज प्रचलित हैं। हमारी सिक्यूलर राज्य की पॉलिसी शुद्ध होनी चाहिए और राष्ट्र-धर्म के आधार पर निर्धारित होनी चाहिए। हम किसी के धर्म में हस्तक्षेप न करें, इस तरह की नीति होनी चाहिए। वास्तव में हमारी व्यवस्था ऐसी होनी चाहिए कि किसी के धर्म में हस्तक्षेप न करते हुए देश में समान रूप से कानून बनाया जाए। किन्तु इस कानून में कहा गया है, जिस वक्त बच्चा पैदा होगा, उस समय उस बच्चे के पिता का जो धर्म होगा, वही उसका होगा। अगर पिता बाद को अपना धर्म परिवर्तन कर देता है तो भी उस बच्चे का उसी धर्म में पालन पोषण और रक्षण प्राप्त होगा जिस धर्म के अन्दर उस बच्चे का अपने पिता के धर्म में जन्म हुआ था। जब धर्म का रक्षण इस कानून के द्वारा आप कर रहे हैं तो आप किस तरह से समाजहीन और जातिहीन समाज की रचना कर सकते हैं। यह कानून हिन्दू समाज पर लागू होगा और हिन्दू समाज का इस देश में बहुमत है और उसी के ऊपर इस कानून का असर होने वाला है। आप ने संविधान में जिस समाज की रचना की कल्पना की है वह इस तरह के कानून से पूरी होने वाली नहीं है। जनता सात वर्षों से आप की ओर देख रही है और बड़ी आशा से यह उम्मीद लगाये है कि उस के कष्ट दूर हों। इस सदन में जब कोई बिल आता है, तो हम चर्चा करते हैं और पास कर देते हैं लेकिन हम दूसरे लोगों की चिन्ता नहीं करते। हम कानून बनाते समय उन लोगों का ध्यान नहीं रखते हैं जिनको अभी तक समाज ने छोड़ रखा है। इस कानून में बहुत सी कमियां हैं, मैं उन पर विस्तार से जाकर समय का अपव्यय नहीं करूंगा। किंतु इतना अवश्य कहना चाहूंगा कि इस बिल के सम्बन्ध में श्री दासप्पा और श्री गुप्ता जी ने जिन कमियों का उल्लेख किया है उन पर अवश्य ध्यान दिया जाना चाहिए। इस कानून के अनुसार यदि नाबालिग की स्थिति में कोई गार्डियन उसकी सम्पत्ति की व्यवस्था कर दे तो देश में इस समय जितने भी प्रचलित कानून हैं उनसे उनकी बहुत बड़ी दुर्भाग्यजनक स्थिति हो जाएगी। मैं माननीय मंत्री जी का ध्यान इस ओर आकर्षित करना चाहता हूं कि हम इस देश के अन्दर एक दो नहीं, सैकड़ों, हजारों तरह तरह के प्रचलित और नित्य नए कानून बनाते जा रहे हैं। इस विषय में संविधान का ध्यान रखते हुए हमारे देश के कुछ हाईकोर्ट के जजों और सुप्रीम कोर्ट के कुछ जजों ने इस बात का उल्लेख किया है कि हमें कानूनों को जल्द से परिवर्तित नहीं करना चाहिए, इस पर किसी तरह की रोक लगाई जानी चाहिए। हमारे देश में पहले से ही बहुत से कानून हैं, एक कानूनी गोरखधंधा बना हुआ है। अगर हम देश में छोटे छोटे और तरह तरह के कानून बना कर इस संख्या को और बढ़ा देंगे तो इससे देश का उत्थान होने वाला नहीं है। हमारे देश में वकीलों का स्टैंडर्ड वैसे ही अच्छा नहीं है। मैं यह मानता हूं कि वकील

वर्ग ने देश की आजादी के लिए हर तरह की कुर्बानी की, त्याग किया। मैं स्वयं वकील रह चुका हूं और वकीलों की दशा इस देश के अन्दर क्या है, उससे भली प्रकार अवगत हूं। अगर यह बिल पास हो जाएगा, तो इससे मुकदमेबाजी बढ़ जायेगी। मुकदमेबाजी अधिक बढ़ने का परिणाम यह होगा कि जनता की बरबादी होगी, उनकी सम्पत्ति का बटवारा हो जायेगा। इससे वकील वर्ग को अवश्य रोजी और रोटी मिलेगी। इस देश में अगर .....

**श्री उपसभापति :** एक बज गया है। आप लंच के बाद अपना भाषण जारी रखियेगा।

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

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

**श्री कन्हैयालाल दाँ० बैद्य :** उपसभापति महोदय.....

MR. DEPUTY CHAIRMAN: Again there is nobody to represent the Government.

SHRI AKBAR ALI KHAN (Hyderabad) : Go ahead, Mr. Vaidya.

SHRI RAJENDRA PRATAP SINHA (Bihar): Sir, in spite of the fact that you asked the hon. Minister to be in time he is not here.

SHRI MAHESH SARAN (Bihar): His watch probably does not tally with this clock.

*(At this stage Shri H. V. Pataskar, Minister in the Ministry of Law, entered the House.)*

SHRI AKBAR ALI KHAN: Sir. the hon. Minister is here.

MR. DEPUTY CHAIRMAN: Yes, Mr. Vaidya.

**श्री कन्हैयालाल दाँ० बैद्य :** उपसभापति महोदय, मैं कानूनों के विषय में चर्चा कर रहा था और इस प्रश्न पर कुछ सुझाव दे रहा था कि किस तरह से और अधिक मुकदमेबाजी न बढ़े। मैंने देश के वकील समाज की स्थिति के ऊपर भी कुछ कहने की चेष्टा की थी और वास्तव में यह एक ऐसा प्रश्न है जिस पर कि बहुत अधिक ध्यान देने की आवश्यकता है। यदि वकीलों के धन्धे की स्थिति को देखा जाए और हाईकोर्ट, सुप्रीम कोर्ट और जो दूसरे कोर्ट हैं वे यदि ठीक तरीके से वकील समाज की स्थिति को देखें तो बहुत से वकील प्रोफेशनल मिसकांडक्ट में अपने घरों को भेजे जा सकते हैं।

**श्री बी० के० पी० सिंहा :** यह कोई बार कौंसिल एक्ट थोड़े ही है ?

**श्री कन्हैयालाल दाँ० बैद्य :** यह ठीक है कि बार कौंसिल एक्ट नहीं है, लेकिन जब हम समाज की स्थिति को सुधारने के लिये कानून बना रहे हैं और उस पर डिसकशन कर रहे हैं तो हमें उसके परिणामों को भी देखना चाहिये। हमको यह भी देखना है कि इस कानून का समाज के ऊपर क्या असर होने वाला है, उसका क्या परिणाम होने वाला है। मेरा तो विचार है कि इस कानून से वकील समाज ही लिटीगेशन में अधिक से अधिक फायदा उठाने वाला है क्योंकि जो प्रापर्टी के झगड़े होंगे उसमें हम और आप वकालत करने वाले नहीं हैं। सम्पत्ति के मामले में जो लिटीगेशन होंगे उसमें वकील ही वकालत करेंगे।

SHRI H. V. PATASKAR: Shall we lay down that no pleader should be allowed to appear in these cases?

**श्री कन्हैयालाल दाँ० बैद्य :** मेरा कोई ऐसा सुझाव तो नहीं है परन्तु मेरे खयाल से वह बड़ा अच्छा दिन होगा जब कि आप इस देश के अन्दर से इस संस्था को खत्म कर देंगे और इस देश के अन्दर कोई ऐसी व्यवस्था ले आयेंगे जिससे कि जनता इनके चक्कर से बच सके और सुलभ न्याय प्राप्त कर सके।

**श्री बी० के० पी० सिंहा :** मैं समझता हूं कि जब तक कानून रहेंगे तब तक वकील रहेंगे ही। उनको हम उठा नहीं सकते हैं।

[श्री बी० के० पी० सिंहा]

अगर वकीलों को उठाना हैं तो कानूनों को उठा दीजिये।

**श्री अकबर अली खां :** जैसे कि जब बीमार रहेंगे तो वैद्य भी रहेंगे।

**श्री कन्हैयालाल वी० वैद्य :** माननीय सदस्य वकील के नाते इस पक्ष को प्रतिपादित करने के लिये स्वतंत्र हैं किन्तु जहां तक संसद् का प्रश्न हैं वहां हम लोग भी स्वतंत्र हैं कि देश की स्थिति को सुधारने के लिये ऐसे कानून बनायें जिसमें कि वकीलों की संस्था को न रखना भी आवश्यक समझें। माननीय सदस्य को अपनी राय रखने का बराबर अधिकार हैं और इस बात के लिये यह सदन भी बिल्कुल कामपीटेंट हैं कि इस बारे में वह जो निर्णय करना चाहे वह कर सकता हैं।

अब जहां तक गार्डियन का प्रश्न हैं इस में दो-तीन धारायें, विशेषतः धारा ८ और ९, ऐसी हैं जो कि यह बतलाती हैं कि अगर एक हिन्दू पिता या एक हिन्दू माता गार्डियन बनेंगे तो उनके क्या कर्तव्य होंगे। धारा ९ में एक विशेष बात कही गई हैं, इसमें स्पष्ट रूप से कहा हैं कि :

> "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."

श्रीमती मुंशी ने इस धारा को इंटरप्रेट करते हुये कुछ इस बात की ओर प्रकाश डाला था कि हम लोग पिछले दिनों जिस कानून को यहां चर्चा कर के पास कर चुके हैं, यानी जो डाइवोर्स का कानून पास कर चुके हैं, उस से कुछ पेचीदगी खड़ी होंगी और उसका प्रभाव इस धारा के अन्दर जो माइनर्स का गार्डियन होगा उसके ऊपर पड़ेगा। यह एक विशेष ध्यान देने की बात हैं कि डाइवोर्स के कानून से कठिनाइयां उपस्थित हो सकेंगी। मैं उस पक्ष का प्रतिपादन करने के लिये तो खड़ा नहीं हुआ हूं किन्तु यह जरूर कहना चाहता हूं कि इस बिल के अन्तर्गत धारा ९ में जो व्यवस्था की हैं उसका पालन ठीक रूप से गार्डियन कर सके, उसके लिये इस बिल में कोई व्यवस्था नहीं की गई हैं और न कोई दूसरा ही कानून ऐसा स्टैट्यूट बुक में हैं जिससे कि इस तरह की स्थिति हो कि उसका पालन हो सके। मैं यह निवेदन करूंगा कि इस देश के अन्दर आज लाखों व्यक्ति गरीब मजदूर हैं, लाखों व्यक्ति बिना जमीन के हैं, लाखों के पास कोई सम्पत्ति नहीं हैं, वे सम्पत्ति-विहीन हैं और पारिवारिक जीवन बिताते हैं। यहां पर कोई फैमिली प्लानिंग तो इस समय हैं नहीं कि लोग विवाहित जीवन के अन्दर अधिक संतानें पैदा न कर सकें। तो ऐसे लोग संतानें पैदा करते हैं और जब पिता मर जाता हैं तो माता एक नैचुरल गार्डियन के नाते उन संतानों की गार्डियन हो जाती हैं। इस धारा के अन्तर्गत उसके ऊपर यह जिम्मेदारी हैं कि वह उनका पालन पोषण कर के उन्हें उसी धर्म और उसी प्रकार की व्यवस्था में रखे जिसमें कि उनका जन्म हुआ था। जब कि उसके पास खाने के लिये अन्न नहीं हैं और उसके आस पास विधर्मी लोग मंडराते हैं तो यह कैसे सम्भव हैं कि वह माता उनका रक्षण कर सकेगी। मैं इसको इसलिये कहता हूं क्योंकि मैं उस क्षेत्र से आता हूं जहां कि मन भर अनाज में चुटिया कट जाती हैं और दूसरे धर्म में लोग चले जाते हैं और उनका धर्म बिक जाता हैं। तो ऐसी स्थिति में जो माता नैचुरल गार्डियन का अधिकार प्राप्त कर लेगी उसके लिये क्लाज ९ के अनुसार चार बच्चों का, चार संतानों का, रक्षण करना कैसे संभव होगा। इसलिये जब कि समाज में ऐसी भयंकर स्थिति हैं कि माता और पिता के पास अपनी संतानों का पेट भरने के लिए अन्न नहीं हैं और वे सोचते हैं कि किसी प्रकार से इनसे मुक्ति मिले और इसके लिये जगह जगह काम करने

के लिये भेजते हैं जिससे कि न तो उनके धर्म का रक्षण हो पाता है और न उनके जीवन का, तब इस धारा का क्या परिणाम होगा, यह हमें सोचना है। मैं जानता हूं कि ऐसे बच्चे होटलों में काम करने के लिये जाते हैं और वहां उनको गर्म सलाखों से भी कभी कभी जलाया जाता है और इस तरह से जला जला कर उनसे १८ घंटे काम लिया जाता है। समाज की ऐसी विषम स्थिति है और ऐसा भी नहीं है कि ऐसी स्थिति माननीय कानून मंत्री के सामने नहीं है। जब ऐसी विषम स्थिति है तब आप माइनर को यह रक्षण देना चाहते हैं। इसमें तो कोई दो मत नहीं हो सकते हैं कि उसको पूरा पूरा रक्षण मिलना चाहिये। हम चाहते हैं, हर एक आदमी चाहता है और हमारे देश की सरकार चाहती है कि उनको रक्षण मिले। नाबालिग बच्चों को इस बात का पूरा हक है कि जब तक वे बालिग न हो जायं तब तक उनके माता या पिता, जो भी उनके संरक्षक हों, उस का पालन पोषण उसी धर्म के अन्तर्गत करें जिसमें कि वह पैदा हुआ था, परन्तु मैं माननीय कानून मंत्री से बहुत नम्र शब्दों में यह पूछना चाहता हूं कि केवल इस कानून को बना देने से, या इस धारा को रख देने से, क्या यह व्यवस्था चलने वाली है। क्या इस समस्या को हल करने के लिये इस कानून के द्वारा और कोई जिम्मेदारी सरकार अपने ऊपर नहीं लेती है, और अगर लेती है तो फिर इस कानून के अन्दर उसकी कोई व्यवस्था क्यों नहीं है।

जो धारा ३ और जो धारा ४ हैं उसमें इस बात की व्याख्या की गई है कि नैचुरल गार्डियन कौन हो सकता है लेकिन उसमें कहीं भी ऐसी स्थिति नहीं है कि नैचुरल गार्डियन के ऊपर एक नैचुरल गार्डियन होने के नाते जो माइनर के रक्षण की जिम्मेदारी आती है, उसको उस जिम्मेदारी को निभाने के लिये कोई रक्षण मिलने की व्यवस्था हो। जब हम एक समाज कल्याणकारी राज्य की व्यवस्था करना चाहते हैं, एक समाजवादी राज्य की व्यवस्था करना चाहते हैं, तो ऐसी स्थिति में जो स्टेट है, जो राज्य है, वही एक ऐसी शक्ति है, जो कि ऐसे असहाय लोगों को ऐसे नैचुरल गार्डियन बनने की जिम्मेदारी को अपने जिम्मे लेकर संरक्षण दे सकती है। अगर समाज को वास्तव में आप संरक्षण देना चाहते हैं, चाहे वह हिन्दू समाज हो या कोई भी समाज हो, और चाहते हैं कि उनके नाबालिग बच्चों का रक्षण उसी वातावरण में हो, उसी धर्म में हो, जिसमें कि उनका जन्म हुआ था और यह बिल्कुल आवश्यक है कि इस देश के जो बच्चे हैं, इस देश के जो नागरिक हैं उनको एक नागरिक के नाते पूरा पूरा रक्षण मिले और उनका जीवन इस प्रकार इस योग्यता से बनाया जावे कि वे आगे चल कर देश के अच्छे नागरिक बन पावें, तो आपको इन तमाम खराबियों को रोकने के लिये भी व्यवस्था करनी चाहिये जो कि इस समय समाज में फैली हुई हैं। इस लिये मेरा सुझाव है कि इस बिल की धारा ५ में या किसी और धारा में ऐसी व्यवस्था हो कि जिनके पास सम्पत्ति नहीं है, जिनके पास साधन नहीं हैं, जिनके पास जीवनयापन का जरिया नहीं है और वे नैचुरल गार्डियन हो जाते हैं, जैसे कि पिता के मरने के बाद माता नैचुरल गार्डियन हो जाती है और नैचुरल गार्डियन होने के बाद उसके ऊपर जो जिम्मेदारियां सेक्शन ६ के अन्तर्गत आती हैं और जिनको वह अपने जीवन के अन्दर पूरी नहीं कर सकती है क्योंकि उसके पास न सम्पत्ति है, न कमाई के साधन हैं और न इस योग्य है कि वह अपने नाबालिग बच्चों का पालन पोषण कर सके और धारा ६ के अन्तर्गत जो जिम्मेदारियां हैं उनको निभा सके और ऐसी असहाय स्थिति में राज्य की ओर ही देख सकती है और जब कि हम सदा इस बात को कहते आये हैं, हर समय इस बात को दुहराते आये हैं कि हमारे सारे प्रयत्न एक वैलफेयर राज्य को स्थापित करने के लिये हैं और हम एक समाजवादी व्यवस्था लाना चाहते हैं, हम एक ऐसी व्यवस्था लाना चाहते हैं

[श्री कन्हैयालाल दाँ० वैद्य]

जिसमें कि समाजवादी राज्य के अन्दर कोई व्यक्ति भूखा नहीं मरेगा, किसी नाबालिग बच्चे का धर्म-परिवर्तन नहीं होगा . . . . .

MR. DEPUTY CHAIRMAN: Mr. Vaidya, we are not concerned with the larger issue of welfare State and orphaned children and all that. We are here concerned only with the Hindi*/ Minority and Guardianship Bill. Please speak on the Bill. Do not go into the larger issues of socialistic pattern of society, welfare State and all that.

SHRI KANHAIYALAL D. VAIDYA: Ultimately, it affects, Sir.

MR. DEPUTY CHAIRMAN: There will be other occasions. Keep to this Bill just now. All the twenty minutes you have been speaking only about orphaned children, the State's duty to provide for them and 'all that. It is no1 relevant. Please speak on the Bill.

SHRI KANHAIYALAL D. VAIDYA: I am speaking on the Bill, Sir. I have already referred to clause 9. Clause 9 is very wide. Here, the natural guardian has been entrusted with wide powers.

MR. DEPUTY CHAIRMAN: That comes into operation only when there is a minor and that minor has property. Nobody will appoint a guardian when there is no property. You need not worry about that. We are now concerned with the Hindu Minority and Guardianship Bill. Please do not enter into the larger issues.

SHRI KANHAIYALAL D. VAIDYA: I am not entering into larger issues, Sir. With due respect to the Chair, I want to put forward certain points only.

MR. DEPUTY CHAIRMAN: Concerning the Bill.

SHRI KANHAIYALAL D. VAIDYA: Yes. Sir, concerning the Bill. I have already read clause 9.

और इस धारा को पढ़कर मैं स्पष्ट कर चुका हूं कि यह जिम्मेदारी विधवा मां के ऊपर आती है और आज जब इस कानून के ऊपर हम यहां वादविवाद कर रहे हैं तो हमें समाज की स्थिति को ध्यान में रख कर कानून बनाना है। हिन्दू समाज के अन्दर जो आज बहुत सी व्यवस्थाएं प्रचलित हैं, उनको परिवर्तित करने के लिये और उनका एक क्रांतिकारी रूप लाने के लिये हम इन कानूनों का निर्माण कर रहे हैं। ऐसी स्थिति में मेरा यह सुझाव है कि जिस को आप इस बिल के अन्दर नैचुरल गार्डियन स्वीकार करते हैं उसके ऊपर आप धारा ६ के अन्तर्गत जो जिम्मेदारियां डाल रहे हैं, क्या वह अपनी स्थिति के अन्दर उन जिम्मेदारियों को पूरा कर सकेगा या नहीं ?

MR. DEPUTY CHAIRMAN: To the extent possible.

श्री कन्हैयालाल दाँ० वैद्य: इस कानून के अन्तर्गत मेरा यह सुझाव है कि धारा ३ और ५ में इस प्रकार खुलासा करना चाहिये कि नैचुरल गार्डियन की जो व्याख्या आपने की है उसमें जिन के पास कोई सम्पत्ति नहीं है और जो धारा ६ की पूर्ति करने के योग्य नहीं हैं उनकी जिम्मेदारी राज्य पर होगी और उनकी व्यवस्था राज्य करेगा। यह इसमें स्पष्ट हो जाना चाहिये ताकि इस कानून के द्वारा जो हम पूर्ति करना चाहते हैं, वह पूर्ति हो सके और जैसा मैं निवेदन कर चुका हूं कि जैसा हम एक वैलफेयर, कल्याणकारी और समाजवादी राज्य की व्यवस्था को पूरा करना चाहते हैं, वह इस क्रांतिकारी सुधार के साथ हम पूरा कर सकें। इन शब्दों के साथ मैं इस बिल का समर्थन करता हूं।

SHRI J. S. BISHT: Mr. Deputy Chairman. I welcome the announcement made by the hon. Minister yesterday, especially at your instance, to the effect that when all these small pieces of legislation concerning the different aspects of Hindu law have been codified separately, they will be brought under one Hindu code so that it will be easier for everybody to

understand where he stands according to the law.

SHRI KAILASH BIHARI LALL: He is not audible, Sir.

SHRI P. S. RAJAGOPAL NAIDU: They will be stitched together.

SHRI J. S. BISHT: No, not stitched together but they will be codified under one code and these different Acts would form different chapters. That is all.

Having said this, I wish to draw the attention of the hon. Minister to clause 4 (b). This sub-clause says, "any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions made in this Act." That is a very important provision because up to now, although the Hindu unwritten law was in force, there was no such provision in that Hindu law whereby provisions of other Acts were made inapplicable but now, by bringing in this sub-clause, there is a mandatory provision in this law that if there is any other law which is inconsistent with the provisions of this Act, that part of the other law shall be inoperative. In the light of that, we come across certain difficulties and I support the plea of my hon. friend Mr. Gupta. In clause 5 you have laid down a proviso, "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, or

(b) if he has completely and finally renounced the world by becoming a hermit (* *) or an ascetic C* * *V

These are the only provisions under which a natural guardian will cease to be a natural guardian and exercise all the rights that pertain to a natural guardian and that have been reserver' for him under clause 7. Therefore under these circumstances, the provisions of the Guardians and Wards Act of 1890 will not come into operation. I would, therefore, request that a special provision be made as in clause 13 or, there may be another sub-clause to this claufce by which this particular handicap can be eliminated with regard to clause 5 as well as with regard to clause 8, to which I shall refer just now. The same difficulty arises with regard to clause 8. A testamentary guardian can be appoin-ed by a male Hindu as well as by a female Hindu. In sub-clause (5) you say, "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." Again there is that proviso so that if a guardian is appointed by will, he too cannot be discharged or removed from the guardianship and he has the same right as a natural guardian. The only additional thing is that he is subject to the provisions of this Act and of the terms of the will. Now, under the Guardians and Wards Act, we have got a provision.

MR. DEPUTY CHAIRMAN: Do you refer to section 39?

SHRI J. 9. BISHT: Yes, Sir, section 39 of the Guardians and Wards Act says:

"The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely: —

(a) for abuse of his trust;

(b) for continued failure to perform the duties of his trust;

(c) for incapacity to perform the duties of his trust;

[Shri J. S. Bisht.]

(d) for ill-treatment, or neglect to take proper care, of his ward;

(e) for continuous disregard of any provisions of this Act or of any order of the Court;

(f) for conviction of an offence

* * * *

* * * *

(h) for ceasing to reside within the local limits of the jurisdiction of the Court;

* * * *"

This is a very important provision and this should be made applicable both to the natural guardians under clause 5 and to the guardian appointed by will under clause 8. It is very important. It is quite possible, as Mr. Gupta was saying, that the hon. Minister's interpretation may be acceptable but I beg to differ from that, Sir. I think 99 per cent, chances are that that will not be accepted because of sub-clause (b) of clause 4. This is very imperative. The law has been codified now; it is no longer an unwritten law, as was the case before. When there is a strict provision that whenever there is any inconsistency between this and any other Act, the provision of this Act will prevail, this particular provision should be construed very strictly. In the case of guardians appointed for minor Hindu children, whether they are natural guardians or guardians appointed under a will, the guardians will be almost irremovable.

SHRI H. V. PATASKAR: May I draw the attention of the hon. Member to this fact that in clause 3 we have tried to enumerate the different kinds of guardians and, therefore, we make a distinction between the natural guardian, a guardian appointed by a court, a guardian appointed by a court of wards, etc? What is referred to in clause 5 is only the natural guardian. There is nothing under the Guardians and Wards Act. So I would like to know and I am trying to understand the hon. Member. But so far as I could follow the hon. Member, what he means is that if there is any other law which is inconsistent with this Act that may not be operative. I do not find anything inconsistent there which relates to the power of the court to appoint a guardian. What we are trying to do here in clause 5 is to recognise the natural guardians and they are only two, the father and the mother. I do not And what is there to show that a court cannot appoint a guardian under the Guardians and Wards Act. I would like to be enlightened. Of course I am open to conviction one way or the other but as yet I think it is not imagined that the court has no such power. By this clause we are only giving legal recognition to the natural guardians, the father and the mother, who are hitherto recognised as such not by any Act but under the prevailing Hindu law. Nothing came in the way of the court appointing a guardian under the Guardians and Wards Act as enunciated in that Act. That Act applies to all and the proviso only says "Provided that no person shall be appointed to act as the natural guardian of a minor if he has ceased to be a Hindu". It is said so because this Act is applicable only to Hindus. This has nothing to do with a guardian appointed by the court. It is quite apart from that. Then (h) of the proviso says "if he has completely and finally renounced the world" etc. That is not very material here.

MR. DEPUTY CHAIRMAN: Can the court remove a natural guardian?

SHRI H. V. PATASKAR: Even now they can do it. Suppose the natural guardian, the father, is a drunkard— there are quite a number of cases like this—and fritters away the property of the minor—may be a natural guardian and the Hindu law recognises him as such—the provisions of the Guardians and Wards Act can be invoked and it applies to all classes of people. There is nothing in this Bill which shows

that we have in any way tried to interfere with the provisions of the Guardians and Wards Act. I am open to arguments and if there is any lacuna it should be set right, but for the present, in my view of the matter this clause 5 only recognises that there are these natural guardians among the Hindus. Of course as I said I would have been glad if there could be one uniform cofle wherein one can find all the provisions relating to Hindu law side by side but here we are simply laying down that so far as the Hindu law is concerned, the natural guardians will be only the father and the mother; nothing beyond that. I do not know how it can affect the right of the court to appoint a guardian.

SHRI J. S. BISHT: That is true, Sir, that may be so, but because of this proviso and the provision here in clause 8 I think it would be very advisable if in clause 4(b) we can say "in so far as it is inconsistent with any of the provisions made in this Act provided that section 39 of the Guardians and Wards Act shall apply."

MR. DEPUTY CHAIRMAN: 4(b) covers it. Sections 39 and 7 are saved. They will be applicable.

SHRI J. 9. BISHT: The difficulty is that under this clause a natural guardian ceases to be a natural guardian only under these two conditions.

MR. DEPUTY CHAIRMAN: See sub-clause (2) of section 7 of the guardians and Wards Act. Section 7 says: "Where the Court is satisfied that it is for the welfare of a minor that an order should be made—(a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly. (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the court." It covers natural guardians and it is saved. 4(b). I think completely covers all your points.

SHRI J. S. BISHT: If that is so, there is no difficulty about it.

Then I come to clause 7. My hon, friend Mr. Naidu raised some objection in regard to the words "reasonable and proper". But I find that these are practically a repetition of the words contained in sections 24 and 27 of the Guardians and Wards Act with this difference that they have been more or less combined here in one sub-clause, sub-clause (1). So in that there is *no* difficulty.

Then my hon. friend was finding some difficulty with regard to the words "evident advantage". I find that it is already there in section 31 of the Guardians and Wards Act. Therefore there is no contradiction so far as that is concerned.

Now we come to the important point as to why part (b) of sub-clause (2) of clause 7 of the Bill as it was introduced in the House has been omitted. Now in sub-clause (b) you have provided that "the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act." If that Is so the power to lease is already there. I do not know why the hon. Minister is objecting to the inclusion of that particular thing here and he says that there are certain local laws under which the term of the lease varies from three years to seven years.

SHRI H. V. PATASKAR: Quite so.

SHRI J. S. BISHT: But 31 (c) says "that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs".

MR. DEPUTY CHAIRMAN: That portion which yeu read just now. that ! clause will be inconsistent with this ' Act.

SHRI H. C. DASAPPA: Section 29 is there, and it says:

> "Where a person other than a Col lector, or than a guardian appointed by will or other instrument, has been

[Shri H. C. Dasappa.] 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 immoveable 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."

So the safeguard is there already.

SHRI J. S. B I S H T: So if it is in consistent with local laws the Guardians and Wards Act is already there. So what is the difficulty about this Hindu Minority and Guardianship Act? It has been there since 1890 and there has been no difficulty in regard to the operation of the Guardians and Wards Act in regard to this particular clause and so there is no reason why it should be omitted from this Bill.. Lease is a very important part and if it is not covered then he can lease it away for 30 years and 40 years and 50 years; practically the whole transfer will be effected by this sort of thing.

SHRI H. C. DASAPPA: There is no amendment to that section now.

SHRI J. S. BISHT: Yes, there is no attempt up to now to amend that section in the Guardians and Wards Act. So it will make a differentiation in favour of the natural guardian. So we should have the provision in those terms. It would be uniform and ii would be better also because undeT sub-clause (5) you have already given them power under section 31 of the Guardians and Wards Act which includes the power to lease. So I think it would be better to re-incorporate that sub-clause (b) which has been omitted in this particular clause so that the question of lease is taken up here.

There was one point, I think, which Mr. Dasappa put forward that clause 13 saves both clauses 5 and 8 with regard to the Guardians and Wards Act. But I beg to differ from him on this point. Clause 13 refers only to the case of guardians that are appoint ed by the court, not with respect to the guardians that will come into play by virtue of this law .....

SHRI H. C. DASAPPA: That is a mistaken reading of clause 13. This clause 13 should be divided into two parts. Welfare of the minor is to be the paramount consideration. The first part of it deals with the principle or policy which should be followed in the appointment or declaration of any per son as guardian. That is, in the appointment or declaration of a person as guardian of a Hindu minor by court, the welfare of the minor shall be the paramount consideration. This is one thought, one principle which is laid down. The second principle in that clause is independent of the first and that is "no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating *to* guardianship in marriage among Hindus, if the Court is of opi nion that his or her guardianship will not be for the welfare of the minor." So it does not matter who the guard ian is, natural guardian, testamen tary guardian, court guardian or any other guardian. So long as it is not for the welfare of the minor, he can not continue to act as a guardian and the courts can intervene and prevent him from doing so. Clause 13 should have been divided into two parts (a) and (b), the first one laying down '.he principle and the second one say ing .....

3 P.M.

SHRI J. S, BISHT: What do you say about this? There is a comma after the word "court".

SHRI M. GOVINDA REDDY: That is the mistake.

SHRI H. C. DASAPPA: It makes no sense to connect the second half of the clause to the first.

SHRI J. S. BISHT: My hon. friend's purpose can be covered if he splits it up into (a) and (b) but as it is there will be trouble about it. The main purpose of legislation is to make it as clear and as unambiguous as possible. Already there are hon. Members, like my hon. friend Mr. Vaidya, who are very angry with the lawyers. Some years ago Lord Morley—he says this in his Recollections—in one of his letters to Minto said that the bureaucrats of India hate lawyers because they hate law. Probably that is his reason. My friend does not perhaps want the rule of law. Perhaps he wants the rule of rod, the rule of *danda.* If everybody were to take to that, there is bound to be anarchy. After all when you envisage the rule of law there has to be some parliamentary government to enact laws and there must be courts to interpret those laws and there will have to be lawyers to help the litigants. Does my hon. friend expect that all the 36 crores of people know all the laws that are being passed here everyday? Even the lawyers are not able to keep pace with all the laws that are being passed in <»11 the Legislatures in the country.

SHRI H. C. DASAPPA. May I draw the attention of my hon. friend to what the hon. the Law Minister, Mr. C. C. Biswas said on the 24th August 1954 when this question was raised? This is what he says. Clause 13 empowers the Court to supersede the natural guardian.

SHRI J. S. BISHT: But that must be made clear. It should not be open to the ingenuity of the lawyers to interpret it.

SHRI H. C. DASAPPA: I entirely agree.

SHRI J. 9. BISHT: Then remains one point. There was a suggestion that the age should be raised from five. Some people have said that it should be 12; some others have said that it should be 10. In my opinion the age as put down here seems to be quite correct. In the original Bill it was put down at three but I think the Joint Committee thought three would be much too early for the child to be taken away from the protection of the mother and so they have raised it to five. I think for the next 20 or 25 years it should be fixed at five for this reason that women are not in possession of any property.

SHRI B. K. P. SINHA: Now they will be getting property.

SHRI J. S. BISHT: By the time men die and they succeed, it will take time and men are not going to oblige them by dying as soon as that law is passed, A child, whether boy or girl, needs ta be educated and provided for and it will be very difficult for the mother tc do that. There may be that ill-feeling or bitterness owing to lack of contact and all that but in my opinion the child must be provided with money or the finances necessary for his proper education. If you hand over the custody of the child to the father after five not only filial love and other things will come into play but he will also see that the boy or the girl is properly educated and brought up.

SHRI B. K. P. SINHA: May I point out that if there is no love for the mother there will be no love for the child also?

SHRI J. S. BISHT: That is not right. Maybe, there may be cases when because she has a bad character or for some such reason .....

(Interruptions.)

SHRI H. C. DASAPPA: If a woman is of a bad character then it comet under a different section altogether: that is a question of unfitness of the mother to be guardian.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order. Let him continue.

SHRI J. S. BISHT: As I was paying, I think for many reasons *it* la

[Shri J. S. Bisht.] wise to keep the custody of the child with the father after five years because we must look at this question not from the point of view of sexes or their rights and privileges but from the point of view of the welfare of the child which should be the main consi deration. What will be best in his own interest? And I think it will be best for his education and for his up bringing that after the age of five his custody should be in the hands of the father who at present is in possession of property. Let the women come into possession of property and the means to.....

SHRIMATI SAVITRY NIC-AM (Uttar iPradesh): There are women even aow who own property.

SHRI J. S. BISHT: That is only rare, one in a million. Otherwise they have no property at present.

My friend Mr. Gupta made some point with regard to the religion in which a child has to be brought up, that is, the religion of the father. I think the law as provided is quite correct and the one hypothetical case that has been imagined by Mr. Gupta may be one in a million. We cannot provide for all possible contingencies in the legislation that is being enacted here.

Then only one point remains which I have to suggest. I do not know whether it is not too late for It. Could it not be that the whole Guardians and Wards Act be made applicable to all Hindus with certain minor modifications so that it may meet the objection of everybody that we must have a uniform law. We have already a uniform code. All that this Bill does is to merely provide for natural guardians; otherwise in all cases in which the guardian is appointed by the Court, the provisions of the Guardians and Wards Act will apply. This is limited only to the case of natural gu[nr]dian which means father and mother and guardian appointed by will

Lastly, I am not in favour of extending the list of people who are to be made natural guardians beyond father and mother. Because it is better that as many people as possible are governed by the Guardians and Wards Act. Let this be confined strictly to natural guardians and guardians appointed by will.

SHRI B. M. GUl'TE (Bombay): Sir, I am glad that the Joint Committee has considerably improved the Bill but there are certain points where in my opinion improvement is yet possible. I am personally not inclined to look with favour upon the proposal that the natural guardian must apply for permission of the court for alienation, for the transfer of property even for consideration. I can understand gift being prohibited but transfer for consideration should be allowed. What was possible for even a de facto guardian under the old law is now being prevented even for a natural guardian and this is based on an assumption which is against nature. It means that there is no natural love. But the natural love will be there and the father will certainly not alienate the property to the detriment of the interests of the minor. I do not know what material the government has to show that this power has been abused. I should like the hon. Minister to give us statistics that so many applications for setting aside the alienations were filed and so many alienations were in fact set aside. Unless that materia! is put forward. I think there is no warrant, there is no justification to assume that the father will not look fo the interests of his son or of his child. I, therefore, submit, Sir, that this is an innovation, an undesirable innovation. If in some exceptional cases, in some morbid cases, the father acts against the interests of his son, if the transfer is not for the benefit of the minor, then there is already sufficient protection given. The alienation would be voidable. I,

therefore, submit that this innovation is not desirable.

Then there is some difficulty for me regarding the provision about the religion—change of religion. I refer to clause 9. I cannot understand it. I personally think that it refers to a case when there is conversion to an allied religion, that is, Sikh, Jain, or Buddhist religion. That is because if a person goes altogether to a different religion—Christianity or Muslim religion—then he ceases to be a natural guardian. So. in my opinion, it appiies to what I describe as conversion to an allied religion. I think even in that case there will be difficulty. Take a case like this. Suppose a person belongs to Hindu religion. A son is born to him and after about one year after the birth of the son he changes to Sikh religion; and when the boy is ten years old the person dies. Now, what happens? According to clause 9, the guardian will have to bring him up as a Hindu. But for nine years the father must have brought him up as a Sikh. And, therefore, in my opinion, this is rather going against what the father himself had intended, for the father had himself brought him up as a Sikh. So the "time of the birth" is not the proper time. When the guardian takes up, the existing state of affairs at that time should be continued by him. There is no reason why he should go back to that period when the child was born. That is my opinion but perhaps my interpretation is wrong and in that case I should like to have an elucidation from the hon. Minister.

SHRI H. V. PATASKAR: The original provision in clause 10 was really the proper one, where it was said:

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

Having changed it, of course, the result has been as pointed out by the hon. Member. They changed it to read "at the time of the minor's birth."

SHRI B. M. GUPTE: With these words, Sir, I support the Bill.

**श्रीमती सावित्री निगम** : उपसभापति महोदय, इधर कई दिनों से इस विधेयक पर जो बहस चल रही थी उसका अन्त अब लगभग निकट आ गया है। जो भी सुधार सेलेक्ट कमेटी ने किये हैं उनमें से अधिकांश हम सब लोगों को सादर स्वीकार हैं, किन्तु, फिर भी कुछ बहुत ही आवश्यक बातों में सुधार होने की आवश्यकता मैं महसूस कर रही हूं, क्योंकि यदि अभी इसमें सुधार न किया गया तो उन नाबालिगों के साथ अन्याय होगा जो कि ऐसे परिवारों में पैदा हुये हैं, जिनको कि क्रूर नियति ने तोड़ने के लिये ही बनाया है। इसलिये इस विधेयक के और सब क्लाजों को न दुहरा कर, संक्षेप में मैं केवल उन्हीं थोड़ी सी कमियों पर प्रकाश डालना चाहती हूं जिनमें कि सुधार की अत्यधिक आवश्यकता है।

श्रीमन्, आज जब कि देश में सर्वोदय की गंगोत्री से शोषण निराकरण की गंगा बह रही है तब हमारा यह कर्तव्य हो जाता है कि हम जब नये कानून बनायें तो उसकी हर धारा को मानवता के दृष्टिकोण की कसौटी पर कसने के पश्चात् ही कानून में स्थान दें और उसका निर्माण करें ताकि वह आने वाली और मौजूदा संतति के लिये पूर्ण रूप से कल्याणकारी हो सके।

श्रीमन्, मेरी समझ में यह बात नहीं आती कि जब काश्मीर की सब से बड़ी जमात ने, जो कि जनता और राष्ट्र के द्वारा सब प्रकार से मानी गई है, काश्मीर को भारत का अविभाज्य अंग मान लिया है, तो जब हम ऐसे परम कल्याणकारी विधेयकों का निर्माण करते हैं तब जम्मू और काश्मीर को छोड़ क्यों देते हैं। पिछली बार माननीय विश्वास साहब ने कहा था कि जम्मू और काश्मीर की जो रियासत है वह हमारे लेजिस्लेटिव जुरिसडिक्शन के अन्तर्गत नहीं आती है परन्तु उसके बाद इसी पार्लियामेंट से जो इम्पोर्ट और एक्सपोर्ट का

[श्रीमती सावित्री निगम]

कानून पास हुआ था वह जम्मू और काश्मीर पर लागू किया गया हैं। तो क्या कारण हैं कि जब हम ऐसे कल्याणकारी कानूनों को पास करें तब उसमें जम्मू और काश्मीर को छोड़ दें। कोई वजह नहीं हैं कि एक कानून हिन्दुस्तान की पार्लियामेंट द्वारा पास किया जाय और उसमें जम्मू और काश्मीर को शामिल किया जाय और दूसरे कानूनों में उसको न शामिल किया जाय। जब एक कानून को जम्मू और काश्मीर पर लागू कर चुके हैं तो दूसरे कानून भी बड़ी आसानी से ऐसे पास किये जा सकते हैं जो कि वहां भी लागू हों। मेरा कहना हैं कि ऐसे कल्याणकारी कानूनों को जम्मू और काश्मीर के हिन्दुओं पर अवश्य ही लागू किया जाय।

**श्री बी० के० पी० सिंहा** : वह कौन सा कानून था ?

**श्रीमती सावित्री निगम** : इम्पोर्ट और एक्सपोर्ट का।

**श्री बी० के० पी० सिंहा** : उसके लिये तो लेजिस्लेटिव पावर हमें हैं।

**श्री एच० वी० पटास्कर** : यदि आप काश्मीर के लोगों को तकलीफ देना चाहती हैं तो कुछ भी कर लें लेकिन उन्होंने जो अधिकार दिया हैं, उसी के अनुसार हम कानून बना सकते हैं।

**श्रीमती सावित्री निगम** : जब इम्पोर्ट और एक्सपोर्ट का कानून हमारी पार्लियामेंट से पास हो सकता हैं तो इसको भी आप कर सकते हैं।

MR. DEPUTY CHAIRMAN: Foreign trade is a Central subject to which 1he Kashmir Government has acceded.

SHRI H. V. PATASKAR: You can legislate for import and export because they have given that power to us.

SHRIMATI SAVITRY NIGAM: Even for this if we ask them they will agree.

SHRI H. V. PATASKAR: You go and try and let me have it.

**श्रीमती सावित्री निगम** : इसके अतिरिक्त मुझे पहली बात यह कहनी हैं कि गार्डियंस की जो लिस्ट हैं उसमें माता-पिता के अतिरिक्त ग्रैंड फादर, ग्रैंड मदर, मैटर्नल अंकल, ग्रैंड मैटर्नल अंकल आदि को भी अवश्य शामिल किया जाना चाहिये। इसके लिये मैं कहूंगी कि बाहर जाने की आवश्यकता नहीं हैं, आप अपने हृदय पर ही हाथ रख कर देखें तो आपको मालूम होगा कि हम सब लोगों को पुत्र से अधिक पौत्र और नाती प्यारे होते हैं। हम लोगों के यहां एक कहावत हैं कि "मूल से अधिक ब्याज प्यारा होता हैं"। पिता और माता के जीवन-काल में ही बच्चों के नाना, नानी, मामा, मामी, दादा, दादी वगैरह बहुत अधिक प्रेम से, स्नेह से संरक्षता भी करते हैं और हर तरह की गार्डियनशिप करते हैं। तो ऐसी स्थिति में माता या पिता की मृत्यु के बाद उन्हें बच्चों की संरक्षिता का प्रथम अधिकार होना ही चाहिये। इस लिये मेरा सुझाव हैं कि इस लिस्ट को अवश्य ही बढ़ा देना चाहिये।

दूसरी बात मुझे यह कहनी हैं कि मां की गार्डियनशिप के लिये जो पांच वर्ष की अवधि सीमित की गई हैं वह बहुत ही अनुचित हैं। जैसा कि विष्ट साहब ने अभी फरमाया, मेरी समझ में नहीं आता कि वह कैसे ऐसी बात कह सकते हैं। मां को पिता से कहीं बड़ा संरक्षक स्वयं प्रकृति ने ही प्रमाणित कर दिया हैं। पहली बात तो यह हैं कि मां से अधिक बच्चे का दुनिया में कोई दूसरा शुभचिंतक हो ही नहीं सकता हैं, पिता तो कभी उसकी बराबरी कर ही नहीं सकता हैं, जितनी कि शुभचिंतिका मां होती हैं, और यह बात हजारों बार प्रमाणित हो चुकी हैं कि मां के बराबर वात्सल्यमय और त्यागमूर्ति संसार में कोई नहीं होता

हैं, पिता की क्या बात है। ऐसे हजारों नमूने हमारे सामने मौजूद हैं और हम लोग नित्यप्रति के जीवन में अपने सामने ऐसी घटनाएं देखते हैं कि बेचारी मायें अपने बच्चों की संरक्षिता के लिये अपना पूरा जीवन, तन, मन और धन न्यौछावर कर देती हैं। इसके अलावा किसी बच्चे को उस पिता के संरक्षण में देना कहां तक उचित होगा जो इतना अविवेकी हो, इतना अविचारी हो कि बच्चे की मां का परित्याग करके, विमाता के, द्विपत्नी के प्रभाव में इतना आ जाय कि अपने बच्चे को इगनोर करे। इस लिये किसी भी हालत में जब तक मां के ऊपर कोई ऐसा लांछन न लगा हो कि उसके चरित्र पर शक किया गया हो, केवल पांच वर्ष या दस वर्ष तक ही नहीं बल्कि जब तक बच्चा बालिग न हो जाय, पूरा पूरा संरक्षण मां को देना चाहिये।

एक बात यह कही गई कि मां के पास इतना धन कहां होगा कि वह बच्चे की शिक्षा-दीक्षा भली प्रकार से कर सके। इस सम्बन्ध में मेरा कहना यह है कि जो विवाह बिल हम पास कर चुके हैं उसके अन्तर्गत मां को भी मेंटिनेंस मिलेगा और बच्चे को भी मेंटिनेंस मिलेगा और सम्पत्ति उत्तराधिकार बिल आगे चल कर पास होने जा रहा है। इसके अतिरिक्त हजारों की तादाद में स्त्रियां यह प्रमाणित कर चुकी हैं कि पहले वे घर की चहारदीवारी के अन्दर एक मलिन कोने की बन्दिनी क्यों न होती हों लेकिन पति के मरने के पश्चात् वे अपनी अद्वितीय शक्ति प्रदर्शित करती हैं और घर के बाहर निकल कर सारी परिस्थितियों का मुकाबिला करती हैं, अपने बच्चों का पालन-पोषण करती हैं और शिक्षा का भी पूरा प्रबन्ध कर लेती हैं। ऐसी दशा में किसी बच्चे को उसके क्रूर पिता के संरक्षण में देने से कहीं अच्छा यह होगा कि उसको उस गरीब और निर्धन मां के संरक्षण में रखा जाय क्योंकि जब वह पिता के पास जायेगा तो द्विमाता अर्थात् सौतेली मां के क्रूर व्यवहार के कारण और पिता की अवहेलना के कारण उसका जीवन बिलकुल नष्ट हो जायगा। इस लिये मैं आपसे इस स्तर पर भी इस संदर्भ में यह कहना चाहती हूं कि बच्चे का संरक्षण केवल पांच साल के लिये ही नहीं बल्कि जब तक वह बालिग न हो जाय, मां को मिलना चाहिये क्योंकि एक मां के लिये बच्चा ही उसका सहारा होता है। वह अपने पति का परित्याग कर सकती है, किन्तु अपने उस हृदय के टुकड़े को अलग नहीं कर सकती है। अभी अभी मेरे पास इंफार्मेशन आई थी और आप लोग भी उससे परिचित होंगे कि उसमें कुछ मांओं ने कहा है कि हम मेंटिनेंस नहीं लेंगे लेकिन बच्चे को नहीं देंगे, बच्चे को हम अपने पास रखेंगे। हम नहीं चाहते कि उस बच्चे को विमाता के हाथ में देकर उसका जीवन समाप्त कर दें।

**श्री कैलाश बिहारी लाल** (बिहार): यह सवाल कहां से पैदा होता है। अब तो कानून में विमाता होगी नहीं।

**श्रीमती सावित्री निगम** : इसके अतिरिक्त मुझे यह कहना है कि यह देख कर मुझे बड़ा आश्चर्य हो रहा है कि लड़की के संरक्षण का भार पिता को कैसे दिया जा रहा है। हम सभी लोग जानते हैं और यदि हम अपने परिवारों में देखें तो हम यही पायेंगे कि अविवाहित लड़की का संरक्षण किसी भी स्तर पर मां के अतिरिक्त और किसी को नहीं दिया जाता है। शास्त्रों से भी यह बात सिद्ध हो चुकी है और हमारे नित्यप्रति के जीवन में भी यह बात प्रमाणित हो चुकी है कि लड़की का संरक्षण मां के अतिरिक्त किसी और को नहीं मिलना चाहिये। इस लिये जब तक मां के ऊपर कोई ऐसा लांछन न लगाया जाय कि उसका चरित्र ठीक नहीं है, हर हालत में अविवाहित लड़की का संरक्षण मां को मिलना चाहिये। लड़की को मां के संरक्षण से हटाने से कहीं अच्छा यह होगा कि उसको गंगा में फेंक

[श्रीमती सावित्री निगम]

दिया जाय क्योंकि हर एक व्यक्ति को एक बार मरना होता है और इस प्रकार कम से कम वह शांति से मर तो सकेगी बजाय इसके कि उसको एक नारकीय जीवन व्यतीत करना पड़े, अपनी विमाता का क्रूर व्यवहार सहन करना पड़े, पिता की अविवेकशीलता के कारण कहीं बिकना पड़े या किसी वृद्ध के गले में बंधना पड़े।

**श्री डी० नारायण** (बंबई): जिन की माताएं मर गई हैं उनको कुएं में डाल दिया जाय।

**श्रीमती सावित्री निगम** : इसी लिये मैं कहती हूं कि नानी, चाची या किसी के संरक्षण में सौंप दें लेकिन पिता के संरक्षण में देना व्यावहारिक नहीं है।

Ma. DEPUTY CHAIRMAN: Who is to pay the expenses of the marriage?

**श्रीमती सावित्री निगम**: मैं आगे यही कहने जा रही हूं कि विवाह के व्यय की जिम्मेदारी पिता पर आनी चाहिये और माता पिता की सलाह से और माता की स्वीकृति से उस लड़की का विवाह होना चाहिये।

श्रीमन्, तीसरी बात मैं धर्म-परिवर्तन के विषय में कहना चाहती हूं। जब विवाह बिल में धर्म-परिवर्तन को कोई बाधा नहीं माना गया है तो इस स्थिति में भी धर्म-परिवर्तन को कोई बाधा मानना सर्वथा अनुचित है। धर्मों के बीच जो नफरत की दीवार थी वह आज अपने आप टूट टूट कर गिर रही है और सब धर्मों के प्रति आदर का जो दृष्टिकोण है उसको हम सब लोग अपना रहे हैं। इस लिये बाबा आदम के जमाने की दकियानूसी धारा को इस सेक्युलर स्टेट में जोड़ने की हम कोई आवश्यकता नहीं महसूस करते हैं। इस लिये इस बिना पर किसी गार्डियन को डिसक्वालिफाई किया जाना मैं सर्वथा अनुचित समझती हूं।

इसके अतिरिक्त यदि कोई बच्चा दस साल या दस साल से बड़ी उमर का हो और तब उसका गार्डियन धर्म-परिवर्तन करे तो बच्चे की सम्मति ली जा सकती है। अगर बच्चा स्वयं यह कहे कि वह उस धर्म में नहीं जायेगा जिस को उसके गार्डियन ने अपनाया है और वह उसका गार्डियन न रहे तब तो बात दूसरी है। लेकिन वैसे जब तक बच्चा इसका विरोध न करे, मैं समझती हूं कि धर्म के परिवर्तन की बिना पर किसी व्यक्ति को डिसक्वालिफाई करना सर्वथा अनुचित है। क्लाज ६ में जो धर्म-परिवर्तन की बात है वह तो मुझे एक अजीब बात मालूम होती है। मैं कहूंगी कि सब धर्म अच्छे होते हैं, सब में उच्च आदर्श होते हैं। यदि हम लोगों में फैनेटिसिज्म नहीं है, यदि हम फैनेटिक नहीं हैं तो कोई बच्चा चाहे किसी धर्म में पाला जाय, अगर उसकी उचित शिक्षा-दीक्षा का ध्यान रखा जाता है, उसके स्वास्थ्य की चिन्ता की जाती है, तो धर्म को बाधा नहीं बनना चाहिये। इस लिये क्लाज ६ में जो इस तरह का एक अड़ंगा लगा हुआ है, उसकी मैं कोई आवश्यकता नहीं समझती।

अन्त में मुझे एक बात यह कहनी है कि जब विवाह की आयु १५ की रखी गई है तो नाबालिग विधवाओं का होना स्वाभाविक सा हो जाता है और अगर हम नाबालिग विधवाओं को संरक्षण दिलाना जरूरी समझते हैं और होना भी चाहिये क्योंकि यह इतनी छोटी और कच्ची उमर होती है कि विधवा हो जाने पर और भी बहुत से काम्पलीकेशन्स पैदा हो सकते हैं तो हमें उसके संरक्षण के लिये कोई न कोई व्यवस्था अवश्य करनी चाहिये। इस लिये यदि क्लाज ५ के (ए) और (बी) में "unmarried" के बाद "or a married or a widowed" जोड़ दें तो विधवाओं को संरक्षण मिल जाएगा और इस से उनका बड़ा लाभ होगा।

बस इन्हीं थोड़ी कमियों के अतिरिक्त मैं इस विधेयक का हार्दिक समर्थन करती हूं।

SHRI RAJENDRA PRATAP SINHA.Mr. Deputy Chairman, I am very happy to note the sense of satisfaction that has been felt by my sisters, the lady Members of this House, over the Bill that has emerged from the Select Committee.

SHRI B. K. P. SINHA: What about your own satisfaction?

SHRI RAJENDRA PRATAP SINHA: "Well, I will come to that. I know that they are not fully satisfied, but even then they have expressed some satisfaction, which is a matter of great happiness to me, and for that, I think, the Members of the Select Committee deserve our congratulations.

Sir, it is very heartening to note also that the women in India now are feeling that they are coming into their own, and they are now having the recognition of their rights ana status of equality, which they though* was denied to them for many many years. The hon. lady Memoer, Mn, Munshi, made a very significant remark in this connection, and the sooner we do away with all the inequalities between the two sexes in this country, the better it would be not only for them, but for the whole society. May I assure them that there are many of their brothers who will fight with them shoulder to shoulder against the reactionary elements in the country to see that what is due to them is ensured to them. They will not be fighting a lonely battle in this. Sir, I was reading the report published by the U.N. Commission on the Status of Women. They have discussed the very subject that we are discussing in this House today. The U. N. Commission on the Status of Women got a study made on the status of women, particularly on their rights over the minors and other connected matters.

SHRI H. P. SAKSENA: In which country?

SHRI RAJENDRA PRATAP SINHA: In all the countries of the world including India. This is a U.N. report. They say:

> "Among women's continuing disability is the limited authority which the law gives to mothers over their children."

This they have said in a nutshell. They have further stated that their study reveals that speaking as a whole the emphasis in the existing personal law of India is conservative. It is a very sad feature that the fair name of India is being blackened in the world records and reports, because the Government here is slow in bringing forward the necessary legislation to place the rights of men and women on the same footing. The report that I am referring to has discussed the parents' claims to guardianship, custody, maintenance and property rights. They say that most of the legal systems in the world allow the father's claims on these heads to over-ride those of the mother. They have also named the countries which give equal rights to men and women in this matter, and the names of these countries are, Czechoslovakia, Poland, West and East Germany, Cuba and the Scandinavian countries. They have reported that in some of these countries the mother has been given preference over the father. The Commission has recommended the abolition of inequality in the different legal systems of the world today. I would very much like that we should examine the measure that is before us in the light of this report that 1 have quoted to you.

First of all, I wish to draw your attention to clause 5(a) pertaining to the custody of the minor in which you will find that this Bill suggests that ordinarily the custody should be given to the mother up to the age of five and after that to the father. I would like this House to consider whether this is the correct thing to do. As I have already quoted to you, the consensus of opinion in the world, e.g., in the U.N. Commission on the

[Shri Rajendra Pratap Sinha.] Status of Women when they debated this question, was that equality should be ensured. I would therefore urge the Members here to view this provision from that angle, from the angle of the recommendation of this Commission. I may point out to you that even when this report was under their consideration, they felt satisfaction over some of the provisions and over certain others they were not very happy. So, whatever legislation we are passing in this House is being watched by people all over the world, and if we allow this provision to continue, it will surely react upon the fair name of India. I would therefore with all the emphasis that I can command urge upon the Members to accept an amendment in such a manner which will give equality both to the mother and to the father. The U.N. Commission's report also says that the latest trend is that the criterion for giving custody of the children should not be the age of the child but the interests of the child, as was pointed out by Shrimati Munshi. That is the view of the U.N. body as well. That is the criterion that we should adopt. Let it be left to the court. If there is a difference between the father and the mother as to whom the custody of the minor should be given, let the court decide the issue. Let us not fix any hard and fast rule here. Let the court decide which party is best suited to look after the interests of the minor. The interests of the minor should be the prime consideration. There may be cases in which the father may not be a fit person to be the guardian of the minor. There may be cases in which the mother may not be a fit person. So, let us not bind the discretion of the court that after the age of five, the custody will ordinarily go with the father. That is the important point with regard to this clause. I would ask the House to consider the feeling of the mother which was so ably pointed out by the lady speaker who spoke before me. In India the mothers are very much attached, as of course all over the world, but here because of the fact that the Indian women ordinarily don't like to remarry after a divorce, it is all the more important that they should have the custody of the children. This matter was also discussed by some of the lady Members of the Mahila Mandal which some of the M.P.'s wives have started in South Avenue.

SHRIMATI PARVATHI KRISHNAN (Madras): Your wife also?

SHRI RAJENDRA PRATAP SINHA: Yes, my wife also is a member. It was their view also that the custody of the minor should rest with the mother and not with the father. In this connection I will urge upon my brothers here to be more chivalrous and if the ladies want it, let them have it.

SHRIMATI PARVATHI KRISHNAN: We want it as a right.

SHRI RAJENDRA PRATAP SINHA: You can have it as a right even If you so like. I am addressing my brothers, as I said.

Then there was a point made out yesterday—I am glad that Mr. Kishen Chand has come—for looking at this question from the point of view of education or literacy. This point was very ably met by another lady Member here and I am sure that the House will not be swayed away by this, I would say, irrelevant consideration. From *my* own personal experience I can say, which I am sure, must be the experience of most of the hon. Members, that my mother, although she was not educated in the modern sense of the word, that she had never received any schooling or college education, even then the impress she had left upon *my* character — although it was a fact that she was not educated—is so great and I think, is so important that we cannot **say** that because the mothers or other persons are uneducated or illiterate, they cannot guide the education or

the character formation of their children. I find that most of the educated women, with due respect to them, cannot discharge their functions so well as most of the mothers in India who are not educated. Therefore this should not be the criterion for taking a decision on this matter.

Then one point more I would like to say while speaking on this occasion. While referring this Bill to the Select Committee I had suggested that the minor widow should come under the guardianship of her parents. Ordinarily, I understand, under the Hindu law, a minor widow is under the custody of her husband's relations. I would like to make a specific provision in this clause that minor widows should come under the guardianship of her parents. The parents—the father and mother—should be the natural guardian even of the minor widows. I hope the hon. Law Minister will consider this point.

Then I shall draw your attention and say a few words on clause 5, proviso (a), which says:

> "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, I raised my voice against such a provision when this Bill was being discussed for reference to the Select Committee and I would like to do that once more. I don't know what is the idea in bringing forward such a clause in this Bill. Is it to protect the Hindu religion?

AN HON. MEMBER: Protect the child.

SHRI RAJENDRA PRATAP SINHA: The child is always protected whether by a Christian father or by a Hindu father.

SHRI H. V. PATASKAR: May I •draw the hon. Member's attention to the fact that this is a Bill which recognizes among Hindus the natural guardians and it is not with a view to make any distinction between religion and religion? Naturally under this Act, if a man ceases to be a Hindu, then he will cease to have the right of being a natural guardian under that law but nothing will prevent him from going to a court and getting himself appointed as a guardian. There is no question of interfering with the freedom of religion but we want this till the minor attains majority after which he can choose what he should do but even then, if the father is a good person, he can get himself appointed by the Court.

SHRI RAJENDRA PRATAP SINHA: If I change my religion, why should I go to Court and why should we have such a provision here?

SHRI B. K. P. SINHA: Why should you change your child's religion?

SHRI RAJENDRA PRATAP SINHA: I have no grudge if the boy changes his religion when he attains his majority but to make me go to court when 1 am the father and to get myself appointed as a guardian by the Court is a difficult proposition.

SHRI H. V. PATASKAR: There is no natural guardian among Christians, Parsees or any other community except the Hindus.

SHRI RAJENDRA PRATAP SINHA: Then I should continue as guardian and the law should recognise me as such. So long as there is the father or mother of that boy or of the minor, he or she should be regarded as guardian by law irrespective of his religion. What has religion to do with it? I don't know if I change the religion today and apply to the Court, it can be objected to. Supposing I apply to the Court for the appointment of guardian, then this clause 9 may stand in the way. These are the practical difficulties. The Court will say: "You are unfit to bring up this boy according to the tenets of the Hindu

[Shri Rajendra Pratap Sinha.] Religion and therefore we will not appoint you as guardian". That is what the hon. Minister wants. They don't want me to be the guar dian if I change my religion. They profess something and they want to do something else. From the house tops they profess secularism.....

MR. DEPUTY CHAIRMAN: Just now you are passing a Bill by name the Hindu Minority and Guardianship Bill.

SHRI RAJENDRA PRATAP SINHA: I would like you to judge it from this point of view that under the Constitution we are guaranteed profession of any religion we choose, whatever it may be—religious tolerance. If I change the religion why do you want to interfere with me and want me not to change my religion because of my children?

Moreover, why do you suppose that the father and the mother will lose all their affection for the child when they change religion? Why do you suppose that the child can have a better guardian in someone else?

SHRI H. C. DASAPPA: Sir, may I point out to the hon. Member that this law applies only to Hindus? Take the Preamble itself. Unfortunately, though the general principles are excellent and if there was going to be a general law, *my* hon. friend would be quite in order in his suggestion, but unfortunately for him, we are only legislating here for Hindus and when the guardian ceases to be a Hindu, how can this Act be applicable to him? There must be some other Act applicable.

SHRI RAJENDRA PRATAP SINHA: I accept the contention of the hon. Member; but let us make it explicitly clear that the Court will not debar me from being appointed the guardian when I change my religion.

MR. DEPUTY CHAIRMAN: The court may reject you.

SHRI RAJENDRA PRATAP SINHA; That's what I object to.

SHRI H. V. PATASKAR: If my hon. friend will only read the provision here which says:

> "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."

He cannot be the natural guardian. That is all. Otherwise there is nothing to prevent him from acting as the guardian in any other capacity.

SHRI RAJENDRA PRATAP SINHA: I accept it, Sir. If the provision means that it is only for the Hindu minor—which is the contention of the hon. Minister and therefore, I will cease to be the natural guardian, then T would like to be quite clear about it. I am not a lawyer myself and.....

MR. DEPUTY CHAIRMAN: You shall go to the Court.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir. I will go to the Court and the Court will reject me from being appointed the guardian, under clause-9?

MR. DEPUTY CHAIRMAN: Quite possible.

SHRI RAJENDRA PRATAP SINHA: But Sir, I would like to be absolutely sure that I will not be rejected.

MR. DEPUTY CHAIRMAN: But the possibility is there.

SHRI RAJENDRA PRATAP SINHA: That is my submission.

MR. DEPUTY CHAIRMAN: If the-Court thinks that the interests of the minor will not be jeopardised by your being appointed the guardian, they will appoint you, otherwise they will not.

SHRI RAJENDRA PRATAP SINHA: I appreciate the point that you are clarifying, Sir. That is so, and that is my quarrel with them. They have no right to decide these things. So far, religion seems to be their concern whereas the interest of the minor should be the concern. You say, let him be a vagabond. This measure is meant to preserve the interests of the minor.

MR. DEPUTY CHAIRMAN: A Hindu minor.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir, a Hindu minor. But what I say is, it is more important to look at him from the point of view of his becoming a good citizen than from the point of view of a Hindu alone.

MR. DEPUTY CHAIRMAN: That is the larger issue.

SHRI RAJENDRA PRATAP SINHA: Let me finish my point, Sir. If I go to a Court, the Court may reject me. So I want to change this clause 9. I do not want cluase 9 to stand as it is. Or let there be a specific provision to the effect that I will be automatically appointed the guardian of the child if I change my religion.

MR. DEPUTY CHAIRMAN: You may table an amendment.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir. This is my suggestion.

MB. DEPUTY CHAIRMAN: All right.

SHRI RAJENDRA PRATAP SINHA: Sir, let me explain. It is like this. I may change my religion, but it does not mean that I lose all my affection for my child; it does not mean that I am not the best person to look after the interests of my child, so long as I am alive.

DR. SHRIMATI SEETA PARMA-NAND: Your wife may object.

SHRI RAJENDRA PRATAP SINHA: If the wife also changes religion what happens then? Well, I may inform the hon. Member that I discussed this matter with my wife and she also was of the opinion that even if we changed religion, the child must remain with us.

SHRI B. K. P. SINHA: Go ahead.

SHRI RAJENDRA PRATAP SINHA: I would like, Sir, that this clause 9 be altered radically; it should even be dropped.

MR. DEPUTY CHAIRMAN : And then?

SHRI RAJENDRA PRATAP SINHA: That is my contention. Another impoitant point that I would like to make in this connection is this. It is all very well discussing these matters about those who have some means to live. But there are large numbers of conversions going on in the land. I am not looking at it from the point of view of a Hindu. Of course, conversions are bad. But there are many poor people, particularly Hari-jans in the countryside. There you have conversions. What is going to happen to them and their childern? Who is going to look after their children? Will hon. Members come forward to look after those children? Nobody will come forward to own those children. So they must go alone with their parents. That is a very important point. We are not making a law here only for the elite of society, it is for one and all, for the poor people as well. This provision will definitely work against the poor people, the Harijans who change their religion.

*(Interruptions.)*

I am not discussing the merits or demerits of conversions. The point is, what is going to happen to the children of those who change their religion, those who are being converted? Nobody takes care of these children. Therefore, I strongly suggest the changing of the entire scheme of things in this Bill.

Thank you, very much.

SHRI B. K. P. SINHA: Mr. Deputy Chairman, this is rather a non-con troversial measure and.....

SHRIMATI PARVATHI KKISH-NAN: Why only "rather"?

SHRI B. K. P. SINHA: Because the principles of the Bill are not in dispute. There is difference of opinion only so far as the details are concerned.

Sir, I would deal first with the details and I will begin at the very beginning.

SHRI P. S. RAJAGOPAL NAIDU: See that you don't make it more controversial.

SHRI B. K. P. SINHA: No, I will not make it more controversial I will trj to drown all controversy in reason.

I come first to clause 5(a) which lays down the age up to which the mother shall have the custody of the child and thereafter the father. I entirely agree with those who urge that the age-limit should be raised. It should not be 5 years. What is Jaw? Sir, law is the reflection of society, society as it was and society as it is today. Amongst Hindus women were not given property rights. They were the suppressed section. They lived in *purdah* inside the house .....

SHRI M. GOVINDA REDDY: An ancient tale.

SHRI B. K. P. SINHA: But times have changed and times are changing and changing fast. We are going to confer the right to property on women. Women have come forward to take part in the social and political life of the country. They are as forward as men. I would even go further and say that in cities like Delhi and Bombay, they are even more forward than men themselves. Under these circumstances, to stick to old conceptions and to deprive the mother of the custody of the child after the age of five, seems to me to be extremely unreasonable. 'lhe education that the father can give the child, the material comfort that the father can give, the soc'ai and Dolitical advantages that ti'e father can confer on the child, on the boy, can be no substitute for the loving care of the mother. I am reminded of a *Sloka* in *Devi Stotra:*

कुपुत्रो जायेत क्वचिदपि कुमाता न भवति।

I may change it slightly:

कुपिता भवति क्वचिदपि कुमाता न भवति।

That is to say, "Bad sons are born, and undutiful sons too are born; but undutiful mothers are never to be found." Sir, we know of bad fathers. We know of undutiful fathers, we may also come across bad mothers, but not an undutiful mother.

Sir, some hon. Member interrupted one of the previous speakers and referred to the character of profligacy of a woman. A man may be a man of bad character. A woman may be of bad character. But you cannot find a woman who even in her profligacy, even while she is leading a bad life, has not got great attachment for her child. For her, the child is everything; and her life, her politics and her society are all secondary. In these circumstances, I feel that there is every reason that up to the age the child attains majority the custody of the child should be always with the mother. Sir, I may tell you a personal secret. I am a man advanced in age. My hairs are grey. But if today I were given the option to choose between the guardianship of the mother and that of the father, without a moment's hesitation, I would opt for the mother, even at this age.

SHRI M. GOVINDA REDDY: Wise guy you are.

SHRI B. K. P. SINHA: Sir, next I come to the question of secularism. I raised by so many speakers both on

this side and on the other side of the

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4 P.M.

They have objected to the proviso to clause 5, especially sub-clause 1 a) of it. This says that the father or the mother—the natural guardian—ceases to have custody of the child if he or she ceases to be a Hindu. This is sought to be deleted on the ground of secularism. That word has a horror for me. I must tell you plainly that I am not a secular being. I am not a secular being because I do not want to be an indefinite being, I have not been able to understand, in the last seven years what secularism means. What is a secular being? It means so many things to so many persons. It is easy to denounce somebody by saying that he is unsecular and it is easy to support one's contention by saying that he is secular. It means so many things to so many persons. What do I understand by secularism? There was a stage in society through which every society passed, when religion, society and politics formed one integrated whole. They were, as it were, one lump. They could not be differentiated, distinguished from one another. In ancient Egypt, in the Mediterranean civilisations, we know of ' theocracies where priests were also the Kings. They exercised religious power and they also exercised what we now call political power or secular power, call it what you will.

SHRI M. GOVINDA REDDY: Religious power.

SHRI B. K. P. SINHA: Judicial power as well. A stage came when these duties were bifurcated. There were the priests and there were the Kings but, all the same, the law of the priests dominated the Kings. The Kings had to rule according to the law laid down by the priests, the law as laid down in the Holy Book. Fortunately for us, Sir, in India, long long back, at least 25 centuries back, we got rid of this undesirable feature.

13 RSD—5.

Secularism, in the sense in which I understand it, is nothing new to us. It is a part of our heritage, a part of our tradition, a part of our civilisation, a part of our culture. What does secularism mean after all? It simply means that in tackling the affairs of the State, the State shall not be guided by religion or religious precepts. Secularism does not mean that people should become irreligious or ungodly or anti-religious. It simply means that in conducting our political affairs, we shall not give any consideration to religion; we shall not be guided by what the Smritikaras lay down or say. But the fact is that the modern State does not conduct only political affairs. More and more it has come to interfere in the social life of the citizens and when the State makes an effort to control and guide the social life—a sector of life which so far has beer, free from State interference and which should, in all propriety, be free from State interference, we have to take account of the religious susceptibilities of the people who are sought to be regulated. What is, after all, the character of this Bill? This is a Hindu Minority and Guardianship Bill. In this Bill, the conception ot a Hindu runs through and through. We cannot think of this measure except as a measure to control and regulate the life of Hindu minors. In the circumstances, we cannot ignore the fact that when one ceases to be a Hindu, he ceases to have the capacity to act as the guardian of his children. Sir, the child is born to a father; the child is born to a mother, but he is also born to a society; he is born to a religion and he is born to a country. In times gone by, when the family was the unit of society and the head of the family was the patriarch who wielded the power of life and death over women and children, the children naturally had to follow the patriarch in whatever course he pursued, right or wrong, good, bad or indifferent. Times hav« changed and today the individual has become the pivot of all thought. •

[Shri B. K. P. Sinha.] standard by which every measure, every action and every act has to be measured. I have already said, Sir, that the child is the child of the father but he is born in a particular society; he is born in a particular religion and he is born in a particular country. If the father and the mother have a claim over the child, so also has society, so also has religion and so also this country. Today, when the individual is the pivot of our thoughts, would it be proper to treat Che child as a chattel as the child used to be treated 25 centuries back and then confer on him the same religion to which an erring father or erring mother would gravitate? If we were to allow that we would be giving legislative impress to that out-moded, antediluvian patriarchal theory that the child is the chattel of the father. We do not recognise in the modern age that the child is the chattel of the father. The child is an individual in his own right and is free to profess any religion he likes.

SHRI P. S. RAJAGOPAL NAIDU: May I ask my hon. friend this question? Has not the Hindu law through, out treated the wife as the chattel of the husband? I have never come across a child being treated as a chattel of the father.

SHRI B. K. P. SINHA: I am remind ed of a story. One man was hearing the story of Ramayana. After hearing the whole story he asked, "Who is the husband of Seeta?" We have the classical story of Rama wherein th father could order out his sorif *i'"* fourteen years to be spent in exile. To say that the children were not treated as chattels under the Hindi-law.....

SHRI P. S. RAJAGOPAL NA:Dl'-Let us not go to *puranas* or *shastras.* Let us conttne ourselves to Hindu law. Where is it said that the the see *i** considered to be the chatte[1]- of the father? It is said that the wife is the chattel of the husband.

SHRI B. K. P. SINHA: I was talking of society in general. In every society, the patriarch wielded the power of death even over the children, not only over the women. That was so even in the early Hindu society. Ramayana came very, very late. I am reminded of a very, very remarkable book written on this subject by one of my Communist friends; I think it is Mr. Dange.

SHRI BHUPESH GUPTA (West Bengal): I should have thought that Rama left voluntarily.

SHRI B. K. P. SINHA: It may be voluntary. That is the colour that you might give to it but the fact was that in view of the orders of Das.ratha, he had no option in the society of that day.

SHRI KISHEN CHAND (Hyderabad) : That order was given by Dasa-ratha as the ruler of the State and not as the father.

DR. R. P. DUBE: It was not given by Dasaratha at all. It was given by Kaikeyi. It was Kaikeyi who gave that order.

SHRI B. K. P. SINHA: I, therefore, feel that in this age of democracy, we should have regard for the child as well. We should have regard for the society, for the country and for the religion in which that child is born and, as such, we should not give sanction to the patriarchal authority by deleting this clause. This is in my opinion, a very, very beneficent clause and it should be there. No argument on grounds of secularism can convince me the other way round.

Sir, I come next to sub-clause (b) of the proviso. On the happening of any of the three contingencies listed there, the guardian is excluded. If he becomes a *vanaprastha* or a *yati* or a naishthika *brahmachari* he caases to be a guardian of the child. I feel that the inclusion of the *naishthika brahmachari* is rather anomalous. Let us anaiyse the position. Who is a natural guardian? The father or the mother. If the natural guardian becomes a naishthika *brahmachari* he or she

ceases to be guardian. Now, the *naish-thika brahmachari* cannot be a father or a mother. According to Hindu society, human life is divided into four stages. The *brahmachari;* the *grahastha,* that is the life of a house holder the man or woman is married and there is procreation of childien. They brought forth children. The third stage was of the *vanaprastha* and the fourth stage was the ascttic. So far as *brahmacharis* are concerned, the ancient Hindu Sastrakars divided them into two sections. One were the ordinary *brahmacharis* who were *brahmacharis* say for 20 years and 25 years and then they became *grahasthas.* They procreated children and in course of time they assumed guardianship of those children. There was another class and they were naish.th.ifca brahmacharis, those that were vowed to lifelong celibacy. They never got married. They never developed a family, never procreated children. In the circumstances how could a *naishthika bralimachiri* become a natural guardian and *naishthika brahmachari* can never become a natural guardian. If he cannot become a natural guardian where is the sense in excluding him here, I do not understand.

SHRI S. N. MAZUMDAR (West Bengal): Unless he lapses from it.

SHRI B. K. P. SINHA: He is excluded from natural guardianship in the very nature of things. I think this aspect of the question was not considered either by the framers of the Bill or by the Select Committee.

Sir, now I come to clause 7, powers of natural guardian. Restrictions have been put on the powers of guardians so far as immovable property is concerned but not in respect of movable property. Not much of immovable property is left now after our land legislations and even that immovable property will be vanishing gradually in view of our social and economic legislation and I do not think there will be much of immovable property left after some time.

SHRI BHUPESH GUPTA: Where will it go?

SHRI B. K. P. SINHA: It will go very soon, before you go. Most of the property even now is movable property. While restrictions are put on the powers of guardians in the matter of immovable property, no restriction has been put in the matter of movable property. That appears to me to be a serious lacuna in this measure. I am gratified to find that my hon. colleague Mr. Dasappa has put in an amendment to that effect and if that amendment would be accepted movable property also would be subject to the same restrictions. Now a minor may own five acres of land worth Rs. 5,000 or Rs. 10,000. If the guardian wants to transfer it, he is to seek the permission of the court, but the minor may own movables worth lakhs and lakhs and crores and crores of rupees. There 5* nothing in this measure which prohibits or inhibits the guardian from dealing with the minor's movable property in whatever way he likes. I therefore feel that the restrictions on both movable and immovable property should be brought on a par with each other so far as the powers of natural guardian are concerned. That is but meet and proper.

In sub-clause (2) again the natura (/ guardian cannot mortgage or charge any part of the immovable property of the minor without the previous permission of the court and the hon. Minister has sought to support this provision regarding previous permission of the court on the ground that if the permission of the court is there, the infant's property would bring in a sizable amount, a good amount as its price. But the permission of the court involves sometimes a lengthy laborious and expensive procedure The danger to the property of the minor may be imminent, may be very grave may be just in view. In the circumstances to compel a natural guardian to go to the court may mean in very many cases the complete liquidation of the property of the minor So this provision instead of

[Shri B. K. P. Sinha.] acting to the benefit of the minor will act to his detriment. I therefore feel that the words "without the previous permission of the Court" should be deleted. If the guardian deals imprudently with the property of the minor, the minor can according to the law in existence today bring a suit within three or six years—I am not sure what the time limit is—after he attains majority and get the whole thing declared null and void. These transactions are voidable. And I do not see how the father or the mother can be less solicitous of the interest of a minor than a court. The court after all is not in the same position as the father and the mother. The court does not know the affairs of the minor as intimately as they do. The court cannot possibly have the same love for the minor as they have or are expected to have. In the circumstances this restriction appears to be quite unreasonable.

Then, Sir, I support the demand of Mr. Dasappa that the sub-clause regarding lease which has been deleted should be re-introduced. In my State there is a big zamindari -ontaining very valuable mineral wealth.

MR. DEPUTY CHAIRMAN: Just low you said that there should not 3e the restriction incorporated in subclause (2) in the case of a natural guardian. Now you want 'lease' to fee introduced.

SHRI B. K. P. SINHA: No, I meant legal necessity.

MR. DEPUTY CHAIRMAN: Just now you argued that this restriction should not be introduced because it is so difficult to obtain the permission of the court and all that and the natural guardian must be allowed by law to do all that and that the minor can file a petition if he thought that the natural guardian did not act prudently in respect of his property. Now you want 'lease' to be introduced which has a restriction attached to it.

SHRI H. C. DASAPPA: He means if the clause relating to lease is omitted as it is .....

MR. DEPUTY CHAIRMAN: It is true but just now he argued that there should be no restriction even for other classes of porperty.

SHRI P. S. RAJAGOPAL NAIDU: There is nothing here. If it is to be retained then this provision can find a place there. That is what he means probably.

SHRI B. K. P. SINHA: My point was that the restrictions are already there. I was against only one restric tion, the restriction that he should seek the permission of the court. In the law as it stands today there is a restriction on the powers of the guard ian; the powers of the guardian are not unrestricted. The restrictions were laid down about 60 or 80 years back in that famous case Hanoomar. Persaud *vs.* Mussamat Babooee. **that** is, the guardian can alienate the pro perty of the minor only in case of legal necessity or for the benefit of the estate of the minor so that this restriction .....

MR. DEPUTY CHAIRMAN: That will come only afterwards when the alienation is questioned by the minor or somebody else. But here according to this Bill he must obtain the permission of the court beforehand. This is also the provision in the Guardians and Wards Act. Just now ycu said that restriction should not be there.

SHRI B. K. P. SINHA: I cannot see how these two things are contradictory. The restrictions are already there, not natural restrictions but restrictions as imposed by Hindu law and as interpreted by the courts are already there. This Bill seeks to put. one more restriction. Rather it washes off all those restrictions but this one restriction. My only point is, let the restrictions as they stand today in^ law remain there. Do not put in this further restriction, this provision

for securing the permission of the court. That is my only point.

MR. DEPUTY CHAIRMAN: It is already there in the Guardians and Wards A"t.

SHRI B. K. P. SINHA: It is already there, but it is not in the Hindu law; it is not part of the Hindu law.

MR. DEPUTY CHAIRMAN: But we are now enacting the Hindu Minority and Guardianship law.

SHRI B. K. P. SINHA: It may be In the Guardians and Wards Act but it was never in the Hindu law and the Hindu law knew of no such restrictions; the Hindu law in original or as interpreted by the courts imposed some restrictions but those restrictions were of a limited character and people did not have to seek the permission or sanction of the court. This is my point. Let the restrictions as imposed in the judicial decisions and as incorporated in the old texts be here.

But do not put one more restric tion in the shape of permission of the court, and permission of the court creates one more complication. If there is this restriction in the shape of permission of the court, when the guardian sells it on his own .....

MR. DEPUTY CHAIRMAN: But now you argued that the clause regarding leases should remain.

SHRI B. K. P. SINHA: Exactly; the lease is subject to only those conditions.

MR. DEPUTY CHAIRMAN: You have not perhaps understood. All right, you proceed.

SHRI B. K. P. SINHA: I do not mean that in the case of leases .....

THF MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS) : It is not necessary that every one should be consistent in what he says!

SHRI B. K. P. SINHA: I am thoroughly consistent but perhaps I have not been able to make myself clear. It is never my contention that in the matter of leases they should obtain the permission of the court.

MR. DEPUTY CHAIRMAN: That is what you said just now. But you wanted the clause regarding lease to be reintroduced here and that is Mr. Dasappa's amendment as he has tabled it. But earlier you argued .....

SHRI B. K. P. SINHA: Sir, it is very clear. Clause 7 (2) (b) says: "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."

MR. DEPUTY CHAIRMAN: It is not Hindu Law. It is Guardianship Bill.

SHRI B. K. P. SINHA: This is the Bill as introduced.

MR. DEPUTY CHAIRMAN: Yes; introduced earlier.

SHRI B. K. P. SINHA: My whole point was that there should be no necessity for the guardian to seek the permission of the court.

MR. DEPUTY CHAIRMAN: All the while you have been arguing that under Hindu Law—it is not a statutory law—there are certain restrictions, that is, the question of necessity, benefit and all that. According to Hindu Law it can be questioned only in a subsequent suit. But here in the Bill as introduced earlier there was a provision restricting leases also for which a permission from the Court had to be taken. Now, that provision is omitted. Just now you argued that this clause regarding alienation should go. There should be no restriction and the restrictions as held by the decisions of Courts under the Hindu Law would be sufficient. But now you are arguing again that that clause should be

I Shri B. K. P. Sinha.] reintroduced. That is where the inconsistency lies.

SHRI B. K. P. SINHA: That is clear now. The original clause was not before me.

MR. DEPUTY CHAIRMAN: I believe you have understood me now.

SHRI B. K. P. SINHA: I have now understood you. There is very little difference between you and me. I never said that there should be any restriction about lease only.

MR. DEPUTY CHAIRMAN: That means you do not support Mr. Dasappa. The operative clause regarding lease has been dropped in the Joint Committee. You said that you support Mr. Dasappa and Mr. Dasappa has tabled an amendment that it should be reintroduced as it was originally in the Bill as introduced.

SHRI B. K. P. SINHA: To that extent I was wrong. And I committed this mistake because his amendment and the provisions of the earlier Bill were not before me. I simply suggest that both in the case of mortgage, charge, transfer or exchange and in the case of lease the guardian should have the same powers as are there today subject to the same restrictions as are already there. There should not be any further restriction. A transaction may be an extremely bad one or may be extremely unsatisfactory from the point of view of the minor. It may not be to his benefit; it may be even to his disadvantage but if the Court once sanctions it—and there have been so many judicial decisions—it will be assumed that the transaction was a bona *fide* transaction in the interests of the minor and it is not open to the minor after the Court's sanction to challenge that transaction successfully unless he proves fraud or some such thing. I feel that these words must be removed in the Werests of greater precision also.

The hon. Minister urged in his interruptions yesterday that leases also were covered by sub-clause (2). He said that the word 'otherwise' was enough to include leases. It may or may not be enough because, while interpreting, the rule of *ejusdem generis* comes in and difficulties are likely to arise. It may mean lease 3r it may not mean lease. We are codifying this law and one of the aims of codification is to bring precision in legislation, to bring greater definiteness.

AN HON. MEMBER: It may be to your detriment.

SHRI B. K. P. SINHA: It may be to our detriment but we must have greater precision and certainty.

SHRI C. C. BISWAS: Where is the uncertainty here?

SHRI B. K. P. SINHA: The uncertainty is that the word 'otherwise' may include lease or may not include lease. That is the uncertainty I referred to. What is the harm if you specifically put a clause regarding lease? I do not myself see any harm. After all, codification aims aT precision. It aims at definiteness; it aims at certainty. We cannot foresee all contingencies that may arise. We cannot bind all the loose ends. But the fact is if there is anything which we can foresee, there is no reason why we should not provide for it. We cannot altogether eliminate the possibility of judge-made law. The lawyers always will be there so long as law is there in spite of all that we say in the House. The lawyers' interpretations will be there and the judge-made law will be there. One of the aims, as I have already said, of codification is to achieve certainty. I am reminded in this connection of a dictum of one of the greatest jurists, Austen. He says that it is impossible to prevent the growth of judicial law but it may be kept within narrow limits. I therefore urge that with a view to keeping it within narrow limits, we must introduce the provi-

sion regarding lease with the modification that I have suggested, that is, the permission of the court need not be there.

MR. DEPUTY CHAIRMAN: If you do not want the permission of the court to be there, why do you want to have it there v

SHRI P. S. RAJAGOPAL NAIDU: May I say one word? Of course, my hon. friend is not consistent in his arguments. Probably by the inter ruptions he has got confused. The argument that he was advancing was that no permission of the court was necessary in the case of natural guar dians for the disposition of property by way of mortgage or anything if it was for the necessity or benefit of the minor but in the event of that pro position not being accepted by this House, then the next alternative would be .....

MR. DEPUTY CHAIRMAN: No. no.

SHRI H. V. PATASKAR: That is an interpretation of his speech.

SHRI B. K. P. SINHA: I never meant that.

MR. DEPUTY CHAIRMAN: He is quite clear about the stand he has taken.

SHRI B. K. P. SINHA: Yes, I am quite clear. My friend's interruption reminds me of a very famous line in Macbeth. Lady Macbeth began to protest against the murder. Then somebody said, "Lady, thou doth protest too much". I would say to my friend, "You understand too much".

SHRI SARDAR SINGH OF KHETRI (Rajasthan): May I suggest, with all respect, that the hon. Member might read Macbeth again? I should be very interested to see that passage in Macbeth.

SHRI B. K. P. SINHA: I am sorry but .....

*(Interruptions)*

MR. DEPUTY CHAIRMAN: You have already taken enough time.

SHRI B. K. P. SINHA: Then, Sir, I come to clause 7(6), the last two lines, wherein the words "the greater por tion of ____" have been used. That, in my opinion, introduces some uncertainty. After all, what is meant by "greater portion"? Does it mean extent, does it mean value? This is not very clear. In criminal matters also, the provision of the law is that .....

MR. DEPUTY CHAIRMAN: You know as a lawyer what it means.

SHRI BHUPESH GUPTA: Then, he would not have been a lawyer!

SHRI B. K. P. SINHA: " .....the greater portion", in my opinion, is rather a vague term. It may mean greater in value, greater in extent also. So, the better course would be to provide: " .....within the local limits of whose jurisdiction *any* portion of the property is situate" great or small. Let it be left to the guardian to choose, or whoever starts these proceedings in any court— whether the "greater portion" of the property is situate there or is not situate there.

Then, as regards clause 12, I think that the provision is quite proper. That is the law as it stands today, in respect of coparcenary property the ordinary courts cannot appoint a guardian for the minor's undivided interest in joint family property, but the power vests in the High Court. That is as it should be. The power should vest in the High Courts and not in courts of inferior jurisdiction, because it is an extraordinary exercise of power. In the circumstances, superior courts, courts in which people have full faith and confidence should exercise this power. This extraordinary power, in my opinion, should not be vested in inferior courts.

Coming to clause 13 now, little remains to be said except the point raised by Mr. Bisht and Mr, Gupta. They have pointed to clause 4(b), *i.e.,*

[Shri B. K. P. Sinha.]

any other law in force which is inconsistent with this should be abrogated—the Guardians and Wards Act to that exent should be abrogated and, therefore, some specific provision should be made about those natural guardians. Now, whether clause 4(b) is there or not, if this law is in conflict with the Guardians and Wards Act, the Guardians and Wards Act to that extent will be abrogated. Because it is an accepted rule of construction of Statutes that where there are two laws on a subject, the latter one prevails; the earlier one to the extent inconsistent is abrogated and is void. Even in the same Statute if there are two provisions, one earlier and the other later and the later one is inconsistent with the earlier one, then the later supersedes the earlier one to the extent of inconsistency. So, the deletion of sub-clause (b) of clause 4, in my opinion, would not matter much. And I do not think that fear is justified, because I agree with the interpretation put by my hon. friend, Mr. Dasappa on clause 13. Clause 13 really consists of two parts. One part begins with "In ..... " and ends with ".....consideration". The other part begins with the words "no person ..... " and ends at the end of the sentence. The word "and" is there simply in a disjunctive capacity. Now, there are two conceptions, two ideas, two principles of regulation put in one clause. It would have been better if they were split up and put into two clauses; but even as they are they serve the purpose. The word "and" is used in two senses in legislation. It is either disjunctive or conjunctive. Disjunctive separates and conjunctive unites or takes together. My own opinion is that on the basis of accepted rules of construction, the word "and" used here is used disjunctively. It really splits up the clause into two parts, and it is the latter part that matters. In view of this latter part, the courts would be entitled—if the father is erring, if he is profligate, if he is wasteful—to intervene and supersede him and appoint a new guardian for the minor. I, therefore, feel that their fears are not justified.

With these words, I support this measure.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, this Bill has been acclaimed by all hon. Members in this House as being non-controversial and has been welcomed by them. I, too, to a great extent agree with those remarks, but all the same I would like the House to consider and weigh all the aspects of the Bill before it decides upon as to what should or should not be done in this matter. I am of the opinion that change in social legislation should not be made unless it is found absolutely necessary in the interest of the society and that no change which is done for the sake of change itself should be resorted to. In bringing about changes in our social structure, let us not forget that our Hindu society has some distinctive features of its own—which are distinct and quite apart from those of the other societies—and that it is these very distinctive features in our society which have preserved the Hindu society for generations together and it has enabled the family and the Hindu society to survive so long. I would venture to say Sir, that we will be doing a great injustice to ourselves, as also to our forefathers, if we were to say that all the things which have come down to us from our forefathers in the matter of our social structure are bad and that they need a radical change. I will, therefore, examine this measure with great care and see which of the changes proposed are necessary in the interests of the society. To my mind, Sir, the most important changes, and which are most welcome from my point of view, are these. The first change that has been made by this Bill is the provision which confers the right of custody on the mother up to a certain age, even in preference to that of the father. And this is provided in clause 5 of the Bill. This change is no

doubt very important and far-reaching not only from the point of. view of the child, but also from the point of view of the womenfolk and their rights which they have enjoyed in the Hindu society. On this subject Sir, I am quite clear in my mind that the custody and upbringing of the child is the best concern of the mother up to quite a considerable length of time, both for the benefit of the child, as also in the interest of the society itself.

Personally Sir, speaking for myself, I would divide this question of custody into two distinct parts, namely, firstly, the custody of the boy, and secondly, the custody of the girl. I make a distinction between these two, even though I, know Sir, that the hon. lady Members in this House are generally of the opinion that the custody of the child, whether he is a male or a female, should continue to remain with the mother, until the child attains a sufficiently advanced age, but since the question of the education of the boys comes in at an earlier age than it does in the case of girls, it is necessary that the boy's custody should be fixed at a comparatively earlier age so that the father can take charge of him for his education. It is true that education has considerably advanced among girls also in Hindu society and it is to the great credit of our society, but, Sir, although the education of the girls begins almost at the same age as that of the boys, yet it is seldom that the girls are removed from their home town for their education. In some of the families, you know Sir, that the boys are sent to schools even to places outside their hometowns, but it is seldom that the girls are sent for schooling outside their homes. Therefore I would submit that the age of the boy should be fixed at 7 years or at 8 years, whereupon his guardianship should vest in the father, but in the case of the girl, I am definitely of the opinion that the custody of the girl should continue to remain with the mother up to a much later age, it would certainly be good, if it could be continued until the age of the minor's marriage, but if that is not possible, then in any case, the age for the custody of the minor girl by the father should be fixed at 12 years, and not less than that. Frora these two points of view in my mind, I have tabled certain amendments which will come up later.

Then, Sir, the next important change which has been brought about by this Bill is the right of the mother to the guardianship of her children in the absence of the father. And that is contained in clause 8(2). As you are well aware, up till now the position was that even after the death of the father the custody of the child or the minor did not vest in the mother. And therefore I say that it is a step in the right direction, namely giving the custody of the child to the mother after the father.

Then, Sir, there is a provision in this Bill which has given to the mother the right to make a will, appointing a guardian for the minor in her absence. This too, Sir, is a very wholesome provision. But this right has been conferred upon her only where the husband has not already left a will, appointing a guardian. This clause 8 further provides that the father will not have the right, so long as the mother lives, to confer guardianship of the child on any other person during her life time.

But, Sir, there is one little matter in clause 8(2) which strikes me, and upon which I would request the hon Law Minister to throw some light y And that is this. Sub-clause (1) olir clause 8 reads as follows: "

> "A Hindu father entitled to act ai 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 oi in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both."

Then, Sir, sub-clause (2) reads as follows:

> "An appointment made under sub-section (1) shall have no effect

[Pandit S. S. N. Tankha.] if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian."

Now in this matter what I wish to know from the hon. Law Minister is this. What will happen in a case where the father makes a will and appoints certain person as the guardian of the minor but since the mother is alive, during the mother's life time, that will will not take effect, and, after the father's death, when the mother becomes the guardian, she on her part gets the right to make an appointment by will. Now, Sir, after the death of the mother, whose will is to prevail? That is my question.

SHRI H. C. DASAPPA: Mother's.

PANDIT S. S. N. TANKHA: Is it the father's will, or is it the mother's will that will prevail?

SHRI H. C. DASAPPA: The mother's will.

PANDIT S. S. N. TANKHA: But Sir, I say that there is some uncertainty.

MR. DEPUTY CHAIRMAN: Where is the uncertainty? Please read the words "but shall revive if the mother dies without appointing, by will, any person as guardian." It is quite specific.

PANDIT S. S. N. TANKHA: I am taking the case where the mother also leaves a will.

MR. DEPUTY CHAIRMAN: Yes, that is what it means. If she appoints, her will will prevail.

(Interruption.)

PANDIT S. S. N. TANKHA: I am taking the case where the husband has also made a provision by will. Take a case Sir, where the wife comes in as the guardian after the husband's death. She makes a will appointing another person as the guardian of the minor. Now, who is to take charge of the minor—the guardian appointed by the father or the guardian appointed by the mother!

MR. DEPUTY CHAIRMAN: The guardian appointed by the mother's will. It is quite clear.

SHRI H. V. PATASKAR: Let us read sub-clause (2). It says:

"An appointment made under subsection (1)."

*i.e.* the appointment of a testamentary guardian made by the father—

"shall have no effect if the father predeceases the mother....."

That is the normal law when the mother is alive. When the mother is alive, the father's appointment will have no effect, but when he dies it will revive?

"but shall revive if the mother dies without appointing, by will, any person as guardian."

That is the scheme.

MR. DEPUTY CHAIRMAN: Where is the doubt in this?

PANDIT S. S. N. TANKHA: The provision then is that it will revive only on the condition that the mother has not left any will.

MR. DEPUTY CHAIRMAN: If the mother makes a will, then the guardian appointed by the mother will be the guardian.

PANDIT S. S. N. TANKHA: If that is so then, this is a wholesome provision. The most important change which has been made by the Bill is the right of the mother to appoint a guardian by her will if the father has not appointed one. At the same time, while there are these good features of the Bill, there are certain others with which I do not agree. The first of these changes is the denial of the right of the natural guardian to dispose of the property of the minor without the permission of the court. In this connection I have yet to know of a single case in which the natural guardians of minors have acted against the interests of their minor children or for the benefit of their own persons. I have known of no such cases, and even if there are some such cases, they are

very few. In most of the cases in everyday life we see that the natural guardians have done their best not only for the upbringing of the minors but also for the efficient working and management of their property. That being the case, I do not see any reason why undue restrictions should be placed on the powers of the natural guardian. Not only are these restrictions against the best interests of the society but they will also act adversely on the mental outlook of the guardians. Moreover, to my mind, such restrictions will also act adversely agairst the interests of the minors, because it will prevent speedy remedy being provided to the minors for their maintenance and education at the time of need, because going to a court of law by the natural guardian would mean considerable delay in getting the property sold or mortgaged, and by the time these guardians go to a court of law and obtain an order in their favour, there is danger that the value of the property may depreciate or it may not find a ready buyer. I am aware of the fact there is another view in that matter also, namely, that the order of the Court having been obtained, the interests of the buyers will be protected and, as such, they will be in a better position to buy that property. But Sir, I submit that because of the delay which is bound to occur on account of the parties being forced to go to a court of law, the immediate needs of the minor may not be fulfilled. In this regard I am of the view that the present position of law under the Hindu Law is sufficiently protective of the interests of the minors regarding the disposal of their property, and to my mind there was no necessity for effecting any change in it. You will see that the position of the Hindu Law as it exists today is that the natural guardian of a Hindu minor has power to manage the estate, but can mortgage or sell any part thereof only in case of necessity or for the benefit of the minor. It is only under these conditions that a guardian can dispose of the minor's property and if these conditions do not exist, then any transfers made by J the natural guardian will not hold ] good on the minor attaining majority. Therefore Sir, I do not see any reason why these restrictions should have been provided for. Moreover, I do not also realise whether there has been any cry for such a change in our Hindu society. I have not heard of any natural guardian of a Hindu minor ever doing any great harm to the property of his minor, and so why should the hands of the natural j guardian be tied down? In this con-j nection you may also be pleased to ! realise that in the well-known case of Hunooman Persau JL *vs.* Mussamat Babooee—the powers of the manager of a Hindu family have been clearly defined and set down, and it is upon that interpretation that the courts have since administered the law.

MR. DEPUTY CHAIRMAN: Will you take more time?

PANDIT S. S. N. TANKHA: Yes, Sir.

MR. DEPUTY CHAIRMAN: You will resume on Monday.

## PAPER LAID ON THE TABLE

### REPORT OF JOINT COMMITTEE OF THE OUSES ON THE CONSTITUTION (FOURTH AMENDMENT) BILL, 1954.

THE MINISTER FOR HOME AFFAIRS (SHRI GOVIND BALLABH PANT): Sir, I lay on the Table a copy of the Report of the Joint Committee of the Houses on the Bill further to amend the Constitution of India.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. on Monday, the 4th April 1955.

The House then adjourned at one minute past five of the clock till eleven of the clock on Monday, the 4th April 1955.