[Shri B. N. Datar.]

Bihar and Assam. Requests from other State Governments for medicines, foodgrains and clothing, where received, are also being met.

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

MR. CHAIRMAN: Mr. Kaushal will resume his speech.

SHRI J. N. KAUSHAL (PEPSU): Sir, I have only a very few words to say. While referring to clause 5 of the Bill, I want to draw the attention of the House to the provisos which have been added to that clause. There are two provisos which say that under certain circumstances the natural guardian shall not be entitled to act as such. I want the House to consider one other circumstance, which, I think, should be added as a proviso to clause 5. In the case of a natural guardian, when he remarries, what happens? Does he still continue to be the natural guardian of his minor children or does he cease to be the natural guardian? My submission is that experience has shown that when a man or a woman remarries, certain complications do arise so far as the children of the previous wife or the husband are concerned. It is not beyond our knowledge that in so many cases their treatment goes to the verge of cruelty. I feel that under such circumstances, if it is brought to the notice of the court, and the court is satisfied, that such a parent is not looking after the child, and in fact he is giving a cruel treatment, then power should be given to the court to remove that natural guardian. If that is not done, then the purpose underlying this Bill, I would say, would be greatly defeated, because the paramount consideration before the House is the welfare of the children. The other circumstance to which I would like to draw the attention of the House is with regard to the words which are used in this proviso. They are "if he has completely and finally renounced the world by becoming a hermit or an ascetic or a perpetual religious student." Now, so far as the first two categories are concerned, *i.e.*, becoming a hermit or an ascetic, it is all right. But with regard to the third category, *viz.*, "a perpetual religious student", if he takes to religious studies, then the question would normally arise whether he should lose his right of guardianship over the children. If it is an accepted phrase which may amount to severing his connections with the world, then probably this proviso would be all right. Otherwise this phrase should be deleted.

MR. CHAIRMAN: *Nitya Brahamchari.*

SHRI J. N. KAUSHAL: Then I accept what the hon. Chairman says, and it should be retained. I have nothing more to say.

SHRI H. C. DASAPPA (Mysore): Mr. Chairman, this Bill purports to be another instalment of the Hindu Code. It appears to me that it is the least controversial of all those measures brought up before Parliament. I agree, Sir, with the hon. Member from Bombay that it would be very desirable if these allied Bills are considered by the same Select Committee. That will greatly facilitate the task of seeing that there will be no unnecessary conflict between the provisions of the Bills as they finally emerge from out of the Select Committee.

As regards the present Bill, I think, Sir, it merits a warm welcome for the obvious reason that it takes note of the facts in the country and tries to keep pace with the progressive ideas of the people in regard to this matter. I would like just to go through some of the clauses and deal with them before I make a few general remarks at the end.

Now, Sir, with regard to the definition in clause 3(b), I find that a

natural guardian is here stated to be one who will not include a guardian appointed by the will of the minor's father, and secondly appointed or declared by a court—that will be under the Guardians and Wards Act—and thirdly, empowered to act as such by or under any enactment relating to any court of wards. I have not been able to follow the reasoning as to why the exception in clause (b) (i) regarding the natural guardianship is confined only to one appointed by the will of the minor's father, when in the Bill itself there is a provision for the mother appointing by will a guardian for the person of the minor. I take it that this is more an oversight than a deliberate idea of the hon. Law Minister to eliminate the guardian appointed by the mother from out of the natural guardianship of the minor.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): The guardian appointed by the will of the father is excluded from the definition. Natural guardianship is limited only to the relations mentioned in clause 5.

SHRI H. C DASAPPA: I do not know whether I made myself clear. My point is that I do not want any distinction between the status of a guardian appointed by the father and a guardian appointed by the mother by will.

SHRI C. C. BISWAS: See clause 9.

SHRI H. C. DASAPPA: The question in clause 9 is different. I want to know why, when you exclude the guardian appointed by will or testament by the father from being considered as a natural guardian, you should not extend the exclusion to the guardian appointed under will by the minor's mother. Why is there such a distinction? I am unable to understand the difference between the two.

One of the most important clauses is that which relates to the natural guardian of the minor. It is stated that the custody of a minor who has not completed the age of three years, shall ordinarily be with the mother. There was a suggestion yesterday that this limit of three years should be extended to seven years and that it should be the mother's primary responsibility to have the custody of the child. Sir, I would like to make a difference between a minor girl and a minor boy. The proper thing to do so far as the custody of a minor boy is concerned is to place him under the guardianship of the father as early as possible, but I think that in the case of a minor girl, it would be very desirable to see that she is in the custody of the mother for a much longer period than three years. So, I would suggest that the extended period of five or seven years should be allowed for the custody of a minor girl with the mother.

It was also said yesterday that there was no need for sub-clause (c) of clause 5, *i.e.* about the husband being the guardian of a minor married girl, because it was suggested that hereafter a married girl would be more than eighteen years of age, but I see no indication of any proposal to have the age limit of the girl raised to eighteen for purposes of marriage. The Hindu Marriage and Divorce Bill puts it at 15 years, and I have no idea that it is going to be altered.

SHRI C. C. BISWAS: The Joint Committee has increased it to sixteen.

SHRI H. C. DASAPPA: I am not aware, but even if it is raised to sixteen, still she would be a minor, and therefore for that very reason, it is very necessary that this sub-clause (c) should be retained. Even apart from this, this Bill provides for contingent happenings in between the period this Bill is being enacted, its being put on the Statute Book and its coming into force. Besides, there are quite a number of minor girls who are already married and are yet minors and have not reached majority. So, the Bill has to provide for such cases also and therefore I think it is very desirable to retain this sub-clause.

[Shri H. C. Dasappa.]

Then the next thing about which there has been some controversy is the proviso saying that no person shall be entitled to act as the natural guardian of a minor if he has ceased to be a Hindu. There was some criticism with regard to this fact that a mere change of religion on the part of the natural guardian, whether the father or the mother, should *ipso facto* mean that the guardianship should become void. Decisions there are which differ on this point but it seems to me that it has been deliberately adopted as a matter of policy at the time of the drafting of the Hindu Code. It has to be noted that with regard to testamentary guardian or a guardian appointed by the court—very often it is the Collector, the head of the district—there is no such disqualification. There is no caste or community prescribed for such a guardian appointed by the court. So far as at any rate the head of the district is concerned, he may be of any community, and yet he is deemed to be competent to act as the guardian. Likewise, when the court appoints a guardian, it is quite likely that they might appoint a guardian who is not a Hindu, but yet it seems to me that this has been deliberately introduced here as a matter of policy because it should not be the right of the father to determine the religion of the minor and the mere fact that he chooses to change his religion because of his convictions does not mean that he must pre-determine the convictions of the minor. Therefore I welcome this provision and I think it ought to be there.

As regards the suggestion or idea put forward by some that we do not know what exactly a man professes, that there are so many people who do not think of their religion and that they may not come within the definition of the word 'Hindu', I must say that the definition in the Bill is wide enough to comprehend all the people to whom the Hindu Law applies. It is not necessary that a person should be professing the religion actively or consciously in order to come under the definition of a Hindu. So, this is a very salutary provision which ought to remain as it is.

Then as regards the proviso 'if he has completely and finally renounced the world by becoming a hermit or an ascetic' I think this provision is necessary. Otherwise, the interests of the minor are bound to suffer. A person who has renounced the world becomes civilly dead for all purposes and there is no question of his purporting to fulfil any of the obligations of a natural guardian or of any guardian for the matter of that, and therefore I cannot agree with those friends who say that that should not by itself be a disqualification for a person from acting as a guardian. I fail, however, to understand why the words 'perpetual religious student' have been added. In fact, if a person chooses to engage himself or herself perpetually as a religious student, it does not mean that he or she forsakes his or her responsibilities of a father or a mother. In fact, a good many parents do take to that kind of life, and it is not correct to say that they have not the interests of their children at heart. I think this may well be omitted.

It does not also look proper that a natural guardian for the mere reason of his being the father should be entitled to act as such. The fitness of the natural guardian should be a consideration for the purpose of his acting as a guardian. Just now there was a reference by the previous speaker about this question of his acting detrimentally to the interests of the minor by taking, for instance, a second spouse. Though in this Bill there is no reference to unfitness of natural guardian, in the Guardians and Wards Act—I think under section 19—there is provision for seeing that an unfit natural guardian—the mother, the father or the husband—cannot act as guardian if the court feels that she or he is not fit. Here in this Bill I find an omnibus clause, clause 13, which provides for such cases. It reads:

"In the appointment or declaration of any person as guardian of

a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration 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 would be a sufficient answer to Shri Jagannath Kaushal that the natural guardians who are not competent for any reason or who are not desirable for any reason, would not be entitled to act as natural guardians. Under clause 7 even the natural guardian has got to act with the permission of the court in order to deal with the immovable property by way of mortgage or sale or long lease etc. It is also stated that the disposal of immovable property by a natural guardian in contravention of sub-clause (1) or sub-clause (2) is voidable at the instance of the minor or any other person affected thereby. Formerly it was not necessary for the natural guardian to take the permission of the court to deal with the immovable property so long as it was for legal necessity and for the benefit of the minor. Now the same provisions as are in the Guardians and Wards Act in relation to the guardians appointed by the court are introduced here with reference to the transactions of the natural guardian also. We have some experience of the way in which the guardians have functioned and this would be a very desirable thing and will eliminate a lot of litigation and will certainly safeguard the interests of the minor. There was a suggestion that the transactions which are done without the permission of the court should be treated void and not merely voidable at the option of the minor. That would be introducing a very dangerous proposition into the whole scheme of things. It often becomes necessary and in the interests of the minors themselves that a guardian whoever it may be, natural guardian or one appointed by the court, should deal with the property by way of sale or mortgage in order to wipe off debts and save the remaining property. Any inaction by the guardian would only further complicate matters and cause injury to the interests of the minor permanently. There have been numerous cases of that sort. Therefore this is a perfectly salutary provision that has been introduced here.

As regards the revocation of authority by a natural guardian there is not much of a distinction between the two reasons given in clauses 8 (a) and clause 8(c). Clause 8 (a) refers to the fact that the authority is revocable except where it is not in the interests of the minor to permit revocation and clause 8(c) says, where for any other sufficient cause, it is not desirable to permit revocation. There is not much difference between the two and I think it is only a bit of a tautology and we could just as well have only one clause with regard to this.

Then I come to the clause with regard to the testamentary guardians and the powers of the natural guardian. It is open for a Hindu father to appoint a guardian by will or testament to both the person and the property of the minor but it is not open for the mother to appoint a guardian by will or testament with regard to the property of the minor. I am unable to subscribe to this view for the simple reason that such experience as I have, goes to show that the mothers have a better and a greater instinct of preserving, conserving and improving the properties whether of the minors or of themselves. One has only to go to Kerala or Malnad or Assam or Manipur or Coorg to find how efficiently and carefully the wives and the widows husband their estates and resources. In Malnad I have seen that where the men had often been unable to look after their estates and incurred debts and allowed their estates to suffer considerably after the death of the men, when the widows took charge of the estate, very often they had been able to regain most of what their husbands

[Shri H. C. Dasappa.]

had lost and often build up the assets. When the mother is capable of appointing a guardian for the person of the minor, I can conceive of no reason why she should be denied the right to appoint a guardian for the property. This invidious distinction should go and it would be very desirable to give permission to the mother to appoint guardian for the property also. There are ample safeguards in the Bill as well as in the Guardians and Wards Act to prevent any wrong handling or misdemeanour and therefore there should be no reason why the mother should not be permitted to appoint guardian for the property as well of the minors. Here we find that the father only can appoint by will or testament a guardian for the property. Now the issue arises as to when this guardian appointed under the will or testament can choose to take action under that will. You find on the one side that under clause 5 after the father, the mother becomes the natural guardian in the case of the minor. That is a right conferred under clause 5. She becomes entitled to manage the property as well as the person of the minor after the death of the father. Now having conceded that right under clause 5, would it be a right thing for us to enable the father to take that power away from the mother by a will under clause 9 of this Bill? Personally I feel that it is not correct or fair to do so. The exception should only be under clause 13—the overriding clause—when she is considered unfit by any court. That of course is always there and I welcome that.

AN HON. MEMBER: Clause 13 does not apply to natural guardians at all.

SHRI H. C. DASAPPA: Clause 13 says:

> ". . ..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."

So it is difficult for me to understand that that provision relates only to guardians other than natural guardians. There is nothing whatever in that clause to indicate that. It comprehends all guardians including natural guardians. Under the Guardians and Wards Act the mother or father or husband, as the case may be, cannot be entitled to act as guardian if he or she is found unfit.

SHRI C. C. BISWAS: Clause 13 empowers the court to supersede the natural guardians.

SHRI H. C. DASAPPA: It shall be open for the court to supersede the natural guardian in case the court considers that the father or mother or husband, as the case may be, is not found fit to manage the minor's property or to look after the interests of the person of the minor. That is absolutely clear and that is a good provision. We find it stated in section 19 of the Guardians and Wards Act:

> "Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards..... "

Of course, that does not relate to us now—

> ".....or to appoint or declare a guardian of the person—
>
> (a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or
>
> (b) of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or
>
> (c) of a minor whose property is under the superintendence of a Court of Wards....."

Thus it is there put in very clearly that even the father cannot, as a matter of right, becomes the guardian if the

court feels that he is not fit for the job. So, when there is such a clear safeguard, I see no reason why the mother should not be entitled to exercise her right under clause 5, so long as she is there, and it should not be open for the father to deprive her of her right as the natural guardian by means of any will. It should be left open only to the court to say that the mother as the natural guardian should be removed from that office if it feels so, when the court could certainly appoint some other guardian in her place.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI H. P. SAKSENA (Uttar Pradesh): May I interrupt my hon. friend to say that this clause goes counter to section 19 of the Guardians and Wards Act? There is apparent conflict between the two.

SHRI H. C. DASAPPA: Yes, in so far as the mother is concerned, I agree. But so far as the father is concerned, I do not see the same conflict. As regards the mother, the conflict arises only when the father chooses to supersede the mother's guardianship by means of a will or testament, and to appoint another guardian. It is only then that the conflict arises, but not in other cases. In other cases, in the absence of the father, the mother is the natural guardian and under clause 5, she becomes the guardian and there would be no conflict then. Here an extra power is given to the father to supersede the legitimate right of the mother to be the natural guardian, after his death. I can conceive of no reason why this disqualification should be attached to the mother of the minor.

I feel that my reasoning on this point, is reinforced by the structure of the clause itself. Let me read sub-clause (1) of clause 9. This is what it says:

> "A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property or in respect of both:
>
> Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor for so long the mother is alive and is capable of acting as the natural guardian of her minor child."

Then comes sub-clause (2):

> "The guardian so appointed has, after the death of the father and of the mother....."

This has got to be very carefully read and noted. The words used are "and of the mother"—

> ".....if the father has predeceased her, the right to act as the minor's guardian....."

In one place you confer the right on the father to appoint the guardian by will or testament, superseding the claims of the mother, and then we say that the guardian can only act after the death of the father and of the mother, if the father has predeceased her. That means the mother, also should have died. I am rather unable to follow, I am sorry to say, the reasoning in this particular matter. Anyway, it helps me in my argument, that the mother should be the natural guardian and that no will or testament of the father should ever interfere with her right, unless, of course, she becomes unfit to act as the guardian, by the virtue of the general clause, clause 13.

10 A.M.

MR. DEPUTY CHAIRMAN: Please read the proviso which is there about testamentary guardian.

SHRI H. C. DASAPPA: But that is with reference to the right of the mother to appoint a guardian for the person of the minor. If the father has already appointed a guardian for the person of the minor, then the mother cannot make a fresh will or testament and appoint another guardian for the same purpose.

MR. DEPUTY CHAIRMAN: Please read the proviso.

SHRI H. C. DASAPPA: Yes, it says:

> "Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor for so long the mother is alive....."

As I said that is with regard to the person of the minor. As regards the guardianship of the person of the child, this Bill does not take away the right of the mother, except as given under the disability suggested in clause 13. The father cannot take away the right of the mother to be the guardian of the person of the minor. That is absolutely certain. But I contend that there is no reason to question her right to be the guardian of the property as well of the minor. What right has the father to take away her right to be the guardian of the minor's property to which she is entitled under clause 5. All canons of reason and justice and experience show that the mother is the proper person to be the guardian of the minor's property. Why should that right be taken away under clause 9? Sir, I smell a lot of danger in permitting the father to appoint a guardian for the property of the minor, superseding the right of the mother—I repeat, I am dealing here only with the property of the minor—the right of the mother to be the guardian of the property of the minor also. I very strongly object to that right being conferred on the father. I should have no objection, whatever, to the father making any will or testament with regard to either person or property, after the mother's death. Either the mother will predecease the father, in which case no question of the mother becoming the guardian of either person or property of the minor would arise, and even if she does not and she survives him I have no objection to the father making a will or testament, to take effect only after the death of the mother. That is my contention. I have been unable to follow the reasoning and the logic of this distinction between the father and the mother, when I from my ample experience feel that the mother is any day as entitled as anybody else, to manage the property of the minor. Therefore, I would beg the hon. Law Minister, if nothing else, at least to consider my humble suggestion.

SHRI C. C. BISWAS: The father appoints a guardian by will, according to the scheme.

SHRI H C. DASAPPA: The father appoints a guardian by will. Very well. And he can do so in respect of both the person and of the property. There is the proviso, however, that if the mother survives, so long as she is living, the person so appointed cannot act as the guardian of the person of the minor. That is the proviso. Then you come to the next portion which says:

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

SHRI C. C. BISWAS: This testamentary guardian can act both as respects the property and the person of the minor only after the death of the father and of the mother. If the mother is living then the testamentary guardian does not acquire this right. That is the purport of sub-clause (2). The testamentary guardian can begin to function only upon the death of the natural guardian, the father and the mother. So long as the natural guardians are alive, he does not come into the picture at all.

SHRI AKBAR ALI KHAN (Hyderabad): That is not the wording.

SHRI C. C. BISWAS: The other question whether or not we should allow the mother, after the father's death, to nominate a person as guardian who will be competent to look after not only the person of the minor

but also the minor's property is quite a different one. That is a question which will come under sub-clause (3), and I can quite appreciate that. If the mother as a natural guardian has the right to look after both the person and the property of the minor, why should not she have a right to appoint somebody who can similarly look after both person and property?

SHRI H. C. DASAPPA: I agree with my hon. friend that there is a certain amount of confusion in the language and the structure of the clause. As far as I could see, I could understand only one thing from the proviso and that is that after the death of the father, the mother has got only the right over the person and not over the property when the father has appointed by will a guardian. Though sub-clause (2) makes it fairly clear, I find a certain amount of inconsistency between that sub-clause and the earlier proviso. The language should be made clear. That no guardian appointed by the father can act so long as the mother is alive, is made clear in sub-clause (2) but the proviso to sub-clause (1) creates a little confusion in my mind. It is that which worries me a lot. Why should there be this inconsistency? Let me read sub-clause (1) in full: "A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both: Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor for so long as the mother is alive and is capable of acting as the natural guardian of her minor child".

SHRI AKBAR ALI KHAN: If the words 'and property' are added, it will be clear.

SHRI H. C. DASAPPA: It should be, "Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person as well as the property of the minor....."

SHRI C. C. BISWAS: The father has got a right to appoint a testamentary guardian both for the person and for the property but so long as the mother is living, this guardian—whose appointment is not at all invalid—cannot function so far as the the minor's person is concerned but as soon as the mother dies then this testamentary guardian will be competent to take charge not merely of the property—which was already in his charge—but also of the person of the minor.

SHRI H. C. DASAPPA: The issue is very simple. I want to know very categorically—where the mother is alive—whether this guardian appointed by the father can choose to act as the guardian of the minor's property during the mother's lifetime?

MR. DEPUTY CHAIRMAN: I think the wording of the proviso is not very happy. The wording may be examined.

SHRI C. C. BISWAS: The wording is limited to the question of guardianship of the person. If the mother is alive the testamentary guardian will be incapacitated from taking charge of the minor's person. That is the object. The other question is, why you should not extend it also to the case of guardianship of property. That is a different question, but then, as I pointed out, sub-clause (2) says: "The guardian so appointed has, after the death of the father and of the mother, if the father has predeceased her, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as may be specified in the will". This will enable the testamentary guardian to function in the same way as a natural guardian but this right will come into operation only after the death of both the father and the mother. No doubt, the Bill provides that if the father is dead, and the mother survives, she becomes

[Shri C. C. Biswas.]

the natural guardian, and as such she will under clause 5 be competent to look after both the person and the property of the minor. Under clause 5 where the natural guardians are enumerated, the father comes first and then comes the mother in respect of both person and property.

MR. DEPUTY CHAIRMAN: Then why make this distinction in this proviso? There are two parts; one is, "Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person of the minor for so long as the mother is alive", and then you say, "and is capable of acting as the natural guardian of her minor child".

SHRI B. K. P. SINHA (Bihar): The proviso should be deleted.

MR. DEPUTY CHAIRMAN: If the wording is made clear that it applies both to person and property, the problem will be solved. The Select Committee may examine that.

SHRI C. C. BISWAS: That may be made clear but that was not the object of the proviso. The object was simply to say that if the mother is alive nobody else can function as the minor's guardian for the person.

MR. DEPUTY CHAIRMAN: There is no quarrel at all about the person. Will the testamentary guardian step in when the mother is alive?

SHRI C. C. BISWAS: When the mother is alive, after the death of the father, she is the complete guardian under clause 5, guardian both of the person and of the property.

SHRI H. P. SAKSENA: Then why say "person only" here?

SHRI C. C. BISWAS: The object was not to shut out the mother from guardianship of the property as a natural guardian after the death of the father.

SHRI H. C. DASAPPA: I am extremely grateful to the hon. Minister for having made things very clear.

SHRI C. C. BISWAS: I understand there is some ambiguity. My friend Mr. Dasappa is also complaining and so I take it that there is ambiguity. That may be removed in the Joint Select Committee.

SHRI H. C. DASAPPA: I am thankful for small concessions.

MR. DEPUTY CHAIRMAN: The wording does not lend itself to that interpretation.

SHRI C. C. BISWAS: It did not occur to me that it may be susceptible of this interpretation.

MR. DEPUTY CHAIRMAN: It may be clarified in the Select Committee.

SHRI C. C. BISWAS: There are many defects and the Select Committee will put them right, not merely as regards wording but even in regard to substance also, for instance, the question of making a difference between the father and the mother as natural guardian. We make this provision in the Bill, because we did not want to make any violent departure from the existing enactments. You can, if you want, equate the mother to the father.

SHRI H. C. DASAPPA: I feel that this clause will be all right in view of the attitude now taken up by the Law Minister.

As regards the duty of a guardian under clause 10, I think the very fact that conversion from being Hindu to some other sect entails disabilities should also be a reason in support of the provision that the minor should be brought up as a Hindu. This is only in consonance with the spirit of the earlier clause. I am also glad, Sir, that in clause 11 the *de facto* guardian is disabled from dealing with financial matters.

Any number of cases arise because of the misdoings of these *de facto*

guardians and now-a-days people are accustomed to go to the court for securing necessary permission and so where there is no natural guardian there should be no question of a *de facto* guardian meddling or intermeddling with the properties of the minor.

Then, as I said, the last clause is a very helpful clause and I think we ought to welcome that particular clause in the interests of the minors. After all the care of the minors is the responsibility of the State, and I find throughout that idea breathing through this Bill as well as the Guardians and Wards Act. That such changes have been made very cautiously and gradually is a thing which we should welcome, and there should be no unnecessary agitation over the introduction of such wholesome reformers. When the new Hindu Code Draft Bill was brought before Parliament, naturally because it was a compendium and a big thing, there was such a hue and cry. Apparently because the hon. the Law Minister attempted a frontal move there was too strong an opposition for it. He has now taken recourse to these flank moves which have been very very successful, extraordinarily successful, and I agree with my friend from Bombay who yesterday said that we should not be too meticulous with regard to so-called Shastras and injunctions in the past. It is true that our ancient law givers have had a most progressive mind, a dynamic mind, which took into account every changing need and requirement of the country. We have frozen those ideas, those thoughts and crystallized them with the result that the society is unable to go ahead, to forge ahead. He was quoting Narada and Parasara. They have said that a woman can take another husband in certain circumstances, when he is not heard of, when he is impotent, when he is dead, when he renounces the world and so on. A widow is ordained, as the expression goes, to take another husband. Now that was the progressive past and today we have fallen back on the past and I am glad that the hon. the Law Minister is here to increase again the tempo of reform—he has chosen not too much nor too little, but he has taken a beautiful middle path, and I, Sir, thank him for having brought this measure.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Deputy Chairman, I cannot say I welcome this Bill. In fact even at this stage I am rising to say that the Select Committee should look into some of the aspects of the question and suggest that this Bill be taken up as an amending Bill of the Guardians and Wards Act. I will give reasons for making this statement, Sir. The reason why the Hindu Code was brought in at all mainly was that, apart from making provision for the progressive needs of society, there should be within the two covers of one book all law that related to our temporal affairs, worldly affairs, so that even an ignorant man or woman, moderately educated, should without the help of lawyers, be ordinarily able to manage his or her affairs. Now this particular piece of legislation, the Hindu Minority and Guardianship Bill, has been framed in such a way that in some clauses we are asked to take recourse to the general law and in some other clauses we are told that because the general law does not provide for some of the requirements under the Hindu law—especially I would refer to the speech of the Law Minister where he says: "No guardian of the property of an infant can be appointed where the minor is a member of an undivided family governed by the Mitakshara Law or the Aliyasantana Law" etc.—so even under that general law recourse has to be taken to a particular law of a particular community. But by bringing now this Bill we have not said that no recourse will have to be taken to the general Guardians and Wards Act! So if we are going to make confusion worse confounded by this Bill, and thus the very object for which we were going to codify Hindu laws *viz.* clarification or simplification would be de-

[Dr. Shrimati Seeta Parmanand.]

feated. Secondly I would like to point out the very essence of some of the rights of the various persons, particularly of woman in relation to man, over which there has been such a controversy, and I am glad to find out that the previous speaker has been such a champion of woman's rights and he appreciates the woman's position properly.

AN HON. MEMBER: There are many.....

DR. SHRIMATI SEETA PARMANAND: I am glad there are many and I hear that this attitude is a precursor to the attitude to the entire Hindu Code. I would say, therefore, that if the Hindu Code law with regard to succession had been passed and then this Bill had been brought—if it had to come at all as a fragment of the Hindu Code—as really an amending Bill of the Guardians and Wards Act, people would have been in a better position to visualize the correct position of a woman under it because of their realistic appreciation of her proprietary rights. Even here, at the cost of repetition. I would use a phrase which irritates the hon. the Law Minister and say that he has put the cart before the horse. I would also seriously point out that he has, by bringing this little fragment of this Bill unnecessarily at this moment, taken the valuable time of the Legislature which is allotted to social legislation, and which could have been better devoted at present for the Select Committee's work on the Hindu Succession Bill. That Bill should have been given priority over this Bill and referred to a Select Committee which our Prime Minister also thought, was being given, because you may be interested, Sir, to know that, when I was referring to him at a Party Meeting as to when the other Bills would be introduced, he thought that we were already dealing with the Hindu Succession Bill. He, for the moment, while he was busy with other things, thought so and it was because he rightly lays the greatest emphasis on the Hindu Succession Bill. That is the keystone of the entire code structure. So, Sir, I would like to say that the Select Committee—this Bill having been introduced and being referred to it—should take the shortest possible time over this and I hope that they would recommend the enactment of this Bill as an amending Bill of the Guardians and Wards Act. Sir, if we do maintain that the Hindu Code Bill itself is a precursor of the Civil Code, Government has lost an excellent opportunity of setting this example of giving the first instalment of the Civil Code to the whole country by taking with them the progressive Hindu community, which is not so very chary about any of the requirements with regard to minority and majority law being included in the general Guardians and Wards Act, along with it, and by giving the amended Guardians and Wards Act as the real first instalment of a Civil Code. I am very sorry, Sir, that in this respect Government or the people concerned have not acted with vision and it would have been a very happy thing if they had. Having said this I have only one or two remarks to make. Even with regard to woman's rights, etc. much has been said already, but I would like to ask the Law Minister why the age of the child has been put only at three for the guardianship of a mother. Everybody knows that up to the age of seven, if not up to the age of ten, even for ordinary care a child is looked after better by the mother than by the father. Also the courts' decisions so far have been in favour of appointing the mother as guardian as far as possible, and nothing would have been lost in view of the proprietary rights that are going to be enjoyed by the wife—in any case the dispute is only with regard to daughter's right—if the mother had been given precedence over even the father, nothing would have been lost. There need not be an unhealthy competition. The child's interests should be the real criterion.

Secondly, Sir, I would like to make only one reference to the actual clause of the Bill in which it says that the father's wish about a guardian cannot be set aside by a widow, if he has

appointed a guardian by will. This is rather an unworkable and undesirable clause for the simple reason that if a certain guardian appointed by the father by will turns out to be unsuitable, it should be certainly within the rights of the woman, the mother, to act. I mean, with regard to the management of the property also—if the mother feels that some other guardian for that child should be appointed, he should be appointed. I think as far as that clause is concerned, when a woman is given the right to manage the property of the child, provision of these grounds would not be necessary at all. Having said this, I would again like to point out that this Bill is absolutely unnecessary as a separate part of the Hindu Code and its proper place would be as an amending Bill to the Guardians and Wards Act.

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Deputy Chairman, this is the third instalment of the Hindu Code Bill. The lady Member has very rightly complained that we have inordinately delayed the introduction of the other portions of the Hindu Code Bill. Sir, this question has been now before the country and the Parliament for, I think, more than ten years. The Rau Committee examined this issue in all its bearings, in very great detail, and submitted a report. It was discussed in the Provisional Parliament. Now, practically half of the life of the present Parliament is over and we have, so far, before us only three portions of the Hindu Code Bill, namely, the Special Marriage Bill; the Hindu Marriage and Divorce Bill; and this Hindu Minority and Guardianship Bill.

SHRI B. K. P. SINHA: The Special Marriage Bill is not a part of the Hindu Code.

SHRI RAJENDRA PRATAP SINHA: Then we have only two portions of the Hindu Code Bill. The Government is fully aware that the country and the House is prepared to give a very large measure of support to the passage of the entire Hindu Code Bill and I do not know, in spite of that, why they are feeling shy often to do things, to take the entire Hindu Code Bill at a time. Sir, we were given to understand—of course in the lobbies—that this session would be entirely devoted for the consideration of the Hindu Code Bill. It was said that there would be a special session for that purpose, but the hopes have been belied. Sir, the House is anxious to thrust greatness upon its leaders. Mr. Biswas will go down in history as the "Manu" of the republican era, if he so chooses.

SHRI B. K. P. SINHA: That honour has gone to Dr. Ambedkar already.

SHRI RAJENDRA PRATAP SINHA: But the Hindu Code Bill is more important than the framing of the Constitution. I, therefore, urge upon him to avail himself of this opportunity and introduce the entire Hindu Code Bill in a special session. It will also help us in other ways as well. Sir, piece-meal consideration of the Hindu Law is not at all desirable. We cannot maintain consistency in the different parts of the Hindu Law. As has been pointed out by other speakers that the entire Hindu Code should be referred to one Select Committee, I agree with that suggestion and I do hope that our Law Minister will bear all this in mind and do something positive in the matter.

Sir, coming to the provisions of this Bill, I find that some of the clauses raise very fundamental issues. I draw your attention, Sir, to clause 5, proviso (a) and then, again, to clause 10. To my mind, Sir, I think it goes counter to article 25 of the Constitution which reads as follows:—

> "Subject to public order, morality and health and to the other provisions of the Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."

Sir, the clauses that I have referred to limit the rights given to us, to the citizens of India, under the Constitution

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under article 25. A father or a mother cannot be the natural guardian of their children if, for some reason or other, they choose to change their religion. Then, Sir, I understand that even under the present law it is not provided that you cease to be the natural guardian of your children if you change your religion. We are now enacting such a provision which is not there in the existing laws. I would recommend to the Select Committee, Sir, to consider this question from this angle and see how far it is wise to have such provisions in the Bill. Sir, it is the natural affections of the parents which entitle them to be the natural guardians of their children, irrespective of the religion that they profess, and it will be better, Sir, if we delete these two provisos in clause 5(a) and clause 10.

Then, Sir, coming to the question of the right of a mother to be the natural guardian of the minor after the father, objection has been taken by the lady Member who just spoke and she suggested that first preference might be given to the mother to be the natural guardian and after that the father. Sir, I would not like this controversy between the two sexes in this country to develop, and I would like my friends of my sex to be chivalrous, and if the ladies want this right, I would certainly urge upon the Select Committee to consider this. Let us give this right to the mother first to be the guardian, and after that the father.

SHRI C. C. BISWAS: Then why does not the mother discard the father altogether?

SHRI RAJENDRA PRATAP SINHA: Then, Sir, as regards the question of the mother continuing to be the guardian of the minor, the widow mother I mean, after her remarriage, I consider that we should permit the widow mother to continue to be the guardian of the minor even if she takes another husband. There are instances where such persons take second husbands out of necessity and for the benefit of their children. And again, Sir, I say that the natural instinct of the mother entitles her to be the natural guardian, irrespective of the fact whether she marries or remains a widow. Sir, if we are giving this right to the father to continue to be the guardian of the minor, even if he takes a second wife, we should not discriminate against the mother, and she should be given similar rights. But, Sir, there may be occasions when the mother may not like to continue to be the guardian of the children born of her first husband; and provision may be made in such circumstances for the appointment of another guardian, or else, as has been suggested by some of my hon. friends, when the father or the mother takes a second wife or a husband and neglects the interests of the minor, then the court may appoint some other guardian. That will, Sir, serve the purpose.

There is another point, Sir, to which I would like to draw the attention of the Select Committee. Sir, under the Hindu Law, mother includes a step-mother. Now the question is: Should we bestow the right of guardianship on the step-mother as well after the death of the father? I would, Sir, be against the grant of such a right to the step-mother. I would like that an explanation may be added here in clause 5 that the mother is not to include a step-mother.

Then, Sir, coming to clause 5(c), we have said that the natural guardian of the married girl will be the husband. As has been pointed out, there will be instances of boy husbands, and to give them the right of guardianship will be anything but wisdom. It was pointed out that the age limit was going to be raised in such a manner that nobody would be allowed to marry before he attains majority. Sir, the Child Marriages Restraint Act has been there, probably since 1929, and we find that still we are having child marriages in this country. And it will be but proper that we exclude the minor husbands from the guardianship of minor married girls. Then Sir, the question arises that there may be minor mother guardians, because under the Child

Marriages Restraint Act, 15 is the limit for the marriage of the girls. It will not be wise, it will bring in legal complications if we endow such minor mothers to be the guardians of the children.

Then, Sir, there is another point to which I would like to draw the attention of the Select Committee. Under the existing law, after the death of the husband, preference is given to the relations of the wife to be the guardian of the minor widow. I would like, Sir, that we should make a provision that the parents of the minor widow should be the guardians and not the relations of the dead husband.

Now, Sir, coming to the proviso, I endorse the suggestions made by some of my friends that this should be expanded in order to include lunatics and idiots to be excluded from the natural guardianship. I say so in spite of the general clause 13. I would also suggest that it should be made very clear in this clause that natural guardians who will be grossly negligent of the minor's interests will also be excluded from natural guardianship.

Coming to the proviso (b), I fail to understand the significance of the words 'completely and finally'. At any point of time, it will be very difficult to ascertain whether a person has completely and finally renounced the world and become a hermit and so on. There is no restriction on his returning to this world again from the state of renunciation. I think that this needs to be redrafted and properly defined. Similary, 'a perpetual religious student' is a very vague term. It needs also re-definition.

Coming to clause 7 'Powers of Natural Guardian', I find that a differentiation is made between the powers of the father of the minor and the *karta* of the joint Hindu family if he is other than the father. A natural guardian cannot deal with the property of the minor without the sanction of the court, but under clause 12, the *karta* of a joint Hindu family, if he happens to be other than the father—I presume it—will be entitled to deal with the property of the minor in any manner he likes. I cannot appreciate this differentiation. If the *karta* of the family is anybody else, he can deal with the property of the minor without recourse to the court, but if he is the father, he cannot deal with the interests of the minor without the permission of the court. Let us take the question only of a father and his son. Is that not a joint family? Is there no interest of the minor under the existing Mitakshara Law? In a joint family of a father and a son, the minor has rights, and what would be the effect of this clause on such property? I want clarification on this point from the hon. Minister. If the purpose of this Bill is to restrict the doings of the father with regard to his property which includes the interests of the minor as well, then I would say that this would hamper the progress of the family and will ultimately result in injury to the interests of the minor. It will lead to unnecessary expenses. I would like the House to appreciate the difference between a minor's interests in a joint family and the minor's separate interests or the minor's interests in a joint family with his father only. I am of the view that the placing of these restrictions will not very much help the minor. We must depend upon the natural affection of the father who will be always anxious to look after the interests of his minor child. We are not here to legislate keeping only a few instances in view. Taking the entire construction of the society today, taking the management of property as it exists today, I find that it has worked very well indeed; I mean the present law. What the present law says is that, if the father or the natural guardian is working in the interests of the minor and is not acting against the benefit of the minor, he can deal with the property in any manner he likes. There is in the existing law a provision that, if the interest of the minor is at stake, the court, on anybody's motion, can interfere or that the minor, on attaining majority, can challenge the doings of his natural

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guardian. Perhaps my lawyer friends can help here. I am not a lawyer, but I know that many transactions have been declared void on the ground that they were not in the interests of the minor. The law is already there and it has worked well. Why impose these restrictions then and unnecessarily increase the cost to the management of the property?

Now what you are doing is that each time for each transaction you will have to run to the court which will not only increase the cost but at times may injure the interests of the minor. The transaction may not take place because of the delay factor involved in obtaining the permission of the court.

Then I would like to draw the attention of the hon. Minister to this: Supposing a natural guardian has taken the permission of the court to deal with the property of the minor and in so doing he has not disclosed all the facts of the case, will the permission of the court bar the minor, on attaining majority, from challenging such transactions by his natural guardian? I think that some unscrupulous guardians may take advantage of the construction of this clause and withhold vital facts from the court, take their permission and deal with the property as they like and thus debar the minor from taking any action whatsoever at a future date which today he can take, even if guardian deals with the property without the permission of the court. Even if you think that such a provision is necessary which I do not think is necessary, it must be made clear that the minor has a right or anyone else has the right to challenge such a transaction on the plea that all the facts were not disclosed to the court and that, if all the facts had been disclosed, the court would not have given that permission and that therefore the transaction was void. Some such provision should be made, otherwise this will act more against the interests of the minor than the present law provides to safeguard the minor's interest.

There is one vital point that I would like the House and the Select Committee to consider. This point was already raised by my hon. friend yesterday but in order to emphasise this point I would say a few words. The natural guardian is forbidden to deal with only the immovable property of the minor without the permission of the court but he can deal with the movable property in any manner he likes. If you think that such a restriction is necessary, then movable properties must be brought into the picture as well. With the change in the economic structure of the society, the movable properties, particularly for the lower middle-classes, are assuming a very important position. The possession of the immovable properties is only in very few hands. It is only the movable property which is now becoming of great value to the minor's interests and for his welfare. I would mention some of the movable properties like the shares in companies, the cash, the insurance money that the minor may get and all these things are becoming very important and if we don't safeguard them, the interests of the minor may suffer. His education and his upbringing may suffer. So the valuable movable properties should also be added along with the immovable properties.

Then there is one minor point that I would like to bring to your notice and that is that the mofussil courts, the sub-divisional courts and the city courts should be empowered to deal with such transactions and not only the district courts as has been stated here. Because it will be less expensive for the people living in the rural areas to go to the city courts and sub-divisional courts than to the district courts.

MR. DEPUTY CHAIRMAN: They are already empowered, I think.

SHRI RAJENDRA PRATAP SINHA: They are the district courts.

MR. DEPUTY CHAIRMAN: It says 'and such other courts'. They have got the powers already.

11 A.M.

SHRI RAJENDRA PRATAP SINHA: Now coming to this controversial clause 9, I take the assurance given by the hon. Minister although I have also given the same interpretation as the hon. Minister has given and I would only suggest that he should make the necessary change in the draft so that there may be no ambiguity about it and the mother may have full right with regard to the appointment of testamentary guardian both in respect of person and property and the testamentary guardian appointed by the father may have nothing to do both with the person and the property of the minor so long as the mother is alive as provided in clause 5. She should receive priority. Thank you very much, Sir.

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, I rise to support the Bill. I am perfectly conscious of the fact that a lot of ground has already been covered by the previous speakers but I nevertheless feel that a few suggestions might usefully be made even at this stage and I would make them for such as they are worth. There is no doubt in my mind that the legal position as it exists today with regard to Hindu minority and guardianship will be improved by this Bill to a very great extent. About this there is not the slightest doubt in my mind. But nonetheless I feel that in certain respects this Bill does leave much to be desired. I would take this Bill clause by clause and I would begin at the end. I would refer first of all to clause 11 of the Bill which deals with the *de facto* guardian. Under the existing law, *de facto* guardians are recognized under the Hindu law. They have been recognized by the Federal and the Supreme Court, the highest court in this land. Now, the Statement of Objects and Reasons goes to say that this particular clause incidentally abolishes *de facto* guardians and the note on clause 11 also says that this clause abolishes *de facto* guardians as there is no need to continue the grant of recognition to such guardians. I really fail to understand how this clause abolishes *de facto* guardians. If one only reads this clause, one will find that it says:

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

I really fail to understand how the wording of this clause such as it is really amounts to abolition of the *de facto* guardian. I really do not think so, with all respect to the learned Law Minister. Every lawyer for instance knows that a *de facto* guardian, provided he is not an intruder, can borrow money for the protection or for the benefit of the minor so as to make the minor's estate liable for the same. This is the position for instance with regard to borrowing of money. Now, does this clause, *viz.*, clause 11, alter this position in any way? I submit and humbly submit that it does not. And therefore although the notes and the Statement of Objects and Reasons say that the *de facto* guardians are abolished, nonetheless, I feel that they are really not abolished.

Then the next question that arises with regard to *de facto* guardians is whether after all, in the present state of our society, these *de facto* guardians need be abolished. I submit that they need not. And one of the many reasons for this proposition is that at present, judicial proceedings are so cumbrous, so troublesome, so involved, that ordinary people find it difficult to have recourse to them. Suppose, for instance, a child has not got the father or the mother, that both of them are dead. Probably the grandfather or the grandmother or some near relation of the orphaned child will bring him up. In such a case, to ask that particular person to go to the court to get himself or herself appointed as the guardian of the child, I suppose would surely be a great hardship, not only so far as the child is concerned, but also so far as the person

[Dr. W. S. Barlingay.]

is concerned, the person namely who acts as the *de facto* guardian or the *ad hoc* guardian of the child. I have got very grave doubts about this particular point.

Then coming to clause 9, Mr. Dasappa raised some very cogent points with regard to this clause. There is not the slightest doubt in my mind about one matter, and that is that the proviso to sub-clause (1) of clause 9 and also sub-clause (3) require radical alteration. There is not the least reason on earth why the mother should not be allowed to manage the property of the child, when she can, for instance, take the custody of the person of the child. But apart from this, I would raise another question. And this cuts at the very root of clause 9. I would say that so long as the mother is alive, the father should not have the right to make a will with regard to the custody of the person or the guardianship of the property of the minor. Why should the father be allowed to do that sort of a thing at all? The mother can very well look after the child. After all she is the natural guardian of the child .....

AN HON. MEMBER: She might have been divorced.

DR. W. S. BARLINGAY: But she is the natural mother and the mere fact that her husband has divorced her does not make the slightest difference to the fact that she is the natural mother of the child. And being the natural mother, she certainly has got every interest in the child. I suggest that this is a matter which might be usefully considered by the Select Committee. Suppose the father dies and the mother survives and she may survive for quite a number of years. And if she does survive for a considerable time, then the situation may alter at the time of the death of the mother, I mean to say, the situation as it existed at the time of the death of the father may not be the same as the situation at the time of the mother's death. The situation might have changed. Therefore, it does seem to me, that the Select Committee might usefully consider as to whether the whole of this clause, clause 9, ought not to be radically altered. There is no reason on earth why, as Mr. Dasappa has very rightly pointed out, the mother ought not to be treated on the same level as the father so far as the child is concerned. I would suggest and strongly suggest that instead of altering the provisos, you may alter the clause and say that just as the father has the right to make a will—and nobody denies the right to make a will—the mother too should have the right. But neither the will of the father nor the will of the mother, shall be a valid will, if the other parent is alive. If the other parent is alive such a will has no validity. Why not take that straightforward position and do away with this cumbrous clause altogether?

Sir, several speakers have very rightly pointed out that the powers given under clause 7 of the Bill are extremely inadequate. Mr. Sinha who spoke just now has very rightly pointed out that, after all, in the present economic state of our country, movable property might be even more important than immovable property, and to restrict the operation of clause 7 only to immovable property and not to movable property also might mean a good deal of hardship to the child in the ultimate analysis. I, therefore, strongly suggest that just as clause 7 forbids without the permission of the court the alienation of immovable property of the minor, in the same manner, certain legal restrictions ought to be placed with regard to the alienation of movable property also. In this respect, I would suggest for the consideration of the Select Committee that we might consider the whole matter from the point of view of the value of the property, rather than from the point of view of the nature of the property, that is to say, whether the property is movable or immovable. We can say, for instance, that if the value of the property is say above Rs. 500 or Rs. 1,000, then the permission of the court

would be required, but that if the value of the property was less than that limit, then such permission would not be required. That sort of a provision we can have. I offer this as a suggestion for the consideration of the Select Committee for whatever it may be worth.

I agree with several of the speakers who suggested—with regard to clause 5—that the age of three is perhaps inadequate. This clause says, "provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother". I would go further and say that actually the mother should be given precedence so far as the person of the minor is concerned. Let us distinguish between the person of the minor and the property of the minor. So far as the property of the minor is concerned, I would agree that the father should have precedence but so far as the person of the minor is concerned, I feel that the mother ought to have precedence. At any rate, it does seem to me that the age limit of three years for the custody of the child is not quite enough and so it may be raised to five or to seven, if necessary. I commend this suggestion for the consideration of the Joint Select Committee.

There is just one other point which I should like to raise and that is with regard to sub-clause (1) (c) of clause 2 of the Bill. That clause says "to any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed". This really amounts to a presumption that a person who is not a Muslim, Christian, Parsi or a Jew is a Hindu. It really amounts to a legal presumption and I do not know if this sort of presumption would be justified but I will not make any further comments on this. I would only say that that matter deserves to be considered by the Select Committee also.

Sir, with these observations I would commend this Bill to the consideration of the Select Committee.

SHRI GULSHER AHMED (Vindhya Pradesh): Mr. Deputy Chairman, I support this Bill because it is one of the series of enactments which the Government of India want to pass in order to bring the Hindu Code Bill which they had proposed to undertake some time ago. I must say that the drafting of the Bill seems to have been done in haste because the language used in some of the clauses is very misleading and confusing. In some clauses attempts have been made to employ new terminology and new phrases which also have increased the confusion in the Bill. For example, I would refer you to sub-clause (2) of clause 1 which says, "It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories". I cannot understand the meaning of the phrase, "Hindus domiciled in the territories to which this Act extends who are outside the said territories". It would have been quite clear if they had said, "Hindus of Indian domicile or origin residing outside India"; the whole thing would have been quite clear. The words used in the Bill and the manner in which they have been used are very confusing. I would request the Members of the Select Committee to bear this in mind that there are some clauses like the ones I have drawn attention to and also those explained by Shri Dasappa which require retouching and redrafting. The words used create confusion even among lawyers who have had some years of practice in their experience. Even they cannot follow what is meant by these words. Clause 9(2) speaks of "the guardian so appointed". After reading sub-clause (1) it becomes very difficult. What is the meaning of "the guardian so appointed"? If they had only said "testamentary guardian, after the death of the father and of the mother, if the father has predeceased her....." it would have serv-

[Shri Gulsher Ahmed.]

ed the purpose better and the whole thing would have been very clear.

SHRI C. C. BISWAS: If Acts were expressed in such clear terms the occupation of lawyers would be gone !

SHRI GULSHER AHMED: I do not agree with the remarks of my learned friend because the Bill deals not only with the lawyers but also with the common men. They have got to understand the implications. When we make any law we do not take into consideration only the interests of the lawyers but we take into consideration the interests of the people, the man in the street.

SHRI GOVINDA REDDY (Mysore): Lawyers will have their profession however perfect the law be.

SHRI GULSHER AHMED: That is due to their intelligence.

The Bill requires redrafting and a little consideration in the use of words. The Select Committee may give due consideration to these things that I have submitted.

I now come to the Explanations part of clause 2. Explanation (b) reads, "any child, legitimate or illegitimate, one of whose parents is a Hindu and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged, and". My submission in this connection is that it should be made clear in the Bill itself as to what will be the governing law of a child. To leave the whole thing in such a vague way is, I submit, creating difficulties. Who is a Hindu? They say, a Hindu is one whose both parents are Hindus. Then again in Explanation (b) they say, "any child, legitimate or illegitimate, one of whose parents is a Hindu....." Supposing a Hindu has married a Muslim girl and they live separately, away from the joint family, what will be the religion of the child? A friend of mine who has married a Muslim girl has given male children Hindu names while female children have been given Muslim names. In a situation like that, I do not know how the Act will determine the religion of the minor. This will naturally create a confusion. I think it will be much better if the law provides clearly that the religion of the child will be the religion of the father. After all, the institution of marriage came into existence only as a result of the notion of owning property. When man gave up the life of an ape or of an animal and started acquiring property then he thought of having one particular woman from whom he could get children who would have the right to get his property. The notion of marriage is based on the notion of property. The religion of the child should be determined by the religion of the father and I think it should be determined according to the religion of the father. This thing should not be left in such a way as is done in the Bill. Religion of any one parent is difficult to find out and the other test of bringing up is also equally difficult in a situation like the one I have referred earlier where the father is a Hindu, the mother is a Muslim—they live separately from their families—and the male children bear Hindu names while the female children bear Muslim names. It would be difficult to find out and decide whether the boys were meant to be brought up as Hindus and the girls as Muslims. I think it would be much better if the Select Committee—when the Bill goes to it —will consider this point and say that the religion of the minor will be that of the father, in order to remove all these difficulties and litigation that will follow later on if the provision is left as it is in the Bill.

I now come to clause 5, natural guardian. Sub-clause (a) says, "in the case of a boy or unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother;" In this regard my submission is, as my learned friend has also said, that the age of three years should be raised to five because five

years is the right age for a child to go to school. The educationists and the people who are experts in psychology and sociology say that the age of five is the best age for a child to begin his education. So I think it will be much better if the age of the minor is increased from three to five years, and I hope the Select Committee, when dealing with the sections, will give due consideration to this fact and to the opinions of the experts, psychologists, sociologists and educationists, who all say that the right age is five years and incorporate five years in place of three years.

In this connection one of my learned friends has suggested that in the case of girls to be kept under the custody of the mother, the age of minority should be increased to more than five years. I do not agree with my learned friend here because what happens is that if the mother marries a second time, in that case the girl will be a burden to the second husband and it is no use allowing a minor girl of the age of eight or nine or ten to go with her mother to the house of the second husband of her mother because after all she will not be welcome in the house of the second husband. So I do not think that any distinction should be made between a girl and a boy and the age of custody of the child up to the age of five should be made applicable both to a boy and to a girl and only up to the age of five both the boy and the girl should be kept under the custody of their mothers.

Then I come to the proviso appearing after sub-clause (c) of clause 5 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, or (b) if he has completely and finally renounced the world by becoming a hermit or an ascetic or a perpetual religious student." About this phrase 'perpetual religious student' to which my friend Mr. Kaushal drew the attention of the House, it is very difficult and it will be very difficult for a court of law to decide whether a particular person has become a perpetual religious student or not, because there are many who are staying in their houses and devoting most of their time to reading religious books. So this phrase is not a very happy phrase and some other substitute for this phrase should be found out in order to remove any kind of ambiguity and uncertainty. Then in connection with this clause 5, as Mr. Deputy Chairman, you know, yourself being a lawyer, the law at present is that if a mother who is the guardian of a minor child, becomes immoral, then she is not entitled to remain the guardian of her minor child. In this Bill nothing has been said about the mother if she becomes immoral or she leads an immoral life. Whether she has become immoral or not there are various conflicting decisions of the High Courts and it is very difficult to come to any conclusion whether the mother who is the guardian of a minor son is leading an immoral life or a moral life because in certain cases the courts have gone to the extent of saying that even if the mother has given birth to an illegitimate child, even then it cannot be said that she has become immoral. Well, it is really absurd. If a woman who has given birth to an illegitimate child being unmarried or being a widow, naturally you cannot say that she has not become immoral. The only conclusion that one can draw is that she has become immoral. Even then the courts have said that she has not become immoral unless the fact is proved in the court of law that she has been leading persistently a life of shame or a sort of irregular life, not leading a normal life. My submission is that in this Bill some kind of a provision should be made that if the mother who happens to be the guardian of a child marries or gives birth to an illegimate child or becomes immoral, she will not be entitled to remain the guardian of the minor child.

SHRI T. PANDE (Uttar Pradesh): Normal life!

SHRI GULSHER AHMED: But not according to the religion; it may be normal according to the law of nature.

Then I will come to clause 13 and here I do beg to differ from my learned friend Mr. Dasappa when he says that this clause can be divided into two parts. He says that even the natural guardians are subject to "the appointment or declaration by a Court". In this respect I do submit that this clause does not apply to natural guardian because if we read the whole clause it becomes quite clear that a natural guardian is never appointed. He naturally becomes the guardian, I mean the father and mother become natural guardians and there is no need for any appointment or declaration.

SHRI H. C. DASAPPA: This is only with regard to the first half of the clause. The first part refers to appointment or declaration but the second part refers to all guardians under the Act.

SHRI GULSHER AHMED: I will just read the whole clause. "In the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration"—and the sentence is not complete—"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." The court while appointing persons as guardian will have to take into consideration all these things that are being said here. So I do not see that this clause applies to the natural guardian and the interpretation that has been given by my learned friend, Mr. Dasappa, I do not think is correct because a natural guardian is not being appointed or declared; he automatically becomes the guardian.

SHRI B. K. P. SINHA: The language is confusing.

SHRI H. C. DASAPPA: There will be no objection if the clause is split up.

SHRI GULSHER AHMED: That is why I submit, because there is a controversy about this clause, that it will be good if the Select Committee would be kind enough to look into the language of this clause and if possible, to split it into two subclauses so that the whole thing may become quite clear. As at present the clause is not very clear and is likely to create a lot of confusion and arguments can be advanced both in favour of my learned friend and in favour of the argument that I have just advanced. So I would submit to the Law Minister that he will kindly keep in view this clause during the Select Committee stage and will try to improve the language because it is also very confusing.

With these words, Sir, I take my seat. Thank you very much.

श्री ओंकार नाथ (दिल्ली) : श्रीमान् उपाध्यक्ष महोदय, इस बिल के सम्बन्ध में जो सब से पहिली बात मेरे विचार में आती है वह यह है कि आया हिन्दुओं के लिये इस किस्म के अलाहिदा बिल की जरूरत भी है या नहीं। हमें इस किस्म के सोशल मामलों में अलाहिदा कानून नहीं बनाना चाहिये ।

इस बिल में दो ही चीजें मुख्य हैं. एक नाबालिग और दूसरा संरक्षक । मैं समझता हूं कि एक किस्म की आबो-हवा में सब एक ही उम्र में बालिग होते हैं चाहे वह हिन्दू हो, चाहे सिख हो, चाहे ईसाई हो, या मुसलमान हो। ऐसी बात नहीं है कि कोई किसी उम्र में

बालिग हो और दूसरा किसी दूसरी उम्र में बालिग हो । पहाड़ों में या ठंडे मुल्कों में ऐसा हो सकता है कि बालिग होने में दो चार साल का फर्क पड़ता हो लेकिन एक ही मुल्क में और एक ही आबोहवा में ऐसी बात नहीं हो सकती है । दूसरी चीज संरक्षक है । चाहे ईसाई हो, चाहे मुसलमान हो या चाहे हिन्दू हो, सबके एक ही नैचुरल गार्डियन होते हैं, मां या बाप सबके एक ही तरह के गार्डियन होते हैं । तो मैं समझता हूं कि हिन्दुओं के लिये एक अलाहिदा कानून बनाने की जरूरत नहीं है । अगर यहां ऐसी बात करते हैं तो हो सकता है कि किसी दिन सर्विसेज के लिये यह कहने लगें कि अगर हिन्दू है तो ५० वर्ष तक रहे और अगर मुसलमान है तो ५५ वर्ष तक रहे या अगर बच्चा ईसाई है तो १६ साल में मैट्रिक हो और अगर कोई दूसरा है तो १८ साल में हो ।

दूसरी बात यह कही गई कि चूंकि हिन्दू कोड बिल की बहुत मुखालिफत हुई इसलिये अब इसको टुकड़े-टुकड़े कर के लाया जा रहा है । इस बारे में मुझे एक छोटी सी पुरानी कहानी याद आ गई है, उसको मैं सुना देना चाहता हूं । एक बार काबुल में एक लड़की की शादी की बातचीत होने लगी । तो उसने कहा कि मैं उसी आदमी से शादी करूंगी जिसकी बारात का प्रत्येक बाराती एक साबुत दुम्बा खा सके और बारात में कोई बूढ़ा न हो । इस शर्त की वजह से लोगों को बड़ी परेशानी का सामना हुआ । तो एक आदमी जो कि शादी करना चाहता था, वह एक बुजुर्ग आदमी के पास गया और सारी बात बताई । उस बुजुर्ग आदमी ने सलाह दी कि कोई घबराने की बात नहीं है, तुम शादी के लिये हां कर लो और जितने चाहे बाराती ले चलो। मुझे भी एक मटके में बन्द करके ले चलो, मैं सब ठीक कर लूंगा। फिर जब खाने के लिये बैठे तो उस बुड्ढे ने चुपके से सलाह दी एक एक करके दुम्बा मंगाओ और जब वह सब मिल कर खा लें अर्थात् खत्म हो जाय तो दूसरा मंगा लो और खाते जाओ । इस तरह से सब आदमी मिल कर एक एक दुम्बे के हिसाब से खा लेंगे और कुछ पता नहीं चलेगा । इस तरह से सब काम ठीक हो गया । यह एक आम बात है कि आदमी, एक दम बहुत सा खाना आ जाये तो खाना देखकर ही घबरा जाता है और यदि एक-एक चीज आहिस्ता-आहिस्ता खाने को मिले तो बहुत ज्यादा खाया जाता है । मेरा ख़याल है, शायद हिन्दू कोड बिल में यही चीज करने की कोशिश की जा रही है और उसके टुकड़े टुकड़े करके कानून लाये जा रहे हैं । क्योंकि इकट्ठा उसे लाने में मुश्किलात सामने हैं । परन्तु मैं समझता हूं कि यह एक कमजोरी की निशानी है । मुल्क को आगे बढ़ाने के लिये कभी कभी टक्कर लेनी ही पड़ती है और वही टक्कर हमें हिन्दू कोड बिल को इकट्ठा करके लाने में लेनी चाहिये । कम से कम मुझे यह पसन्द नहीं कि सिर्फ इसलिये कि हिन्दू कोड बिल में कई तरह के झगड़े हैं, इसके अलग अलग कानून बनने के लिये यहां लाया जाये । बहुत से कानून हमारे मुल्क में हिन्दुओं के लिये और बहुत से सबके लिये बने हुए हैं । मैं चाहता हूं कि हमारे लॉ मिनिस्टर साहब हिन्दू कोड बिल को स्टडी करके देख लें कि इसमें

[श्री ओंकार नाथ]

कौनसी ऐसी धाराएं हैं जो उन दूसरे कानूनों में एमेंडमेंट ला करके पूरी की जा सकती हैं । बाकी के लिये एक बार ही एक पूरा बिल ले आना चाहिये ।

यह तो हिन्दू कोड बिल के मुताल्लिक बात हुई । अब सवाल यह रह जाता है कि हिन्दुओं की व्याख्या क्या रहे । मेरे ख्याल में यह सवाल न आज तक तय हुआ है और न कभी हो सकता है । जहां तक मुझे इल्म है, हिन्दू महासभा ने कई दिन की बहस के बाद "हिन्दुओं" की एक व्याख्या की थी । वह यह थी कि जिन मजहबों के प्रवर्तक, यानी चलाने वाले, हिन्दुस्तान में पैदा हुए, वे सब हिन्दू कहलाये जायं । उनका मतलब बौद्ध लोगों से था क्योंकि भगवान बुद्ध हिन्दुस्तान में ही पैदा हुए । आज हमने इस कानून में हिन्दुओं की डेफीनीशन करने की कोशिश तो की है, लेकिन हमारे कुछ भाइयों ने और मैंने भी महसूस किया कि कई जगह वह हैप्पिली वर्डेड नहीं है । क्लाज २ के शुरू में आपने एक व्याख्या जो यह दी है कि—

"The following persons are Hindus by religion within the meaning of this Act,—"

उसके बजाय अगर यह रख दिया जाता कि "The following persons will also include Hindus" तो ज्यादा ठीक होता । आगे दिया हुआ है कि

"(a) any illegitimate child both of whose parents are Hindus"

मैं समझता हूं कि इसको कोई भी पसन्द नहीं करेगा कि नाजायज़ सन्तान को सबसे पहिले हिन्दू कहा जाय । यह कैसे हो सकता है कि वह नाजायज़ बच्चा जिसके दोनों मां-बाप हिन्दू हों "नाजायज" माना जाय । जहां तक नाजायज़ बच्चों का ताल्लुक है, मैं समझता हूं कि संसार में कोई, बच्चा नाजायज़ नहीं होता है । मां-बाप अगर बाकायदा शादी शुदा न भी हों, तो भी बच्चा निर्दोष है, वह कभी नाजायज़ नहीं होता । मुझे किसी पुराने संस्कृत के कवि की कविता याद आ गई है, जो मैं आपको सुनाना चाहूंगा । उसने कहा है—

पौराणिकानां व्यभिचार दोषो
न चिन्तनीयः कविभिः कदाचित् ।
पुराणकर्त्ता व्यभिचारजातः
तस्यापि पुत्रा व्यभिचारजाताः ॥

आज अगर हमारे वेदव्यास जी, जिन्हें वेदों का और आर्य संस्कृति का आधार माना जाता है, खुद वे भी डेफिनीशिन के अन्दर आते हैं तो फिर मैं समझता हूं कि इस चीज को जरा खुले दिमाग से देखा जाय कि क्या सचमुच हम इस किस्म की चीज़ रहने दें कि हमारे देश के बच्चे नाजायज़ भी समझे जायं । अभी मैं इस बिल पर बहुत सी जो ओपीनियन्स आई हैं उनको देख रहा था जिनमें से एक सनातन वैदिक धर्म सभा, अहमदाबाद की है । बहुत कुछ अनाप शनाप उसमें लिखा है । उन्होंने यह कहा है कि हमारे ऋषि-मुनि जो हिन्दू धर्म की एक व्यवस्था बना गये हैं वह इस कानून के बनने से खत्म हो जायेगी और सारा धर्म नष्ट हो जायगा । जब हम उसे पढ़ते हैं तो हमें शर्म आती है । तो मैं बता रहा था कि इस बिल में इस तरह के अल्फाज रख दिये जायं कि एक बच्चा

इल्लेजिटिमेट होते हुए भी हिन्दू रह सकता है ।

आगे यह दिया है कि एक ऐसा बच्चा जो हो तो नाजायज, पर मां-बाप में से एक हिन्दू हो, और वह हिन्दू फेमिली में पला हो तो हिन्दू माना जायगा । मगर जो यह लिखा हुआ है—

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

इसका मतलब यह हुआ कि यदि बच्चे की मां हिन्दू है और वह बच्चा हिन्दू धर्म में पला है तो वह हिन्दू रहेगा और अगर मां हिन्दू है और बाप मुसलमान तो नहीं रहेगा । अगर पैदा होने के १० या १५ दिन बाद मर जाय तो वह हिन्दू नहीं रहेगा, यह क्या बात हुई ? इसलिए मैं चाहता हूं कि क्लाज २ के (ए) और (बी) पर आप पुनर्विचार करें ।

मैं आपसे हिन्दू धर्म की व्याख्या के बारे में कह रहा था । उसके सिलसिले में अलग अलग जगहों से जो रायें इस बिल पर आई हैं उनका मैं जिक्र कर रहा था । डिस्ट्रिक्ट जज अजमेर की राय को मैं सबसे अधिक महत्व देता हूं । फिर मैं समझता हूं कि कलकत्ता हाई कोर्ट की राय निहायत माकूल है खास कर क्लाज ५ के बारे में । वह इसमें कतई ध्यान देने लायक है । क्लाज ११ में भी कुछ थोड़ा सा ड्राफ्टिंग की ओर उन्होंने पोइंट आउट किया है । बाकी जो ये तीन चार ओपिनियंस हैं, जैसे सनातन वैदिक धर्म सभा, अहमदाबाद की है, उन्होंने मैं समझता हूं कि अपने सभ्य होने का सबूत नहीं दिया क्योंकि जिस तरह के अल्फाज उन्होंने इस्तेमाल किये हैं, वे किसी अच्छी जमात के योग्य नहीं हैं । जिस विराट सनातन धर्म का नाम लेते हैं उसको वे वास्तव में बदनाम कर रहे हैं । जहां पर वे लिखते हैं—

"another pair of tongs to catch the riches of the minors", "communal ideal is better than the national ideal", "equality of all men is being imposed upon us, leading to injustice, tyranny, rebellion and social disorder"

आदि । मैं समझता हूं कि इस किस्म की रायें कतई गौर करने के लायक नहीं हैं, न इनमें इंसानियत है, न शराफत है । ऐसे लोग ऋषि और मुनियों की बात करते हैं । वे आगे लिखते हैं—

"Shri Pt. Jawaharlal's tirades against caste, and Hindu social system and Hindu orthodoxy. It is not just to desire being called Hindus and to sabotage the Hindu system".

इस किस्म की ओपीनियंस तो उन्होंने इस बिल के बारे में भेज दी हैं, मगर यह नहीं बताया है कि फलां क्लाज में यह गलती है या यह सुधार होना चाहिये । लेकिन मुझे खुशी है कि जहां पर सनातन वैदिक धर्म सभा, अहमदाबाद ने ऐसी वाहियात ओपिनियंस भेजी हैं वहीं सनातन वैदिक धर्म सभा, सूरत ने अपनी यह एक ओपीनियन लिख कर भेजी है कि—

"The Sanatan Vedic Dharma Sabha has no objection to the above Bill". सूरत की वैदिक धर्म सभा तो कहती है कि हमें कोई एतराज नहीं और अहमदाबाद की धर्म सभा कहती है कि इस कानून के बन जाने से हिन्दू धर्म खत्म हो जायगा, ईश्वर खत्म हो जायगा और इसी किस्म की और चीजें वगैरा; वगैरा; यानी सूरत और अहमदाबाद के हिन्दू धर्म में कितना अन्तर है । इसी तरह से मध्य भारत सनानन धर्म की

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तरफ से और सनातन धर्म मंडल से ओपीनियंस आई हैं कि यह बिल उन्हें मंजूर नहीं है और यह शास्त्रों से मेल नहीं खाता है। कई जगहों पर इनमें कांग्रेस गवर्नमेंन्ट को गाली दी गई है और कई गलत गलत चीजें बयान की गई हैं, जिन पर मैं समझता हूं कि सेलेक्ट कमेटी को कोई ध्यान नहीं देना चाहिये। मैं पूरे जोर से कह सकता हूं कि वह देश के किसी माकूल तबके की राय नहीं है। न इनके पीछे एक फीसदी भी फौलोइंग हैं।

असल बात तो यह है कि अगर हिन्दुओं के कोई दुश्मन हो सकते हैं तो इसी किस्म के लोग हो सकते हैं। जो लोग तंग दिल होते हैं वे इस तरह की बातों को लिखते हैं। उन लोगों ने लिखा है कि यहां पर बैठे हुए लोगों को शास्त्र का बिल्कुल भी इल्म नहीं है। मगर मैं उन से यह पूछता हूं कि क्या उन लोगों ने किसी तरह से कभी हिन्दू शास्त्रों की स्टडी भी की है। अगर वे लोग इस तरह की बातें दिमाग में लाते हैं तो वे किसी तरह से भी हिन्दू धर्म की सेवा नहीं कर सकते हैं। वे अपने को हिन्दू शास्त्र का पंडित और ठेकेदार कहते हैं। मगर वे इस तरह की बातें कहकर न तो देश का भला कर सकते हैं और न अपना या हिन्दुओं का ही।

इस बिल के मुताल्लिक मैं एक दो चीजें जानना चाहता हूं। आपने इस में यह लिखा है कि अगर कोई आदमी संन्यासी हो जाय, तो वह गार्डियन नहीं रह सकता। इस सिलसिले में मुझे यह अर्ज करना है कि हमारे देश की यह पुरानी परम्परा रही है कि बच्चों को ऋषियों के पास पढ़ाने के लिये भेजते थे। जिन बच्चों के मां-बाप जिन्दा होते थे वे भी अपने बच्चों को गुरुकुल में विद्या पढ़ने के लिये भेजते थे। इस तरह से हमारे देश की यह परम्परा रही है कि लोग शिक्षा के लिये ऋषियों, मुनियों, सन्तों और संन्यासियों के पास जाया करते थे और उनसे शिक्षा ग्रहण करते थे। अगर हम उन लोगों को संरक्षणता का अधिकार नहीं देंगे तो यह एक गलत बात होगी। इसकी जगह पर यह हो जाना चाहिये कि अगर किसी का गार्डियन पांच साल से लापता हो जाय, कहीं चला जाय, उसे १० वर्ष की जेल हो जाय या वह पागल हो जाय तो उसको संरक्षणता का अधिकारी न माना जाय। यह भी हो सकता है कि वह आदमी संन्यासी हो कर फिर गृहस्थ जीवन में आ जाय, इसी तरह की बहुत सी बातें पैदा हो सकती हैं। उन सब पर हमको बहुत होशियारी के साथ विचार करना चाहिये। हिन्दुस्तान में इस तरह की बहुत सी चीजें हुआ करती हैं। हमारे दक्षिण भारत में सन्त ज्ञानेश्वर जी महाराज नाम के एक बहुत ही मशहूर संन्यासी हो गये हैं। इसी तरह से बहुत से पतित संन्यासी भी मिलेंगे। साथ ही साथ बहुत से इस तरह के संन्यासी भी मिलेंगे जो कि गृहस्थ जीवन व्यतीत करते हैं। हमारे पुराने इतिहास में इस बात के बहुत से सबूत मिलते हैं कि हमारे पुराने ऋषि और संन्यासी गृहस्थ जीवन व्यतीत करते थे। कई मिसालें इस तरह की दे सकता हूं, मगर हमको इस बात पर अच्छी तरह से सोच विचार करके फैसला करना चाहिये। मंसूरी में एक सन्यासी रहते

हैं जिनकी वाइफ भी है और बच्चे भी, वे इन सब लोगों की देखभाल करते हैं, अगर हमने यह कानून मान लिया कि अगर कोई संन्यासी का चेला अर्थात् perpetual student of religion होगा तो वह गार्डियन का हकदार नहीं होगा तो यह एक मजहकाखेज बात हो जायेगी । धर्म के आध्यात्मिक अध्ययन के तो आप हम सभी विद्यार्थी हैं और मरने तक रहेंगे, तो क्या हम इसके अधिकारी नहीं रहे ? मुझे पूरी उम्मीद है कि इस तरह की बातों को सेलेक्ट कमेटी दूर करेगी ।

दूसरी बात जो मुझे कहनी है वह यह है कि इस बिल में आपने यह रखा है कि अगर कोई नाजायज बच्चा है तो उसकी संरक्षकता माता की होनी चाहिये, अगर कोई जायज बच्चा है तो उसकी संरक्षकता पिता के ऊपर होनी चाहिये, यह बात मेरी समझ में नहीं आई । जहां तक माता के संरक्षणता का सवाल है, मां को ज्यादा प्यार होता है, हर हालत में मां पहिली संरक्षक होती है । मगर आपने इसमें यह लिखा है कि नाजायज़ बच्चे की संरक्षकता माता पर होगी । इसका मतलब तो यह हुआ कि पिता ऐश करता रहे। यह बात ठीक मालूम नहीं देती । इस कैद को बदला जाना चाहिये । दूसरी हालत में भी माता को यह अधिकार होना चाहिये। चाहे बच्चा जायज हो या नाजायज़, माता का पहिला संरक्षण होना एक कदरती चीज़ है । मुझे पूरी आशा है कि इस चीज़ को अवश्य बदल दिया जायगा ।

इस बिल में बच्चों की उम्र पर जो तीन वर्ष की कैद रखी गई है उसको भी ५ या ७ साल तक बढ़ा देना चाहिये । तीन साल का बच्चा तो मां से अलग रहने के लिये बहुत ही छोटा होगा । छः, सात साल के बच्चे को पिताजी अपने साथ ले जा सकते हैं दूकान ले जा सकते हैं, उसको स्कूल भेज सकते हैं । सात साल से कम उम्र इसमें नहीं होनी चाहिये, इस क्लाज को जरूर बदल दिया जाना चाहिये ।

इस बिल के क्लाज ५ में यह लिखा हुआ है कि अगर कोई गार्डियन धर्म बदलना चाहे अर्थात् हिन्दू न रहे, तो वह अपने बच्चे के संरक्षण का अधिकारी नहीं रह सकता है, यह बात मेरी समझ में नहीं आई । जब उस बच्चे का पालन पोषण धारा १० के अनुसार हिन्दू धर्म के आधार पर किया जायगा तो फिर क्लाज ५ में यह प्रावीजन रखने की क्या जरूरत थी । हमारे देश में तो बहुत से मजहब के लोग रहते हैं । अगर माता पिता अपना मजहब बदल भी लें तो भी बच्चे का पालन पोषण वे उसी तरह से कर सकते हैं जिस तरह से वे पहले करते थे ।

मजहब बदलने से आदमी अपनी इंसानियत को नहीं बदल देता है । हिन्दुस्तान के अन्दर तरह तरह के मजहब के मानने वाले लोग रहते हैं, उनमें अक्सर यह बात देखने में आती है कि एक मज़हब के लोग दूसरे मजहब में चले जाते हैं मगर जहां तक इंसानियत का सवाल है, वह नहीं बदलती है । न ही उनकी नैशनैलिटी यानी कोम ही बदलती है । वह उसी प्रकार हिन्दुस्तानी रहते हैं जैसे पहले थे । इसलिये मैं समझता हूं कि यह चीज इस बिल पर नहीं लानी चाहिये थी और मैं इसकी

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मुखालफ़त करता हूं। यह हमारे विधान व सैकूलर विचारधारा के विरुद्ध है। हम किसी भी आदमी के किसी एक मजहब में रहने या दूसरे में चले जाने पर आपत्ति या भेद नहीं कर सकते।

१० क्लाज में दिया हुआ है कि बच्चे का पालन पोषण हिन्दू धर्म के मुताबिक ही होना चाहिये। इसका क्या अर्थ है, मैं अच्छी तरह नहीं समझ पाता। खाना, पीना, पहनावा कौनसा रहन सहन हिन्दू कहलाता है जो औरों से जुदा है ? क्या हिन्दू बच्चा हो तो उसको सन्ध्या करना जरूरी होगा, व्रत रखना होगा, हिन्दू की तरह से उसकी कोई खास शिक्षा होगी, यह बात मेरी समझ में नहीं आई। बहुत से हिन्दू आज ऐसे हैं जो संन्ध्या का नाम भी नहीं जानते। आप लोगों को मालूम होगा कि बहुत से हिन्दू योरोप जाते हैं और वहां पर वे सन्ध्या वगैरह नहीं करते हैं। इसी तरह से आप इस देश में भी बहुत से ऐसे लोगों को पायेंगे जो कि अपने धर्म में रह कर उसकी बातों का पालन नहीं करते हैं। उनके और दूसरे धर्मों के लोगों के रहन सहन में कोई भेद नहीं है। सो मेरा कहना यह है कि कानूनन धर्म की वजह से रहन सहन में भेदभाव पैदा करना निहायत गलत और ऐंटिनेशनल कदम होगा। मेरी राय में जहां तक स्टेप मदर और स्टेप फादर का सवाल है, उनको नेचुरल गार्डियन नहीं मानना चाहिये, इस तरह का क्लाज इस बिल में बढ़ाया जा सकता है।

बार बार मेरे कहने का असली मतलब यही है कि हमें ज्यादा तंग मजहबी नजरिये की ओर नहीं जाना चाहिये। हमें देश की भलाई को देखते हुए मजहबी भेदभाव को प्रोत्साहन नहीं देना चाहिये। हमारी जो पुरानी परम्परा "विश्व को कुटुम्ब, संसार को परिवार" मानने वाली चली आ रही है, उस पर चलना चाहिये। मुझे तो इसी में देश व दुनिया का कल्याण साफ नजर आता है। मुझे यकीन है कि मैंने यहां पर जो कुछ भी इस बिल के बारे में अर्ज किया है उस पर सेलेक्ट कमेटी के मेम्बर और हमारे कानून मंत्री जी जरूर विचार करेंगे। इस बिल में जो चीजें मुनासिब नहीं हैं उनको नहीं रखेंगे और इस बिल को दुबारा ड्राफ्ट करेंगे। इसमें बहुत से वर्ड्स ऐसे आ गये हैं जो कि मुनासिब नहीं हैं, उनको भी बदल देंगे। मेरी अर्ज तो फिर यही है कि आज कल के जमाने के मुताबिक नैशनल स्पिरिट में इस बिल को बनाया जाय जिससे सभी इसका ज्यादा से ज्यादा फायदा उठा सकें। मुझे पूरी उम्मीद है कि मेरी इन सब बातों पर पूरी तरह से ध्यान दिया जायगा। इन शब्दों के साथ मैं अपनी जगह लेता हूं।

SHRI B. K. P. SINHA: Mr. Deputy Chairman, I entirely share the feelings of the previous speaker and some other speakers who preceded him that this branch of the law deserves a well merited repose. To me, the title of the Bill appears to be a bit misleading, a sort of misnomer. It gives the impression as if Hindu law—original Hindu law—as based on scriptures, contains some special provision for minority and guardianship, and that this Bill seeks to codify that branch of the law. There is nothing like this. There are only a few texts in the original Hindu law, in the *smritis*, which specifically deal with minority and guardianship. This branch of the law, as it is administered today, is mainly based on statu-

tory law, and sometimes on extensions of principles prevalent in other countries, like the British principles of equity or principles of contract. Take the case of attainment of majority. The original text prescribes the age of 16, but that has now been superseded and abrogated by the Indian Majority Act.

There are some other Acts like the Guardians and Wards Act and the Court of Wards Act which deal with minority and guardianship, and they control the Hindus in regard to these matters. Take the case of the contractual ability of the minor. It is entirely governed by the Contract Act. Even the contractual capacity of the guardian is controlled by the Contract Act. This fact has been recognised by most of the eminent writers on Hindu law. There are some portions of Hindu law which have almost become part of our tradition, part of our culture and part of, as it were, our whole life—*e.g.*, the provisions regarding marriage, divorce, or the joint family, the Mitakshara and Dayabagh succession, etc. We cannot easily disturb them. If we want to change our law, we can change only the Hindu law in matters like marriage, succession, etc. We cannot change the law of all the people in the country, because in such matters the Hindus have been accustomed to one set of laws, the Christians to another and the Muslims to yet another, and so we cannot all at once have a civil code dealing with all the sections of this great nation. But minority and guardianship is mainly controlled by statutory law. The Hindu law as such has nothing to do with it. And in these matters provisions regulating or controlling the Muslims would to a very great extent be similar. And the structure of Hindu law or the structure of Hindu society would not be disturbed if this portion of the law were left to be regulated by statutory law. I therefore feel that for minority and guardianship we should have a civil law which may deal with all the sections of the Indian nations—Hindus, Muslims, Christians and so on and so forth.

Then I come to the question of legitimacy and illegitimacy. I entirely share the convictions of the previous speaker that there should be no scope for these invidious distinctions under the law. I cannot understand illegitimacy. For the matter of that, nature does not recognise illegitimacy. Every child is legitimate in the sense that every child is born of one father and one mother. It is naturally impossible for the child to be born of two fathers. A child has always one father and one mother. This is the law of nature, and so, why should you make a distinction? Because one man had committed certain folly or indiscretion, why should we call his child illegitimate?

SHRI GULSHER AHMED: The question is of social inheritance.

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SHRI B. K. P. SINHA: Inheritance is regulated by man-made law. Illegitimacy is not recognised by nature or God. Let us do away with this distinction. When nature does not recognise it, why should we recognise it and give it legal sanction? Moreover, illegitimacy is a serious handicap. A child who is considered illegitimate cannot rise to his full stature. We know the story of Karna in the Mahabharata. He was a great hero, according to some the greatest hero of the Mahabharata, but the stigma of illegitimacy was attached to him—Suta putra, Sankar Varna. Therefore, he could never rise to the stature that was his due. I can very well understand a man being punished for his actions. The criminal law does not recognise any vicarious responsibility. Why should we burden an innocent child with vicarious responsibility for something done by others? I therefore feel and I would urge the Law Minister to consider whether it is not proper to do away, in this latter half of the twentieth century, with this invidious distinction

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which hampers the proper growth of a man's personality. Where is the question of legitimacy and illegitimacy? Nature does not recognise it. Why should we recognise it?

SHRI GOVINDA REDDY: Then these words must not be in the dictionary.

SHRI B. K. P. SINHA: Coming to the clauses of the Bill. A minor is defined as a person who has not completed the age of 18 years. But for some purposes for example when a person is under the gurdianship of a Court of Wards or when a guardian is appointed by the court, he attains majority at the age of 21. He is considered to be wise enough to manage his affairs at the age of 21. But if he is under his natural guardian, his wisdom is accelerated by three years. I do not see any rational reason for this. I feel that in all cases the age should be brought to parity. Whether it is a case of a natural guardian or whether it is a case of a guardian appointed by the court or tutelege by a Court of Wards, in all these three cases, the age of majority should be fixed at 21. This is one of the things which I would like the hon. Minister and the Joint Committee to consider. I know that the law has been there for a long time but there appear to be no rational reason behind these distinctions and it is high time that these distinctions should go.

Coming to clause 4, it appears to be quite proper. When we are codifying the law, those portions of the previous law which are inconsistent with the new code must go.

Coming to clause 5, I find that sub-clauses (a) and (b) create some sort of confusion.

SHRI H. C. DASAPPA: Do you refer to the proviso?

SHRI B. K. P. SINHA: Not the proviso, but the main clause. In (a) it is said 'in the case of a boy or unmarried girl'. There are no qualifying words before 'boy' or 'girl'; it may be both legitimate and illegitimate. But sub-clause (b) specifically deals with an illegitimate boy or an illegitimate unmarried girl. While by implication sub-clause (a) is confined to legitimate boys and legitimate unmarried girls, I feel that we should not leave it to the interpretation of the courts. We must make it plain that sub-clause (a) refers to legitimate boys and unmarried girls. If you propose at all to keep the distinction, though personally I do not like that distinction, you should add the word 'legitimate' in sub-clause (a). That will make the meaning very clear and no disputes will arise in the courts. Then it says that the custody of the minor shall be with the mother till he is of the age of 3. I think the age of three is a very immature age at which to transfer a child from the mother to the father or anybody else. The age limit should be extended at least to 7. A child before that age cannot very well be looked after by his father. The mother is the proper guardian to look after the child and so the age should be raised to 7.

AN HON. MEMBER: More liabilities.

SHRI B. K. P. SINHA: Yes, but it shall be discharged better. Because in a law of minority and guardianship the interest of the minor is always supreme. That should be the guiding factor in making any provision and the interest of the minor till the age of 7 at least requires that he should be under the tutelege of his mother. So the age should be raised.

Then Mr. Sinha from Bihar wanted to make some distinction between the mother and the step-mother. I do not think it is necessary because under the Hindu law as he himself said, the mother excludes a step-mother. The word 'mother' here will be understood in the sense in which Hindu law as it is administered today takes it. I am

reminded in this connection of the interpretation of the word 'sister'. In the thirties sisters were brought in the categories of 'heirs'. There was a dispute as to whether the word 'sister' included a 'step-sister'. Most of the Indian High Courts themselves said that it excluded a step-sister because they went by the meaning of the words 'sister' and 'step-sister' as current in the English language. But then one of the cases went to the Privy Council who held that since Hindu law does not make a distinction between a sister and a step-sister, therefore the word 'sister' is deemed to have included the word 'step-sister'. In this matter the reverse is the case. The Hindu law makes a distinction between a mother and a step-mother and the word 'mother' automatically excludes the step-mother. So no specific mention need be made.

About minor husbands, I agree that child marriages are very common in spite of the Child Marriage Restraint Act but we cannot frame a law on the basis that the law is being broken in practice. We have to proceed on the assumption that the law is being respected. Moreover there is a definite trend in the Hindu society today for the marriage age to be raised. Each year the age of marriage rises and I think in a few years the marriage of minor boys would be an extremely rare phenomenon. So there is no necessity of prescribing that the minor husband will not have the guardianship of his wife.

Regarding clause (a) of the proviso to clause 5 there were some objections from both the previous speaker and Mr. Sinha who said "Why should a man cease to be the guardian of his children simply because he changes his religion" and Mr. Sinha further referred to article 25 of the Constitution and said that this offends against it. I do not agree with him. That article simply says that every man shall be free to profess whatever religion he likes. That never laid down that every man shall be free to profess any religion and at the same time to have the guardianship of somebody who is professing another religion. If the father is free to profess any religion, so is the child. If the child is born in a particular religion, if he is born to a particular society, he should, unless he attains majority, live in that society and follow that religion. When he attains sense enough to know what is good and bad for him, he would be free to change his religion but before that stage is reached, it seems to me unreasonable why a child should be forced to live under the guardianship of a man who has changed his religion and passed over to another society. To me it appears that this clause does not offend against article 25 and it is an extremely salutary provision. I feel clause (b) is also a salutary provision. It is recognized by Hindu law that whenever somebody becomes a hermit or an ascetic or a perpetual religious student, he loses his civil or secular capacity. This proviso simply takes note of the existing provision in Hindu law and the words 'perpetual religious student' do not create any confusion. That is a very well crystallised and defined conception in Hindu law. I do not think it will occasion any litigation or dispute. Moreover when a man becomes a hermit or an ascetic or a *Naishtik Brahmchari* or a perpetual religious student, he, as it were, breaks off from the whole world. He is guided by other-worldly considerations. His mental make-up, his psychology assumes an entirely different character and he becomes unfit to manage secular matters. So in all propriety such a man should be excluded from the guardianship of the child. My friend referred to the case of *Rishis* and *Munis* but they did not look after secular matters. They simply taught the boys and gave them training. They were teachers as it were and they were not guardians, and did not look after the secular affairs of their wards.

Clause 6 again gives an impress to what we find in the Hindu law today, that on adoption, the adoptive father becomes the natural guardian.

Under clause 7 (1) the powers of the natural guardians so far as movables and immovables are concerned are put

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on a par. The guardian can deal with both types of property only in a certain manner and in certain contingencies but then sub-clause (2) puts certain restrictions on the powers of the guardian so far as immovable property is concerned. I don't see why this distinction between the two should remain. There were times when immovable property was the only kind of property and movables formed a very small and insignificant portion of the total property but with the growth of time movables are assuming greater and greater proportions every day. Immovable property is now the lesser part of the possessions of a man and moreover with the legislations regarding land and houses that we are contemplating, this will assume still lesser significance in the future. So there is no necessity of making a distinction between the two types of properties. But that distinction can be removed in two ways: The first is that the same restrictions should be put on the power of the guardian as regards movable properties as is put by clause 2 as regards immovable property or the other way would be that the restrictions prescribed by clause 2 as regards immovable property should also go. I think the latter would be the proper and better course. Today even in dealing with the immovable property of a ward, the natural guardian has certain freedom, certain latitude. His powers are similar to those prescribed under clause 7, sub-clause (1) even as regards immovable property. Now we are equating the powers of the natural guardian by sub-clause 7(2) to the powers of a guardian appointed by a court. Some restrictions are being put. The guardian, even if he is the natural guardian, has to run to the court for every transaction regarding the immovable property. That means it will put a lot of expenditure on the estate of the minor. This procedure will be cumbrous and in some cases extremely vexatious. Suppose the property of the ward is a small one and there is imminent danger to the property. And suppose the property could be saved by the transfer of a small portion of it. The man has to go to the court. We know some money will come into the coffers of the State and some to the pockets of lawyers and the matter will take some six months. By that time, the property might have depreciated and the danger to it being so imminent, the whole property might have gone away. Moreover, the ambit of the natural guardian is very limited, being only father, mother, husband. It does not stand to reason that the father or the mother shall be less solicitous of the interest of the ward than the court. The father or the mother is always a better judge of the interests of the child than a court can possibly be. Therefore, I feel that this sub-clause should not be here, sub-clause (2) and the natural guardian should have the powers which he possesses today and no more fetters should be put on that power.

Then I come to the question of the transaction being void or voidable,—whether a transaction entered into by a guardian in violation of sub-clauses (1) and (2) of clause 7 should be void or should be voidable. I think to make them voidable would be a better arrangement. Unless we want to put a total ban on all dealings by guardians, we cannot make the transaction void. If there is total ban, then nobody will purchase the property and even if somebody does buy it, it will *ipso facto*, be void. But here we have prescribed that in certain contingencies, if there is danger to the estate, or benefit to the minor, the property can be dealt with by the guardian. If the guardian has discharged his duty effectively, then the transactions should not be made void, because, after all, who is to judge whether the transaction is necessary or reasonable and proper or not? It is for the court to judge. To make it void, would be to do away with the judgment of the court altogether. In that case, this provision becomes nugatory or contradictory. In view of the powers sought to be given to the guardians and properly sought to be given, I feel that the transaction should be voidable and not void.

Then I come to clause 8. This clause, I feel, is based on the judgment of the

Privy Council in that famous case fought out between Annie Besant and the father of that person—your namesake, Sir, Mr. Krishnamoorthy. Now, when that case went up to the Privy Council, certain standards were laid down by the Privy Council and this clause has incorporated those standards. But I feel that sub-clauses (a) and (c) are out of place and improper because, I have read that judgment in the Besant case, and my own feeling is that the conclusion is against the whole tenor of the judgment. The Privy Council lays down that a father cannot divest himself of the guardianship of his child. He remains the guardian in spite of himself. He has to remain guardian because it is the duty enjoined on him, both by law and by God. After coming to this conclusion, there was no option for them but to dislodge Mrs. Besant from the care of the child. But they fought shy of that. They did not go that far. Therefore they developed certain theories which have no place in Hindu law, that when expectations had been raised or a certain standard had been laid down, and if those expectations or those standards were endangered by the revocation of that authority, then in that case, the revocation shall not be allowed. To me, these exceptions seem to be extremely unreasonable. who after all, is to be the judge of the interests and the welfare of the child? Surely it is the father or the mother. Is it to be the father, mother or somebody else? The father may entrust the child to the care of some person, or the mother may do it. But after some time, it may be discovered that they had made a mistake, that the father or mother had erred. In that case, it should be open to the father or the mother, as the case may be, to revoke that authority. Therefore, I feel that sub-clauses (a) and (c) should be deleted. Instead, I feel that one more clause should be added here, similar to sub-clause (b) of the proviso to clause 5, that is to say "if he has completely and finally renounced the world by becoming a hermit or an ascetic or a perpetual religious student." This should be added to the clause dealing with revocation of authority and sub-clauses (a) and (c) of clause 8 should be deleted, because they run counter to the principles of Hindu law.

Then I come to clause 9 which deals with the guardianship of a minor legitimate child. I have already urged that we should not make a distinction between a legitimate and an illegitimate child. But if this distinction is to be retained, then there should be some provision for the guardianship of illegitimate children also. I do not see any provision in clause 9 or in any other clause of this Bill for the guardianship of an illegitimate child.

Mr. Dasappa has already spoken about the inconsistency and confusion that the proviso to sub-clause (1) of clause 9 leads to. I think if that is deleted, then the whole thing will be clear and put beyond all doubt or confusion. It is proper that *de facto* guardians should be done away with. These inter-meddlers did a lot of mischief and.....

AN HON. MEMBER: Exploitation.

Shri B. K. P. SINHA: So much exploitation and so much litigation cropped up that it was ruinous to the minor, ultimately. So they have rightly been given the go by.

I come now to clause 12—Guardian not to be appointed for minor's undivided interest in joint family property. The first portion of this clause is quite proper. It takes note of the decisions of several High Courts as well as of the Privy Council. But the proviso again appears to be improper. The proviso says 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." This matter was raised in several High Courts. Some of the Indian High Courts, I think they were Allahabad, Bombay, Calcutta, held that the High Court in spite of the general provisions of the Hindu law, since it is the successor of the Court of Chancery—or was it some other court—I forget which

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—being the successor of some particular British court, and by virtue of that succession, they had the power to appoint a guardian even for the undivided interest in the joint family property of a minor. Subsequently there was a decision of the Privy Council—I forget the reference but I would refer the hon. Law Minister and the Members of the Select Committee to some case quoted in Maine's or Sarkar's Hindu Law. Actually it was not a decision but an obiter but then even obiters of the Privy Council are binding on the High Courts here and they control the decisions of the High Courts here. The Privy Council held that it would be entirely against the scheme of Hindu law and joint family property to appoint a guardian of a minor so far as the undivided interest in joint family properties was concerned and they made no exception in this regard so far as the High Courts were concerned. I feel that this should be properly looked into and if found proper, this proviso should be deleted.

Coming to clause 13, I feel that this clause consists practically of two sentences joined by the word 'and'. So far as the first part which begins with "In the appointment or declaration of any person as guardian of a Hindu minor by a court the welfare of the minor shall be the paramount consideration" is concerned, this portion deals with matters which, properly speaking, are not relevant to this Bill because this deals only with the natural guardians and not with guardians appointed or declared by any court. The first part of this clause controls other Acts. Difficult questions of interpretation may arise later on as to how far the first portion of this clause affects the operations of other statutes. The second portion, of course, is in very general terms and deals with natural guardians also with which this measure deals. I, therefore, feel that while the second portion beginning with "no person....." and ending with "the minor" should be retained, the first portion should be completely eliminated. If any change is sought to be made that change may be introduced in the appropriate Acts. That is all I have to say.

Towards the end I will refer to the question of re-marriage and change of religion. Re-marriage of a mother has very often been made the ground for depriving her of the guardianship of the child. So far as change of religion is concerned, the law at present is that if the father changes the religion the boy goes along with him to the same religion as the father but when the mother changes her religion the position is different and the mother is deprived of the guardianship of the child. The Select Committee should consider whether they should retain the law as it is today or whether some change is necessary. I find that in this Bill there is no specific provision dealing with re-marriage of a person or with change of religion by any one of the parents. If the Select Committee feel necessary —and I think it is necessary—that we must have some reasonable provisions regarding these in a Bill of this nature, they will no doubt take suitable action. With these words, I commend the Bill.

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Deputy Chairman, it is my misfortune that my turn to speak has come at the fag end of the day and as such, I do not think I can make any valuable contribution to the debate. Hence, I will ask your indulgence and the indulgence of the House to be permitted to express my views on what may already have been said by so many other speakers.

Before I come to the provisions of the Bill, I would just like to refer to one of the replies received regarding the opinions expressed on this Bill and which is opinion No. 31 received from the Supreme Court printed on page 50 of Paper II.

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

The reply received from the Registrar of the Supreme Court is to the following effect: "I am directed to state that the hon. Chief Justice and the other Judges of this Court have no desire to express any opinions on the provisions of the Hindu Minority and Guardianship Bill, 1953". I believe,

Madam, if I am not wrong, that the same reply was received from the Supreme Court on the Marriage and Divorce Bill. I believe that this procedure has been adopted by the Supreme Court under the impression that they being the highest judicial appellate tribunal in the country it would not be right on their part to express any opinion on the various Bills at their formative stage at which their opinions are being asked for. With the greatest respect to the hon. Judges, I may be permitted—with your permission, Madam—to say that I think that that is not a correct attitude to adopt. To my mind, it is not only the duty of the Supreme Court to unmake, or ratify the laws which the legislatures make but it should also be their duty, as the highest judicial tribunal in the country and also because it consists of some of the most eminent judges, jurists and lawyers, that they should guide the legislatures and the Parliament in the making of laws by expressing their opinions on the Bills even at their formative stage. With these few words, Madam, I will come to the provisions of the Bill.

The salient features of this Bill are: firstly, it reduces the age of majority of wards for whom guardians have been appointed by the court from 21 years as provided in the Guardians and Wards Act to 18 years; secondly, it gives the right of custody to the mother on the person of her minor children up to the age of three years in preference to the father; thirdly, it takes away the right of the natural guardians to alienate properties of their wards without the permission of the court; fourthly, it takes away from the natural guardians the right to revoke the authority which they may previously have given to another guardian appointed by them; fifthly, it takes away the father's right to exclude the mother from the guardianship after his death by appointing a testamentary guardian; sixthly, it authorises the mother to appoint a testamentary guardian where the father has not appointed any such guardian; seventhly it takes away the *de facto* guardian's right to deal with and alienate property like a natural guardian and eighthly, it authorises transfers of minor's properties only if it is to the evident advantage of the minor in place of the words which at present stand in the Guardians and Wards Act namely "to the benefit of the minor or his estate".

Madam, if these new provisions of this Bill are considered good and proper for the minors and their estates, I do not see why these provisions are not being incorporated in the Guardians and Wards Act itself so that these provisions, if they are salutary and beneficial for the minors, may be applied to all minors alike, whether they be of the Hindu religion or of any other religion. No cogent reasons have been set out in the Objects and Reasons of this Bill as to why it has been considered proper to apply these provisions only to the Hindus and not to the minors of the other religions. As has been said by various speakers, the mandate to us under the Constitution itself is that we should try and make laws which would be applicable alike to all persons of all faiths and of all religions and this, being a Bill of a nature which could be made applicable to all religions and faiths, I do not see why it is being specially enacted for a section of the people only.

Now, coming to the provisions of the Bill, I will first take up clause 2 and will remind the hon. the Law Minister that this provision also existed in the Hindu Marriage and Divorce Bill but the Select Committee to which it has been referred has thought it proper to make certain changes in that clause. I would therefore request him to modify this clause likewise. The most important change made by the Select Committee in that Bill is in sub-clause (a) of the Explanation to clause 2. The Explanation to sub-clause (1) under it reads thus:

> "The following persons are Hindus by religion within the meaning of this Act:—
>
> (a) any illegitimate child both of whose parents are Hindus";

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which indicates that a legitimate child both of whose parents are Hindus is not a Hindu within this Act. Therefore the Select Committee has in this sub-clause added the words "legitimate or" before the word "illegitimate" to read thus:

> "any child, legitimate or illegitimate, both of whose parents are Hindus";

which is a more correct explanation of a Hindu under the Bill and I would ask the hon. the Law Minister to incorporate that amendment in this as well.

Now, Madam, I come to clause 5. Here provision has been made that in the case of a boy or an unmarried girl, the father, and after him, the mother shall be the natural guardian of a Hindu minor subject to the fact that until the age of three years the mother will be the guardian of the person of the minor.

SHRI H. C. DASAPPA: Custody.

PANDIT S. S. N. TANKHA: Regarding this sub-clause my submission is that to my mind it appears, that the age of the children specified herein regarding the custody of the person of the minor child, namely, three years, is too low an age, and I am definitely of the opinion that the care of the children until they become sufficiently old, should remain with the mother, and therefore this period of three years should preferably be advanced to seven years, or at least to five years if seven years is not acceptable to the Select Committee. Until the age of at least five years the children, I think, should not be weaned away from their mother and it is only right and proper that the Bill should provide that the custody of the person of the minors up to the age of 7 or 5 years should be with the mother instead of with the father. On the point of the custody of the person of a minor girl, speaking for myself, Madam, I am inclined to think that the custody of an unmarried girl should be with the mother even up to the age of her marriage. I think the mother is a much better guardian to look after the welfare of the daughter than the father. The father in most cases has not sufficient time to look into this matter, nor can he be expected to and cannot look into those matters as well as the mother can, and therefore I would ask the Select Committee to provide that the custody of the girl shall remain with the mother until her marriage and that of the boy up to the age of seven years or five years, whichever age the Select Committee considers proper.

Then, Madam, in sub-clause (c) of clause 5 it has been provided that the custody of a married girl shall be with the husband, but this makes no stipulation as to whether or not the husband himself should be a major before he can be entrusted with the custody of his wife. Therefore I think that some restriction should be placed in this clause to provide that it is only when the husband has himself attained the age of twenty-one years that he shall have the custody of his wife. I say twenty-one years because, as you will remember, in connection with the Special Marriage Act the question was raised as to what should be the fit age at which persons under the Act may be allowed to be married without the consent of their guardians and it was decided that the only age at which both girls and boys should be considered to be of sufficient maturity was the age of twenty-one years, and therefore, Madam, I maintain that even though the husband may be considered to have become a major at the age of eighteen under the Indian Majority Act, even then provision should be made under this Act that the husband will become the guardian of his wife only if he has attained the age of twenty-one years, namely an age of sufficient maturity. Moreover provision should also be made that until the married girl has attained puberty, her parents who are her natural guardians, the father and the mother, shall continue to remain her guardians rather than the husband.

SHRI GULSHER AHMED: You want both the conditions or one condition?

PANDIT S. S. N. TANKHA: I have said that this condition is necessary, where the married girl has not attained puberty. Yes, I want both the conditions, namely the attainment of the age of twenty-one by the husband and the attainment of puberty by the girl to pass a married girl's guardianship from the parents to the husband.

Now, Madam, as I have said, one of the chief changes made in this Bill is that it has reduced the age of majority of the wards from 21 years to 18 years even in cases where the courts have appointed guardians for them, either in respect of the minors' properties or for their persons. Now, this departure, I do not think, is salutary. I am of the view, Madam, that both girls and boys are not sufficiently mature to manage their properties below the age of twenty-one years.

I would, therefore, suggest that where the minor is possessed of property, in such cases the guardianship shall continue until the age of 21, as is provided at present under the Guardians and Wards Act. I think the present rule, is very much more beneficial to the interests of the estate of the minors than fixing their age of majority at the age of 18. If the age of majority, even in cases where the minor is possessed of properties, is brought down to 18, I am afraid there is a great danger of unscrupulous persons taking advantage of the immaturity of youth of these minors and profiting by it by various means whether by hook or by crook. Therefore, I would suggest that as far as the guardianship of the property of the minors is concerned, the guardianship of minors should continue up to the age of 21.

Then, Madam, as regards the guardianship of the married girls, as I have said, the husband is to be the guardian under the Act. But I find that no restriction has been placed upon his doings with respect to the property of his wife. I would suggest that some very stringent rules be provided that the husband shall not manage the property to the detriment of the wife and he shall not either transfer or take away or alienate the property. You know, even now, without the husband being the legal guardian of the wife, he takes advantage of the monies and other properties of the wife in so many ways; but if he is placed in charge of the wife's property as a legal guardian of her property then, I am afraid he may, by some means or other whether by love or by threat or any other means, take advantage of it to the detriment of the wife and hence those restrictions are very necessary. It is only in respect of the immovable property that provision has been made in clause 7 for consent of court to be taken before any alienation is made thereof. It does not contemplate any restrictions on the transfer of movable properties, and movable properties can be very valuable properties. As a guardian the husband may part with her jewellery. Strict restrictions should, therefore, be provided for under this clause so that the husband may not easily be able to take advantage of his wife's property, whether movable or immovable.

Then I come to clause 7 in which I find that restrictions have been placed on the powers of the natural guardian to alienate the minor's properties. To my mind, this, instead of proving beneficial for the estates of the minors, will act to the detriment of the minors and their properties. After all, under the present Hindu law there are adequate provisions that the property of a Hindu minor can not be alienated by the father unless it is done for legal necessity or for the benefit of the minor or his estate. Now, requiring the father or the mother, to apply to the courts for permission to transfer the property is to place an unnecessary restriction on the powers of the natural guardians. I have not

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yet come across any instance or a natural guardian alienating the property of the ward for his personal benefit, if the guardian is either the father or the mother. I maintain Sir, that they do not do it unless they are compelled to do so either for the education of the child, or the maintenance of the child or for the maintenance of themselves. Therefore, under such circumstances, I think, the present law on the subject should have been allowed to stand and these restrictions should not have been imposed, because it will mean a needless expense to the natural guardians to be asked to go to a court of law and it is even possible that by the delay which may be caused in obtaining permission from the court, the transaction itself may in many cases fall through, and which will certainly prove detrimental to the interests of the minors. But, Madam, if it is considered by the Government that sub-clause (2) of clause 7 should remain as it is and that these restrictions should be placed on the powers of the natural guardian, then I fail to see why under sub-clause (3) it has been provided that "Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any other person affected thereby". And in this connection I would like to know, Madam, why such transactions shall be voidable only and not void *ab initio*. If these restrictions on the powers of the natural guardian or the advantage of the minors and for the preservation of their estates, surely it should be provided for that if anything contrary to sub-clause (3) is done by the guardian, then that transaction will be void at once and it will not be left to the option of the minor, after several years, on attaining majority to accept it or repudiate that transaction. Suppose, Madam, the child is only 3 or 4 years of age at the time the transaction of alienation takes place, in such cases it will be only after fifteen years or so, that when the minor, he or she, becomes eighteen years of age that he or she will be in a position to repudiate or accept that transaction. By that time the property may change hands several times which fact will create various difficulties if the transaction is thus repudiated. Therefore, I think, if sub-clause (2) is retained, it is very necessary that the transaction should be made "void" and not "voidable", in all cases where the transaction is in contravention of sub-clause (2).

In sub-clause (4) the words used are: "No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor". Personally I think that the words "necessity" and "for an evident advantage" used in this sub-clause are not so suitable as "legal necessity" and "for the benefit of the minor or his estate", which words find place under the present law and which words have acquired a definite legal meaning and interpretation. Therefore, I would suggest that the words now occurring in sub-clause (4) be substituted by the words "legal necessity" and "for the benefit of the minor or his estate", which exist under the present law.

Then, coming to clause 8, where it is provided that if a natural guardian has given an authority to another person to become the guardian in his place and if such natural guardian ceases to be a Hindu, then he shall no longer have the power of revocation of that authority, I submit, Madam, that I do not see sufficient reason for this provision. If a person has ceased to be a Hindu, but before he changed his religion if he has made another person the guardian of the minor, and if after his conversion he finds that that person is not a suitable guardian or that he is not acting ~~or that he is~~ not acting in the best interest of the minor then, why should it not be open to him to revoke that authority which he had

himself conferred earlier? Change of religion should not be any bar for revoking that authority.

Then, Madam, regarding clause 9, I entirely agree with the interpretation which has been placed by Shri Dasappa on this clause. I am of the opinion, Madam, that sub-clause (2) of this clause, coming as it does after the proviso to sub-clause (1), will be governed by it, and therefore, sub-clause (2), as it stands—"The guardian so appointed has, after the death of the father and of the mother, if the father has predeceased her, the right to act as the minor's guardian, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as may be specified in the will"—will not only include the guardianship of the property of the minor but of his person also, because in sub-clause (1) the father's right to make a testamentary guardian has been restricted only to the extent of the appointment of a guardian in the presence of the mother for the person of the minor. Therefore, it cannot be said that sub-clause (1) contemplates that the father will not have a right to appoint a guardian for the property as well as for the person of the minor until the mother is alive since the clause specifically mentions only that the father will not be entitled to appoint a guardian for the person of the minor if the mother is living, but it makes no mention of his having no right to appoint a guardian for the property also if the mother is living. It has been suggested that this clause needs a radical change, but I might be permitted to say that to my mind it does not need any radical change It only needs the addition of two words "and property" in the proviso, so that the sub-clause may read as follows:—

> "Provided that nothing in this section shall be deemed to authorise any person to act as the guardian of the person *and property* of the minor for so long the mother is alive and is capable of acting as the natural guardian of her minor child."

If you add the two words "and property", it solves the difficulty. There is no need to alter the whole sub-clause or both the clauses at all, because once you add these two words "and property", it makes the position abundantly clear that the proviso contemplates that the father will have no power and will not have the right to appoint a guardian for the minor, either for his or her property, or for his or her person, so long as the mother is alive. And then, sub-clause (2) coming after that will make the whole thing quite clear that in the absence of the father and the mother, the guardian so appointed under the will shall exercise all those rights which the natural guardian would have had. Further, Madam, with regard to this sub-clause, I also do not see any reason why the mother has been debarred from making a testamentary appointment regarding the guardianship of the property of her minor children, if the father has not made any such appointment.

1 P.M.

In sub-clause (3) you will note, Madam, that the words are "Subject to the provisions of this Act, a Hindu widow may, by will, appoint a guardian for any of her minor children in respect of the person of the minor: Provided that her husband has not already by will appointed any person to be the guardian of the person of such child". So, Madam, it is clear from this that the right of the mother to appoint a guardian by her will for the property of the minor is not permitted under the Act. But I fail to appreciate why it is that when the mother, under clause 5, has the right to become the guardian of the property of the minor, then why should she not have the right to appoint a guardian for the property of the minor also after her death, if the father has not made any such appointment" It does not stand to reason why she should be thus debarred I would therefore suggest

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to the Select Committee that the mother may be authorised to make a testamentary appointment of a guardian in respect of the minors' property also.

Then in clause 11 recognition of the *de facto* guardian has been taken away. It has been doubted by one of the hon. Members whether clause 11 actually implies the removal of the *de facto* guardian or it fails to convey that meaning. I am inclined to think that this clause is not quite clear on the point, and it should therefore be suitably amended to provide for what is really intended by this clause. I really do not see any objection in the retention of the recognition of the *de facto* guardians. You must remember, Madam, that there are several cases in which young mothers, upon the death of their husbands go to live with their parents or brothers and with them to their fathers' or mothers' or brothers' houses, and thus the father and the mother, or the brother, as the case may be, become the *de facto* guardians of those minors, and these persons being so nearly related to the minors, naturally it is always their main concern to look after the proper interests of the minors and to do all such things as are beneficial for them. Therefore, why should these *de facto* guardians be removed altogether or given no status, I cannot understand. Therefore I would suggest that either provision should be made for their inclusion in the list of natural guardians provided in clause 5, that is to say, the father, and after him, the mother, and so on and so forth, or the *de facto* guardians may be allowed to be continued to be recognised as is done at present. The law on the point is clear as to what is the authority of these *de facto* guardians and what are their rights in respect of the property and the person of these minors.

Now, Madam, regarding clause 12, I think it is a very salutary clause since it has not conferred the power of guardianship of the property of the minor where it consists of an undivided interest in a joint family. As long as joint family system continues in our country, I think it is the privilege and the right of the head of the family to be the guardian for all the minors in the family, and as such, I support this clause. With these few words, Madam, I support the measure.

SHRI B. K. MUKERJEE (Uttar Pradesh): Madam, I rise to offer my suggestions for the consideration of the Joint Committee as I feel that the draft of this Bill is almost useless. This has got to be improved. This Hindu Minority and Guardianship Bill assumes that the majority of the minors of the Hindu community possess immovable property, but the fact is otherwise, as most of the minors do not have any property whatsoever, but nevertheless they need guardians to look after them and to give them education to enable them to become proper citizens and serve their nation and country. The provisions of this Bill deal with the way in which the property of minors should be safeguarded but about those minors who have no property, the Bill is almost silent. Not only that, the Bill expresses only a pious wish about them in clauses 10 and 13.

Clause 10 says:

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

Clause 13 says:

> "In the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration . ..."

Now, a minor needs a guardian because the minor does not know what is wrong and what is right, and he has got to be guided in every matter. The Bill only says that it shall be the duty of a guardian to bring the minor up as a Hindu but if the guardian does not do so, the Bill does not say as to how the guardian can be made to act as this Bill wants him to act.

The majority of the minors of this country will have no property but nevertheless they are the property of the nation and the country So, their upbringing and education should be the paramount consideration, and when we deal with the appointment of guardians, we have got to see that provision is there to compel the guardians to deal with their wards properly so that the wards get proper education to become full-fledged citizens of this country I would like the Joint Committee to incorporate provisions in this Bill so that it shall be the duty of the guardians to bring up the minors as desired in clauses 10 and 13 In the absence of provisions to this effect, the guardians will neglect their duty And if they neglect there is no penalty mentioned here and as such, these two clauses, 10 and 13, will only remain as pious wishes and ineffective

Even though this Bill is a part of the Hindu Code, as it has been brought separately as a Bill by itself, it must be self-contained That is to say, necessary provisions must be made in this Bill itself so that anybody becoming a guardian may know what his obligations are

As I read the Bill the first thing that struck me was that most of the terms used in this Bill have not been properly defined Definitions are necessary to be incorporated in the Bill itself

DR SHRIMATI SEETA PARMANAND Does the hon Member consider the Bill to be unnecessary and that therefore it should be withdrawn?

SHRI B K MUKERJEE It is not necessary in its present form, and it needs modification or improvement at the hands of the Joint Committee Therefore I am offering my remarks

Then in clause 1 sub-clause (2) it is stated that this "applies to Hindus domiciled in the territories to which this Act extends who are outside the said territories" I do not know what the draftsman wanted to say here, but it is not clear to me If he means a Hindu domiciled in another territory where our laws do not apply, how will this Act apply in that territory? If it is the intention of the framers to apply this law to Indian citizens wherever they may be domiciled, it should be so stated

I find that there are certain contradictions in the Bill in that case. In sub-clause (6) of clause 7, where the definition of a court has been given, it has been stated "within the local limits of whose jurisdiction the immovable property in respect of which the application is made, or any part thereof, is situated" The question arises where the property is situated If it is so, it must be within Indian territories So, whether he is domiciled in another territory where this Act does not apply, or whether he is domiciled here, is immaterial for the purpose of the appointment of a guardian The court where the property is situated is the authority, and therefore I do not understand why this phrase has been incorporated in this clause I think the Joint Committee should apply its mind to this and make it very clear

THE VICE-CHAIRMAN (SHRIMATI PARVATHI KRISHNAN) I would request the hon Member to continue tomorrow. Before the House adjourns, I have one announcement to make I have to inform hon Members that there will be a slight change in the order of legislative business for tomorrow After the Hindu Minority and Guardianship Bill the Railway Stores (Unlawful Possession) Bill, 1954, will be taken up then the Dentists (Amendment) Bill 1954 and thereafter the Drugs (Amendment) Bill, 1954

The House now stands adjourned till 8-15 A M tomorrow

The House then adjourned at a quarter past one of the clock till a quarter past eight of the clock on Wednesday, the 25th August 1954