[Mr. Speaker]

will be taken if there are any further violations. The Legation has not yet replied to the protest note. There was a question about this incident in Parliament on the 20th September. The facts stated above were given in reply to this question."

On these facts, I think it requires some further elucidation before we can decide about this motion. The place, as stated, is not easily accessible. Perhaps information may not be available. The only thing that can be done at this stage is, it may be held over. In the meanwhile Government may call for information and give it to the House.

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): That is, any additional information that may be received.

Mr. Speaker: Yes. At present, this is postponed. I do not fix any date for this because I do not know when the Government will be in a position to give the information: in any case, before the present session ends.

INDIAN TARIFF (THIRD AMENDMENT) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to move for leave to introduce a Bill further to amend the Indian Tariff Act, 1934.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Tariff Act, 1934."

The motion was adopted.

Shri T. T. Krishnamachari: I introduce* the Bill.

HINDU MINORITY AND GUARDIANSHIP BILL—*contd.*

Mr. Speaker: The House will now resume further discussion on the motion for concurrence in the recommendation of the Rajya Sabha for reference of the Hindu Minority and Guardianship Bill, 1953, to a Joint Committee. Of the five hours allotted for the discussion of the motion, two hours and five minutes have already been availed of yesterday and 2 hours and 55 minutes now remain. This would mean that the motion shall be put to the vote of the House at about 3 P.M.

Thereafter, the House shall take up the Preventive Detention (Amendment) Bill, 1954 for which 15 hours have been allotted.

We will proceed to take up that motion. I do not think that I need read out that motion. Shri D. C. Sharma, who was on his legs yesterday continue his speech.

Shri D. C. Sharma (Hoshiarpur): Yesterday, I said that the definition of the term "Hindu" has been made as comprehensive as possible and that no harm would be done to the minors by restricting the guardians only to three categories.

A point was made yesterday that something wrong was being done in changing the Hindu Law at this time and that the Hindu law was being played with in a spirit which is not very proper and right. I must say that Hindu Law has been something dynamic and it has always been responsive to the changes which have been demanded of it by the new social circumstances and new social situations. If we read the report of the Hindu Law Committee published in 1941, on page 11, we find that a very cogent case has been made for a change in the Hindu law. It has been said that when the author of the *Mitakshara* wanted to change the law in respect of the right

*Introduced with the recommendation of the President.

of the widow to inherit the property of her son-less husband, he started with the texts of Yajnyavalkya which were favourable to the change. Then, he took up the texts of Manu which were not favourable. Therefore, he by-passed Manu and tried to sttand by Yajnyavalkya. In the same way, when he came to other points, he made use of those sources which were favourable to his point of view. As it has been said, the ancient law-givers were making a judicious selection of the texts to suit their needs. Such Hindu law-givers are not available. It is necessary that we should meet the social challenge of the times by amending the laws which have become obsolete and outmoded.

The main point in this law is the welfare of the minor and I think the welfare of the minor has been described in a very efficient manner thus.

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

On going through this Bill, one finds that several precautions have been taken and every safeguard has been put in to see that the protection of the minor should be the only consideration and that the property should not be wasted or played with in any case.

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

I would say that there are certain changes which have to be made in this Bill. I would like to suggest these changes.

In the first place I would say that in clause 5(a) the word 'mother' should be further defined so as to make it clear that the term should not include a step-mother or a divorced mother or a mother who has married again. This is for the obvious reason that when a mother has done anything of that kind, her interest does not remain of the same intensity in her former children.

Again, in the proviso to clause 5 it has been said that a man should not be made a natural guardian "if he has completely and finally renounced the world by becoming a hermit or an ascetic or a perpetual religious student". I would say that if a man has become socially undesirable he should not be permitted to be a natural guardian. A man may be a habitual drunkard or may have developed some other undesirable traits of character. All such persons should be debarred from becoming natural guardians of children.

At the same time I would say this. In clause 7 it is said that mortgage or charge, or transfer by sale, gift, exchange or otherwise of any part of the immovable property of the minor should not be done without the permission of the Court. We are living in times when business is done at a very quick tempo, and I would say that this clause requires to be amended, because sometimes it may be in the interests of the minor to effect the sale of the property at a very short notice. If one wants to have recourse to a court of law it may take a very long time.

Coming to sub-clause (5) of clause 7 I would like to say that it has become the habit of the Government to give references to Acts but not to quote the relevant sections of those Acts. For instance, in sub-clause (3) of clause 7 the Guardians and Wards Act (VIII of 1890) has been mentioned. I would say that this piece of legislation is not only meant for Members of Parliament and lawyers but also meant for the common man. Whenever a reference is made to any other Acts, those Acts should be

[Shri D. C. Sharma]

quoted in full or *in extenso*, so that anybody who wants to read the provisions of the Acts referred to should be able to grasp the full significance of the provisions by looking at this Act.

Coming to clause 9, it has been said—

> "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 etc."

I believe that a very valuable point was made by Shrimati Jayashri when she said that the powers of the mother should be extended under this clause. For instance it has been said that a mother can be the guardian of a child up to the age of three. She said that the mother should be the guardian of a girl till she is fourteen and of a boy till he is seven. I believe that this also is not the right course to follow. A mother should be put on a par with the father, because I believe that mothers look after their children in as proper a way as the fathers do. I think there may be many Members in this House who will hold with me when I say that mothers are not to be discriminated in any sense of the word—in this Bill or anywhere else. Women have shown their capacity not only for looking after the physical and mental welfare of the children, but they have also shown their capacity for managing the property. I would therefore say that there should be no discrimination made against mothers in this Bill.

One minute more and I have finished. It has been said in sub-clause (3) of clause 9 that "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". I think this provision should be made subject to certain other conditions so that it is not in any way used wrongly against the minors.

In the end I would say that it is a very simple measure and it makes an attempt to bring our Hindu Law in conformity with the changed spirit of our times and that it does not make any serious departure from those conditions which are prevailing at present; most of the provisions in this Bill are those which have been accepted more or less in our country already. I would therefore commend this Bill for the whole-hearted support of the House.

Shrimati Sucheta Kripalani (New Delhi): I rise to support this Bill generally because this is an attempt to codify the law pertaining to guardianship and minority, and I believe a codified law is better than an uncodified law. But I have some general criticisms to offer for the manner in which this Bill has been brought and also I shall give at a later stage my views regarding the details of the clauses.

From the opinions circulated to us we find that there have been two general criticisms which are of considerable force. One is that we are attempting to pass the Hindu Code by driblets, in a piecemeal fashion. This Bill is a part of the Hindu Code Bill. If we really want to improve the law of the land, we should bring a comprehensive integrated Hindu Code covering all aspects of our national life and our personal law, and that should be passed. This kind of piecemeal legislation does not give us an opportunity to study the different aspects of the law in a proper fashion. I am sure some loose ends will be left after the passing of the various laws—Marriage and Divorce, Minority and Guardianship. Succession and others—and at a later stage amendments will have to be brought in to integrate them. That is very necessary because each law will affect the other law.

For instance, the Marriage Law will affect the Law of Succession.

It is a great pity that the Congress Party having such a tremendous majority did not think it fit to pass the integrated Hindu Code. I was a Member of the Parliament at that time and I saw the manner in which the Hindu Code Bill was scuttled in this House. I am surprised when I see that when the Government wants to pass the motion every year to extend the Preventive Detention Act, it is passed by an overwhelming majority. Similarly the Criminal Procedure Code (Amendment) Bill with all its various obnoxious features was passed in spite of the fact that many Congress Members opposed it. But when it comes to the Hindu Code, that cannot be passed, that must be brought in this defective, back-door manner. This aspect of the manner in which this Bill has been brought, I fail to grasp. I feel that in this matter the Congress Party is not acing in a courageous manner.

Shri S. S. More (Sholapur): There is a fifth column of Mr. Chatterjee inside the Congress.

Shrimati Sucheta Kripalani: I think Mr. Chatterjee has many followers in the Congress.

Shri N. C. Chatterjee (Hooghly): I have a few supporters.

Shri S. S. More: He has a larger following there than here.

Shrimati Sucheta Kripalani: You want to bring about social reform. But you hesitate, halt and do not go to the logical end. That is why we have this defective Bill. But whatever it is, I welcome it because even a halting step is a step forward. Then there has been another criticism which requires to be considered. Why do we not have one civil code for all the people of India if we want reform? We believe that religion is a personal and individual matter. Our social life should be governed under one law. Therefore, we should have one Civil Code governing the lives of all citizens of India. Here too, we want to do a thing, but we have not got the courage to go far enough. One criticism is that such communal legislation is against our Constitution. It is against one of the Directive Principles of the State.

When we are bringing such a faltering measure, I do not understand why we do not bring some amendments to the Guardians and Wards Act instead of bringing a new Bill. Certain amendments could have been introduced and some new principles could have been added. Therefore, though I welcome the Bill, I am very conscious of the defects and very conscious of the weaknesses of the Congress Party in bringing this halting Bill.

I would now like to go into details. The principles embodied in the Bill are generally acceptable to me, but there are many defects in the Bill. I do hope that the Joint Select Committee will bring in considerable amendments.

As the time is limited, I shall only touch upon a few important points that appeal to me.

The first point is that the age of a minor in this Bill and other Bills is different. In some Acts the age of majority stands at 18 and in some other Acts the age of majority is 21. I do not see why the age of majority is not 21 under all the different Acts. That would simplify the laws and make it easy for people.

Then in clause 2 we have defined the people to whom this Act would apply. I think this definition is very cumbersome...

Mr. Deputy-Speaker: If the average age of majority is 23 and a man is at the age of 21, it can well be extended.

Shrimati Sucheta Kripalani: Even in this Bill uunder certain circumstances he does not become a major

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till 21 and in other circumstances he becomes a major at 18.

In clause 2, we have defined the people to whom the Act would apply. I consider that this definition is very cumbersome. I would suggest that we should define it in this way, that "except for the communities mentioned, all persons domiciled in India may be governed by this Act". That would simplify the wording of this clause.

One favourable aspect of this Bill is that under this Bill the women's position has been improved as a guardian. In this Bill an attempt has been made to give the mother and father the same status and put them on an equal footing. Clauses 5 and 9 give women the right of guardianship as well as the right to appoint a guardian under will. In clause 5, woman has been given certain preferences. For instance, women would be given the custody of a child under three years of age. For an illegitimate child, the first guardian is the mother and the second guardian is the father. But I think there is scope for improvement. I do not think that the age of a child should be below three whose custody should be with the mother. A mother can look after a small child much better than a father. Therefore, I would suggest that the age of the child should be raised from three to ten for the custody of the mother.

Then in clause 9, a mother has been given the right to appoint a guardian by will for the person of the child and not for the property. I do not at all understand why this distinction has been made. Perhaps the argument that would be put forward would be that women in India do not know how to manage property; they have not sufficient knowledge; therefore they should not have the right to appoint guardians for the property of the child. Here, the woman is not going to manage the property. She is merely going to appoint a guardian for the management of the property. The woman knows best who would look after the best interests of the child. She would be in a position to find amongst her friends and relations the person who will really look after the child. Therefore, it is quite improper not to give the woman the right to appoint a guardian for managing the property of the child. I do hope that the Joint Select Committee would rectify this defect in clause 9.

I have another small change to suggest in clause 9. In clause 9 in section (3), you say, "subject to the provisions of this Act, a Hindu widow may, by will, appoint a guardian." Now, we have here provided for an illegitimate child also. The word 'widow' may not cover all cases. Therefore, we should substitute the word 'mother' or some other word so as to cover the cases of both legitimate as well as illegitimate children. No provision has been made in the Bill for cases where the woman remarries or separates from the husband by divorce or is physically unfit. Therefore, some provision should be made for that also. Besides, we should also take into consideration the question of step-mother. Whether the step-mother is the right person to be a guardian is a very controversial matter.

Mr. Deputy-Speaker: The term 'mother' does not include step-mother.

Shri S. S. More: It includes.

Shri Raghavachari (Penukonda): Generally in Hindu law it includes; but here, they have simply said 'mother'. I am not a lawyer to know whether 'mother' includes 'step-mother' or not. I hope the Select Committee will look into it.

Shrimati Sucheta Kripalani: Now I come to the question of natural guardians. In clause 5, we have defined natural guardians as the father, mother.....

Mr. Deputy-Speaker: Is it so provided in the General Clauses Act that 'mother' includes 'step mother'?

Shri Bogawat (Ahmednagar South): Yes.

Mr. Deputy-Speaker: Whenever a special statute is enacted, it is excluded from general principles of Hindu law, where 'mother' does not include 'step-mother'. So far as that law is concerned, it is excluded. It may be that for other purposes of the Hindu law, 'mother' may include 'step-mother'.

Shri S. S. More: There is no specific provision.

Mr. Deputy-Speaker: Any provision of Hindu law is abrogated by this. The over-riding effect of this Act is there. Any text covered by Hindu law, or any custom or usage in force immediately before the commencement of this Act shall cease to have effect. So, so far as minority and guardianship are concerned, the rights are all abrogated.

Shrimati Sucheta Kripalani: It is for the lawyers to decide, and I hope the Law Minister will take note of this.

I was saying that in clause 5, the natural guardians are defined. The only natural guardian recognised by this Act would be the father or the mother. Those who have framed the law have failed to take into consideration the existing Hindu society. In our society to-day, the joint family system may be very bad, but it still persists. That system has got some good features also. In our society, when children are left without proper guardians, they are looked after by the uncles, by the elder brothers and by so many other male members of the family. And in the Indian society as it is situated today, we have got unemployment, our income is not very high, the financial needs are there. With all these things, it is absolutely imperative that certain members of the family should be looked after by other members. It is a kind of socialistic system in a way, in a crude form maybe, that in a joint family the weakest members of the family are looked after. Now, here, we have not recognised the joint family at all. In framing this law we have merely taken into consideration the position of the father and the mother. So, under this Act, only the father and the mother would be the natural guardians. This, I think, would go against the interests of the minor. Therefore, I think, that the list of those who should be eligible to be natural guardians should be increased. The group of people to be eligible to be natural guardians should be enlarged than what is defined in this Bill. I think if we retain the Bill in its present form, the result would be that many children would be left without any proper guardians, and it will be difficult for the Courts even to find suitable guardians for such children.

Now, again, the same defect comes when we define the powers of natural guardians. In clause 7, the powers of the natural guardians have also been limited in the matter of sales, mortgage and transfer of property. I do recognise the fact that the guardians are often in a position to cheat the minors and to misuse the property. We have to safeguard against that, it is true, but at the same time, if such restrictions are placed, then the guardians will not be in a position to effect sale or transfer in a quick manner—because the essence of a sale or transfer is that it should be done quickly. When a buyer comes, he cannot indefinitely go on waiting, and we know that legal proceedings are so lengthy that if you apply for the permission of the Court, it may take a very long time. Therefore, it may in fact turn out to be impossible for these guardians to sell or transfer the property when the need arises.

Then, after all, what do you safeguard by this measure? You are putting this safeguard only for immovable property. Nowadays with the

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abolition of zamindari etc., immovable property is not much. Very often, in a property you will find movable property forms the larger share, like shares, debentures etc. Now, the guardian can do away with that larger share of the property, but when it comes to immovable property, he will have to take the permission of the Court. Therefore, I feel you are not protecting the interests of the minor very much by putting in this clause.

Then, what happens. Suppose he goes to the Court for permission to sell. It will be an *ex parte* statement. The guardian goes and he gets the permission of the Court and sells. In such a case, the right of the minor for future action is barred. If he sells without the permission of the Court, at a later stage the minor can go against the guardian and do whatever he likes. He can take some steps. But now, by an *ex parte* representation, the guardian goes to the Court, gets permission to sell and sells. After he has sold, the minor child has no right to do anything. He cannot take any steps against the guardian.

Then, there are other difficulties. For instance, the immovable property may be scattered in two or three States. If it is scattered over two or three States, the guardian will have to go from State to State to the different Courts of the different States in order to get permission for selling or transferring. There are very many difficulties. This will result in raising the cost. It will result in an increase of the Court work, and it will also result in making it more difficult to find proper guardians. What will happen is lawyers will make hay. Ordinarily, people will not like to become guardians with all these difficulties, and most often probably the Courts will appoint lawyers to become the guardians of the children.

Pandit Thakur Das Bhargava (Gurgoan): Lawyers have not got so much leisure.

Shrimati Sucheta Kripalani: There are many lawyers who have plenty of leisure.

So, generally, these are my criticisms. There are certain other criticisms with which I do not wish to take up the time of the House at the moment. I generally support the Bill, but I find there are many defects. It has not been carefully drafted. I hope the joint Select Committee will give it serious thought and make suitable changes.

Shri N. C. Chatterjee: I was obliged to the hon. Law Minister for suggesting my name on the Select Committee, but I am sorry I could not accept it because of my fundamental objection to the Hindu Code Bill as it is coming. And he has candidly stated that this is really one of the instalments of the Hindu Code Bill.

We are sorry that the Law Minister, Mr. Biswas, is not here. We wish him speedy recovery and complete restoration to health. At the same time, we are happy that a distinguished votary of them like Mr. Pataskar is now occupying the position of Law Minister, and I am sure he will bring a detached mind to bear on these questions.

I am one of those who are genuinely convinced that this kind of communal legislation, of communal Codes, are really repugnant to the Constitution of India, both in letter and spirit. I do not think that there is any occasion for infringing article 44 of the Constitution. You know, Sir, the makers of the Constitution solemnly set a very glorious objective in front of the country and in front of Parliament—and that is in article 44. Article 44 clearly states in unequivocal terms that the State is enjoined to strive, to provide, to secure for the citizens of India a uniform civil code throughout the territory of India. You would remember the words "a uniform civil code throughout the territory of

India". Daily the Congress leaders are harping on the evils of communalism. The Prime Minister of India is ranting on the menace of communalism. What business has this Congress Government to bring up a communal legislation, a communal Code of this character, directly infringing the directive principle of the Constitution? What is the difficulty? If you honestly feel the necessity for any codification or law reform or having a uniform civil Code applicable to all citizens, it should be a legislation which is applicable to all citizens.

It may be stated that it does not make it illegal because you are only infringing a directive principle, but as the Supreme Court has pointed out, directive principles should be taken into account, because the "State" means Parliament and all the Legislatures functioning in India. "State" means all the organs of the State, and they are enjoined to have a desirable objective in view. Otherwise, you make these directive principles mere pious, important platitudes. They are not meant for that purpose. But, I go further and I do maintain that this kind of communal legislation—marriage law for one community or divorce law for one community, or fixation of a particular age for marriage for Hindu boys as distinguished from Muslim boys, a particular age of minority for one community and not for another—is an infringement of article 14 of the Constitution, also of article 15 of the Constitution. And they are fundamental rights. I would be very happy if the hon. Law Minister would devote some attention to this important aspect of it.

You know, Sir, that any legislation in any way abridging the fundamental rights is completely void. It has been declared by the Supreme Court of India that anything which is done which in any way abridges any of the guaranteed rights of equality which are embodied in articles 14 and 15 would be immediately struck down and is liable, to be struck down as unconstitutional.

Article 14, you know, Sir, incorporates both the English principle of equality before the law as well as the American doctrine of equal protection of law. Both these concepts have been embodied in article 14. Is it consistent with the doctrine of equality before the law that you shall have one marriage law for Hindus, another marriage law for Muslims, one law of guardianship for Hindus, another law of guardianship for Muslims and Christians and Jews and Parsis? Is it consistent with the fundamental guaranteed rights solemnly embodied in Part III of the Constitution? Are you providing equal protection of laws within the territory of India?

I know that the fourteenth amendment of the American Constitution does not prevent application by a State of different laws or different systems of judicature to different parts of the country, having regard to local conditions. Regional classification is one thing; communal classification is different. Article 15 of the Constitution says:

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".

When you say that a particular boy, because he is a Hindu, shall have to wait till the age of twenty-one before he can marry, while a Muslim boy can marry, say, at the age of eighteen, are you not discriminating against a particular citizen, simply because he professes the Hindu faith, simply because he professes a particular religion? Is that discrimination against the members of one community who are citizens of India on the ground of religion or place of birth or caste or

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race permissible. Sub-section (3) of article 15 says:

> "Nothing in this article shall prevent the State from making any special provision for women and children".

The Constitution-makers have pointed out that only in one case, and in one case alone, an exception can be made for discrimination. Otherwise, there is absolute, categorical, unqualified, unequivocal prohibition of discrimination on the ground of religion. I humbly beseech the hon. the Law Minister to apply his mind to this aspect of the question. The norms have not been fully set, the extent of the ambit of protection against discrimination has not yet been completely defined and it is not capable of rigid definition. But, as you know, the Supreme Court, has struck down the West Bengal Special Criminal Courts Act on the ground of article 14, it has struck down the Communal G.O. which was promulgated in Madras, also on similar grounds, and strong judgements were delivered. In a Bombay case also—that of Lakshman Das Ahuja —it has struck down the Bombay Special Courts Act on the ground that it infringes equality before the law or equal protection of law. It is a serious matter. I submit very strongly that this is certainly inconsistent with what the Constitution-makers have enjoined. This kind of communal legislation is not desirable. This is completely out of tune with the concept of secular democracy, which Shri Jawaharlal Nehru is daily preaching throughout India. Sir, it does not behove his Government to rush through this kind of communal legislation. If you think that something is good for one particular community, it must be good for all and you should plan it on that basis and you should not say that simply because some people, some so-called progressive people, some so-called fashionable people are wedded to the Hindu Code, that you must legislate for codification or reformation of only one law for one community.

Mr. Deputy-Speaker: Is there not a Majority Act for the whole of India?

Shri N. C. Chatterjee: Yes. The Guardians and Wards Act is for the whole of India. That is why I am appealing. If there is to be a Minority and Guardianship Act. If you want some reformation, have it for the whole of India.

I have listened very carefully to the speech of Shrimati Sucheta Kripalani—I always listen to her with respect and with profit.

Mr. Deputy-Speaker: She spoke like a lawyer.

Shri N. C. Chatterjee: That is a trespass into the legal domain!

Shrimati Sucheta Kripalani: A third class lawyer!

Shri S. S. More: Is it not a slander to compare Shrimati Kripalani with lawyer?

Shri N. C. Chatterjee: Slander is excusable under Dr. Katju's Act; therefore, there is no difficulty.

I hope Shri Pataskar is not so hard-hearted as the hon. the Home Minister; I hope the new Law Minister will be more relenting and more responsible and susceptiable to our appeals and suggestions.

Shri S. S. More: He is new, but old in his views.

Shri N. C. Chatterjee: Shri More knows Shri Pataskar better; at least he claims so. He says he is old. But I have the privilege of working with him on two Committees, both very important—the Committee on Subordinate Legislation and the Joint Committee on the Companies Bill—and I have found that he brings a

refreshing view and refreshing outlook to bear on all serious problems connected with law.

Now, what I am pointing out is this, that it is entirely a slander—and a mischievous slander—to say that simply because of the organisation, which I have the honour to represent, is opposed to the Hindu Code, therefore, I am championing crude, mediaeval orthodoxy. It is a slander and I repudiate it; I repudiate it wholeheartedly. Those of the Members who had the opportunity of working with me on the Joint Committee on the Untouchability (Offences) Bill know that I had fought tooth and nail much more than the so-called progressives for the purpose of eradicating that cancer from the body politic of the Hindu community. I shall strive my best to widen the door to bring about real unity and integrity in the great community of which I am a humble member.

Now, I do maintain that Hindu law had been dynamic, Hindu law has not been static, Hindu law has been progressive, and the great glory of Hindu law and of Hindu society has been that it has been a common law of the Hindus. That means that it has grown, developed and expanded with expanding social consciousness. It has been an organic growth; it has not been an artificial growth. Therefore, if you read *Manu*, if you read *Yagyavalkya*, if you read *Narad*, if you read *Gautam*, and then go to the *Dharma Shastras* or *Baudhayana* or *Apastambha*, you find, stage by stage, that Hindu law was progressing or developing. Sir, the development, the organic development, of Hinduism, in tune with expanding social consciousness, was checked, thwarted and chocked by the incubus of British imperialism. I am not saying that great British Judges who were administering the Hindu law made any conscious attempt to do anything improper to the Hindu community. But they were sitting and thinking in Whitehall. When I was a student in the London University, I used to go to the tribunal, the greatest tribunal in Downing Street. You know the Judicial Committee sits there. I was amazed to find Lord Shaw or a man like Dunedin going through *Manu* and *Yagyavalkya*. They used to go religiously, scrupulously, through these and try to find out what was laid down there and enforce it strictly. Their anxiety was not to hurt feelings, but to maintain susceptibilities and to maintain the traditional look of law. That compelled them to accept a peculiarly orthodox or reactionary view in certain things. In the development of *Stridhan*, Lord Davy was actually misled in his judgement by the translation by Colebrook of *Brahaspati* and *Narad*. These were wrongly translated and that wrong translation was enforced upon India, and we got a shock when that judgement came.

Now that you are freed from that incubus of British imperialism, now that you have not got to deal with Dunedins and MacNaughtons, why don't you allow the organic social conciousness to develop and, with Hindu law so developing, allow it to have full and free play? Why do you bring in only legislation? Look at the history of England. You know of the great system of common law of which the British people are so proud. They are one of the greatest commercial nations of the world, but they had not got a codified commercial law; they had not got a law of contracts codified, a law of tort codified. Only at a very late stage after we had the Sale of Goods law in the Contract Act, did they have the Sale of Goods Act. Therefore, do not think that the development of a nation is thwarted or choked simply because there is no codification. Codification is, to a large extent artificial. The greatest jurists and the greatest lawyers have pointed out that codification sometimes thwarts

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sometimes acts with a deterrent effect on improving social consciousness, and it gets petrified. Take for instance, the Criminal Procedure Code. Was that not codified in the year 1882? It took 72 years before this Parliament of India had the time to do something and even then we are not satisfied. Yesterday, all sections of the House pointed out that although for 72 years some attempt was made, we were not quite happy on what we had done. Therefore, codification is not the ideal. You know, Sir, that when Bentham was trying to have a comprehensive codification and to have a unified system of civil law for England the great jurists there said that it will not do any good to England. Lord Cranworth, Lord Westbury, Lord Cearns and nine others pointed out, when Lord Westbury was the Lord Chancellor, that a digest or codification would lead really to no improvement and may by a process of interpretation, by a process of petrification, by the process of development of law by precedents based on statutory interpretation of certain codes really retard the development and therefore they dropped it. Sir, one of the greatest, if not the greatest man of jurisprudence born in Europe in the last century, Lord Kingsley pointed out that it is much better to allow free play for the traditional and normal development of social consciousness in accordance with the spirit of the age rather than codify artificially and when you codify and it gets some interpretation our doctrinaire decision comes into play and law becomes static and law becomes unprogressive. Therefore, my objection is that codification *per se* will not bring about any solution of the problem.

Now, coming to this Bill, I have tried honestly to understand the rationale of the Bill. I have made an honest effort to find out if there is any justification. I am convinced that there is absolutely nothing in this Bill which will do any good to the community or any good to any minor. If the Bill is passed today, how will it help anybody from tomorrow? If you look at the Bill, there is nothing, not one word of improvement, not any conscious attempt made to reconcile the different conflicting judicial dicta or judicial decision. As a matter of fact, if there is any chapter on Hindu law in which there is almost complete unanimity, it is on this law of guardianship and minority. Codification becomes necessary and you try to formulate a code when there is some uncertainty or when there is an urge for radical legislation. There is absolutely no uncertainty in this branch of Hindu law. You have got Mulla's *Hindu Law* which is one of the recognised text books daily cited in courts of law or take Maine's book. Chapter XXIV in Mulla's *Hindu Law* is the chapter on Minority and Guardianship. The law is very clearly put except on one subject; there is practically no difference of opinion and the whole law is crystal clear. It is given in practically 8 or 10 pages from page 612. What is the hon. Minister going to do? I ask him, is this Bill worth the paper on which it is written? Just take this Bill, clause by clause. Clause 2 is the application of the Act. The Act applies to any person who is a Hindu by religion in any of its forms, to any person who is a Buddist, Jaina or Sikh by religion and to any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew by religion. Section 3 is definition. Next is over-riding effect of the Act. It brushes aside, by one stroke of the pen, all the laws and customs and *dharma shastras* and the *nibhandaks*, all the interpretations and all the judicial decisions in force. Very well, to what effect, what is the purpose and what is the objective? What are you going to do? Every legislation must have a standard, must have some ideal, must be actuated by some tangible clear objective. What is the objective?

Clause 9 is natural guardian of the minor. Everybody who knows the A B C of Hindu law knows that in the case of a boy or an unmarried girl the father is the first preferential guardian and then comes the mother. They have put down illegitimate boy or illegitimate unmarried girl will have the mother as the preferential guardian rather than the father. That is a great tribute to the other sex. In the case of a married girl, the husband I do not know whether Mr. Pataskar has thought about it. Supposing the husband is a minor, then what is the position? Are you going to make the minor husband the guardian?

Mr. Deputy-Speaker: No minor can marry now.

Shri N. C. Chatterjee: You know, Sir, there are millions of people in this country who are husbands as good as anybody else in the world and they have got minor wives.

Mr. Deputy-Speaker: All that I was saying was the husband can no longer be a minor.

Shri V. G. Deshpande (Guna): They are already married.

Mr. Deputy-Speaker: If they are already married, they would have become majors by this time.

Shri N. C. Chatterjee: When a boy of 8 or 10 marries a girl of 6 or 7....

Mr. Deputy-Speaker: It is not merely for keeping the House in good humour. Now the age of marriage has been raised in the Act which was passed a number of years ago, in 1929 or so.

Shri N. C. Chatterjee: But the marriage is quite good and valid in law; it is not void, nor even voidable.

Mr. Deputy-Speaker: Is the submission that law should recognise such improper marriages and at the same time make provision for a minor boy marrying a minor girl?

Shri N. C. Chatterjee: That is what Mr. Patasker's Bill is. You know and we know.....

Pandit Thakur Das Bhargava: In the Guardian and Wards Act also the minor husband is the guardian of the wife.

Shri N. C. Chatterjee: What I am pointing out is, openly, even with the connivance of Dr. Katju's police and the authorities, the Child Marriage Restraint Act is defeated in the rural areas. I do not know of Maharashtra but I know of Bihar and other places (*interruption*), even in Mr. Pataskar's constituency possibly, hundreds of such marriages are performed at an age much below the prescribed age. The only thing, so far as I know, is what the High Courts have done. I know Mr. Justice Banerjee of the Calcutta High Court, when a guardian came and applied to the court for permission to raise money on the property of the minor for the purpose of marriage of the ward, refused such permission on the ground that the ward had not attained the requisite age limit according to the Sarda Act and that the guardian was trying to do something which he could not under the law. Apart from that, in fact, there are thousands—not thousands but hundreds of thousands of such cases.

Then comes the powers of the natural guardians. Under clause 9, the natural guardian of the Hindu minor has the power to do all acts which are necessary or reasonable and proper for the benefit of the minor and for the protection or benefit of the minor. You know, as a lawyer, that for at least one hundred years, from Hanuman Prasad's case this has been the law and everyone in India knows it. There is nothing new. It is simply a way of putting down what Lord Kingsdowne had said in that case.

Then comes sub-section (2). What business has this Parliament got to

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say that the father, who is a natural guardian or the mother who is the natural guardian shall not be able to charge or mortgage or transfer any part of the *immovable* property of the minor. Why not? That is not the Hindu law, that is not the law of this country. Why are you putting this fetter on the father or the mother. The mother might have had some *stridhan* which might have been inherited by the son and there may be the necessity of sending the son to another country for getting some specialised training and some money may be needed for that purpose. The father might like to sell the property for that purpose. Why do you deprive the father of the opportunity of charging or transferring any immovable property of the minor? This is a wonderful piece of legislation. Supposing there are ten houses belonging to the minor. The father cannot go and pledge or mortgage one house and raise some money.

Mr. Deputy-Speaker: It is the son's private property and not the joint family property.

Shri N. C. Chatterjee: Even that is permissible today. There is no restriction. Right from 1856 to 1954, throughout India a father or the mother, as natural guardian, had the fullest right as you know. Hanuman Prasad's case has been followed by all the courts and recognised as the bedrock of Hindu law. If this power is not given, what is the good of giving any power to the natural guardian. But, if a man leaves ten lakhs of rupees in shares and securities, then the father can sell it or any part of it and there is absolutely no impediment to that. It is only immovable property that cannot be touched.

Mr. Deputy-Speaker: If a boy inherits some property from his maternal grandfather and his mother dies and if his father marries a second wife, does the hon. Member think that the father should be given the unrestricted right to do whatever he wants with that property of the children of the first wife?

1 P.M.

Shri N. C. Chatterjee: There may be one or two extreme cases, but ordinarily, if the father dies and the mother is a natural guardian, is it ever to be suggested that the mother will do anything except for the purpose of protecting the interests of the son? How can the mother have the right to sell the immovable property, share security or anything that the boy has got? But you cannot even allow that to be done.

One other thing is this. You will find that the testamentary guardian has powers. Clause 9 says that a Hindu father may, by will, appoint a guardian for any of his minor children. Now, as I understand it, is there any question of any reformist mind being brought to bear upon this? I should think that the mother should also have that right. Why do you confine it to the father?

Shri Tek Chand (Ambala—Simla): Not if she re-marries.

Shri N. C. Chatterjee: I am not thinking of her re-marrying I do not think that every mother who wants to be appointed a testamentary guardian will be thinking of re-marriage necessarily, but I am thinking of a mother who continues in the family without any thought of re-marriage. She should be given that right. What is troubling me is this. It will be very much detrimental to people governed both by *dayabhaga* law and also by *mitakshara* co-parcenary law. Take, for instance, the *dayabhaga* law. I belong to a family and I have got four brothers. If I die,....

Mr. Deputy-Speaker: God forbid.

Shri N. C. Chatterjee: Supposing my next brother, belonging to *dayabhaga* family dies, then comes the next brother. He, the uncle of the child—is expected to look after him.

Supposing that man dies, with four houses, in Bombay, Calcutta or any other city, from the next day, the uncle collects the rents, the usufructs, etc. and pays for the education and other expenses, if necessary, for the child, as also the marriage of the sister if there is any daughter alive. From tomorrow, after this Bill is passed, no uncle, no elder brother, will be able even to collect the rents or pay the school or college fees.

Shri Altekar (North Satara): Not even to pay taxes.

Shri N. C. Chatterjee: Yes; not even to pay taxes.

Shri S. S. More: He is your follower!

Shri N. C. Chatterjee: Shri More interrupts me. He is suggesting that the Congress Party has done something very improper, that the Congress Party has done many bad things. One good thing it has done—not to pass the Hindu Code in spite of the popular will!

What I am pointing out is this: is it right, is it fair, that even in the case of a joint family, we should compel the person to go to a court of law? You know we have not got any co-parcener; where there is no co-parcener, is it fair that we compel every uncle or the eldest brother or the next brother to go to a court of law and apply for a certificate under the Guardians and Wards Act and then go through the whole gamble? I can assure you that very many people who go to the court of law find it difficult to proceed. I know it is so in my part of the country, and I do not know what is the procedure in other parts, and perhaps my friend Pandit Thakur Das Bhargava will be able to tell you about them. People who would like to go to the court of law and get into all this botheration of filing six months' accounts, etc., and they have to dance attendance at the *sheristadar* who asks them, "Why have you paid Rs. 2-4-0, why have you paid Rs. 12-0-0 and not Rs. 6" and so on. There is interminable discussion District Judges almost invariably issue notices inviting caveats, and a caveat somehow comes in, whether due to vigilant eyes at the Bar or something. Sometimes two or three caveats follow and then all these difficulties occur. Assuming you are here in Delhi and there is somebody dying in your family. What will you do?

Mr. Deputy-Speaker: Why should, for the purpose of minority and guardianship, an hon. Member's family suffer?

Shri N. C. Chatterjee: Talking of *mitakshara* law—supposing I am dying, in respect of this Bill, for the time being—I will omit the references to the Chair.....

Mr. Deputy-Speaker: I equally urge upon the hon. Member not to refer to himself either. We are trying to take care of the children when the father dies. But no death need take place.

Shri S. S. More: Let him use 'A B, C and D'.

Shri N. C. Chatterjee: Supposing A is here in Delhi.

Mr. Deputy-Speaker: 'A' is the first letter of my name.

Shri N. C. Chatterjee: Supposing AA dies. But there again, your name comes!

Mr. Deputy-Speaker: X is convenient.

Shri N. C. Chatterjee: Supposing X of Madras is working in Delhi and dies, and Y and Z are there. Now, naturally Y would look after X's son, but if he is compelled and driven to go to a court of law and subject himself to these troubles and periodic difficulties and handicaps of having the accounts scrutinised,—there is no mahinery really other than the *sheristadar* or his deputy or his deputy's deputy—all sorts of difficulties are created. As in the case of *mitakshara*, I want some clarification from the hon. Minister. You know the case—Gurubullah vs. Tilak Chand—decided by Sir Arthur Wilson at page 165 of the reports. The Privy Council

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laid down the law clearly that the guardian of the property of an infant cannot be appointed in respect of the infant's interests in the property in an undivided *mitakshara* family.

Mr. Deputy-Speaker: It has been defined as property exclusively belongly to the minor; not to the joint family.

Shri N. C. Chatterjee: I know from my experience in the Calcutta High Court that if there is any question of selling the property, no purchaser would be willing to pay any decent price unless and until you get the permission of the court and then applications are made for the purpose of getting the *karta* or the eldest male member appointed, and then formal proceedings of the court are initiated. You know there is a complete conflict of judicial authority on that point, because after this judgment on 30 Indian Appeals, all the High Courts have said that it cannot be done under the Guardians and Wards Act. That is settled law. Therefore, the High Courts have found out that this judgment has had a great deterrent effect on getting the proper, requisite value for even a very high-class property. Supposing a daughter has got to be married; there are Rs. 10,000 or Rs. 20,000 in the family; and there is no cash money for the other daughters but they own ten houses in Calcutta and the family has got to dispose of one of them to bear the marriage expenses. They apply to the court, and the High Court takes up the case. In fact, Justice Costello did it; he said "I have got inherent powers by the first Letters Patent as a chartered High Court to grant certificates and to appoint a man as a guardian of a ward although he is a member of the *mitakshara* undivided co-parcenary family." The hon. Minister drew my attention to the proviso under section 12 which reads thus:

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

There is an illuminating judgment of Mr. Justice S. R. Das who is now a Judge of the Supreme Court of India. It is reported in *A.I.R.* 1944, *Calcutta*, page 433. There, His Lordship has made an exhaustive review of the cases and he has pointed out that the appointment of a person as a guardian of a minor can be done under clause 17 of the Letters Patent. That is, even in spite of Sir Arthur Wilson's judgment, the Calcutta High Court and other High Courts who have got similar Letters Patent, have got the power. Assuming that this is the correct view, I do not know what will be done in such cases when we have got Part B States and other States where the High Courts are not constituted under the Letters Patent. I do not know how such High Courts will have the power and what will be done in such cases. This will lead to a very great difficulty in the administration of a co-parcenary property. This may even to some extent disintegrate. In many cases, the Judges have refused. I know in Calcutta, even in very wealthy families, there is absolutely no charge of mismanagement against the daughter. So, Sir, there is no question of maladjustment misfeasance or malfeasance on the part of the *de-facto* guardian. But, what has happened is their Lordships have refused it because of want of power. Some Judges have not taken the view that inherent power is there and they have to actually separate the *mitakshara* co-parcenary, sell the house and everything and after the sale is effected then again have reunion of the co-parcenary.

Mr. Deputy-Speaker: Now, this Bill makes a provision there.

Shri N. C. Chatterjee: No, Sir; it does not make any provision. I wish it had done so. The proviso says:

> "Provided that nothing in this section shall be deemed to affect

> the jurisdiction of a High Court to appoint a guardian in respect of such interest."

It does not confer power; it only saves power. You will notice that this is a proviso saving the jurisdiction.

Mr. Deputy-Speaker: That means other Courts are not competent at all.

Shri N. C. Chatterjee: Yes, Sir, and it will be very very difficult. I am beseeching my hon. friend Shri Pataskar to make a provision. I think he comes from Khandesh. A man coming from one part of a country may have to travel 250, 300 or 400 miles before he can come to a High Court, and you know in every High Court it is much more costly than in District Courts where you can get things done with much more expedition and at less cost. Therefore, Sir, I think that it should be done.

Mr. Deputy-Speaker: Is it the suggestion of the hon. Member that a special power should be conferred under this Act upon High Courts in proper cases to intervene and appoint guardians even with respect to minors of undivided families.....

Shri N. C. Chatterjee: That is the point.

Mr. Deputy-Speaker: ....and therefore, make a positive provision here or is he against the ruling to this provision and against the ruling of the Calcutta Court?

Shri N. C. Chatterjee: I am proceeding on the view that Justice Das's view is correct and I am appealing to the hon. Minister that if he accepts that the view is correct—that is not the Supreme Court's Judgment; other Courts might have taken a different view; I know Justice M. M. Mukerjee took a different view....

Pandit Thakur Das Bhargava: In Punjab guardian could be appointed in respect of undivided property of Hindu Joint family. The Punjab Chief Court had held that view.

Shri N. C. Chatterjee: Other High Courts like Calcutta and Bombay have held differently.

The Minister in the Ministry of Law (Shri Pataskar): That proviso will be considered when it goes to the Select Committee.

Mr. Deputy-Speaker: Regarding extension of powers.

Shri N. C. Chatterjee: Another thing to which I want to draw attention is that I would strongly urge that *de facto* guardian should be inserted. Do not confine it merely to natural guardians. I am reading Sir, a judgment of Chief Justice Kania when he was Chief Justice of the Federal Court, reported in AIR 1949, Federal Court on page 218. Therein he pointed out that *de facto* guardians should be recognised by law and they are recognised by law. I am reading that passage—Justice Mahajan, the present Chief Justice, has agreed with it:

> "In law there is nothing like a *de facto* guardian. There can only be a *de facto* manager, although the expression 'de *facto* guardian' has been used in text books and some judgments of Courts. That is the correct description of a person generally managing the estate of a minor without having any legal title to do so."

He has pointed out, Sir, that *de facto* manager—call him manager or guardian—has and should have the same powers as a natural guardian when he is doing something for the benefit of the minor. He is saying that if the transaction is in the interest of the minor or for the benefit of his estate, the *de facto* manager has got the necessary authority.

I am submitting, Sir, that this is a very, very salutary provision and there should not be by legislation complete interdiction or complete exclusion of *de facto* managers or guardians.

Shri Bogawat: Sir, I am very glad that you have given me this opportunity. This is the first instalment of the Hindu Code which has come before this House. I have no objection to reforms, but the social reforms must be such so as to suit the conditions prevalent in the country or the interests of our people. But, if there is any law or any reform which would hurt the interests either of the minor or the people of the country, that is a very unhappy circumstance.

The present Bill, as it is drafted is very unhappy and I am very sorry to say that the persons who drafted the Bill have not given full consideration to the day to day transactions, the interests of the minor and the interests of the property of the minor. All those who spoke on this motion have clearly stated that as regards the several points. I can humbly say that the existing law is far better and, as the previous speaker said, there is nothing in this Bill which would improve matters. On the contrary there are provisions in this Bill which would harm the interests of the minor and the minor's property. I have no objection to bypass Yajnyavalkya, Manu and other legislators but the present legislators are going in such a way that they will harm the interests of the country if such a Bill is allowed to pass.

So, I want first to lay stress on clause 7, sub-clause (2). It says:

> "The natural guardian shall not, without the previous permission of the Court, mortgage etc. etc."

This is a very bad clause. I am very sorry to say that an experienced lawyer like the present Law Minister should have said in his yesterday's speech that even with respect to natural guardian an important provision has been made in the Bill by which the natural guardian cannot without the permission of the Court mortgage or dispose of the minor's property. Now, Sir, I ask the House: "Who is the real judge, the father—natural guardian—or the Court which is not acquainted with the circumstances and the difficulties of the father and the minor?" Supposing the property is mortgaged and there is a decree; the property is put to sale and it will be auctioned in a day or two and the father wants to raise money and save the property anyhow, he cannot do that. He cannot sell the property or mortgage it or have money raised on the property. This would not be in the interests of the minor. It would go against the interests of the minor if in each and every case the permission of the Court is required to be taken. The former law was that the father had the right to alienate the property of the minor in case of necessity or for the benefit of the estate. That was a good law because the burden of necessity would lie on the purchaser or the person who advances the money and if there was no benefit of the minor's estate that was lost then the transaction could be effected. But, now, here in the present clause 7, sub-clause (2) it is said that the natural guardian, even though he is the father, will not be entitled to mortgage, charge or transfer the property or even lease it for a period of more than five years.

Shri S. S. More: Is not prevention better than cure? This is a 'Preventive Alienation Act'.

Shri Bogawat: My good Sir, you are not serious.

Mr. Deputy-Speaker: Both hon. Members will address the Chair please.

Shri Bogawat: Yes, Sir. So, here the clause as it stands is very harmful to the interests of the minor or the minor's estate and the original provision that is there under the Hindu law is the best. There is no harm in allowing the natural guardian to transfer the property in case of necessity or it is for the benefit of the estate. Similarly he has no power to lease any part of such property for a term exceeding five years

or for a term extending more than one year beyond the date on which the minor will attain majority. Suppose there are circumstances in which the property would bring good rent if it is leased out for 10 or 20 years, as for example, in the case of town planning, people are in need of some plots are some property, and it is necessary then for the father to give it to a person who is in need. Therefore, the father, who is the real judge of the minor's interest, is not allowed to lease the property beyond the particular period stipulated here. This also is not in the interest of the minor. Surely, as the man is required to go to the Court, it takes months and months and—who knows—the person or the mortgagee may change and may not advance the money or may not purchase the property, or the person who wants to have the property on lease may change and may not take it on lease or may not give the amount which he intended to give. These provisions are put here in clause 7, sub-clause (2) and they are unwanted provisions. The previous law that the property can be alienated by the natural guardian in case of necessity and for the benefit or in the interest of the minor is the right law. I suggest that this clause should totally be changed and the original law should be put in its place.

Similarly if we read sub-clause (3), it says:

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

I do not mind the words "at the instance of the minor" but I do not like the last words "or any other person affected thereby". Why should you have any other person who is not a minor and who may have some interest? Suppose there are three sons, two of whom are majors and one minor, and the property belongs to all the three. The natural father or the other persons who are majors have transferred their property. Are they also entitled to void the transaction? That would not be proper. The minor, whose property is transferred, may be given the right to void the transaction. Why should the other persons be affected? They themselves have transferred the property and I do not know why they should be given the right to void the transaction. That is not a good law.

As regards the appeal to the High Courts, we know how expensive it is for the people. That is also a provision which is not material and I think that these petitions should be allowed to be made to the original Court of principal jurisdiction, and power should be given to such Courts so that there will lie an appeal to the District Court. In that case, people will not be required to spend much for going to the High Court.

Clause 8 says—

> "Where the natural guardian of a Hindu .....
> (b) where the natural guardian has ceased to be a Hindu....."

I do not understand how a change of religion is so much harmful. Supposing a Hindu changes into a Jain or a Jain becomes a Hindu.

Mr. Deputy-Speaker: Both of them are Hindus.

An Hon. Member: Christian.

Shri Bogawat: Suppose a Hindu becomes a Christian, why should there be such an objection? Under the Hindu Law, by the very change of religion, there will not be very bad effect. The original Hindu Law had allowed this change, but now our present law-givers want to make a change.

Shri Tek Chand: That is the only good change done.

Shri V. G. Deshpande: Do not criticise even good things!

Mr. Deputy-Speaker: Where from has the hon. Member found it? Where is it in the existing Hindu Law?

Shri Bogawat: When a person has got a big estate, when he has got many

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fields and business transactions, shops etc., and the minor is not able to manage all these affairs, then there is a provision under the existing Hindu Code that a Hindu father may, by writing, nominate the guardian for his children, so as to exclude even the mother. It is a very good clause in the interest of the minor.

An Hon. Member: Where is the provision that change of religion is no bar?

Shri S. S. More: There is some law!

Shri Bogawat: The existing Hindu Law has allowed the father to nominate a guardian in the interest of his minor children, but now this power of the father is desired to be taken away and the mother is to be the natural guardian in all cases, including those where there is a large estate or where there are business firms, shops and big properties. In such cases, generally it is the intention of the father that some good friend or trusted friend should properly manage the estate of the minor in the interest of the minor and, therefore, that was the provision in the existing law. I am very sorry to say that this power even is sought to be taken away. I do not know the reason why such a provision is to be made now. I have got every respect for our ladies, and still our country is to advance and education is to spread. So long as our ladies are not educated to such an extent as they are made experts, so long as they are not competent to manage large estates and properties, why should the father not have the right to make a will and appoint a guardian in place of the mother, though the mother is there. So, in the interest of the minor, the existing provision is the right provision and it should not be disturbed.

Shri S. S. More: What about the fathers who are ignorant and illiterate?

Shri Bogawat: There may be exceptions. My friend Shri More wants to know about the case of ignorant fathers. There are cases wherein the father may be ignorant, may be a drunkard, and in such cases there is provision made for making an application to the Court to have some other person appointed in place of the father. There is that provision in the case of a father who is not fit for being a guardian—there is no objection in making an application to the Court to have another guardian appointed in his place. The authority of the father making a will and appointing a guardian in place of the mother is taken away by the present Bill, which in my opinion is not a proper provision. In the interest of the minor and in the interest of protecting the property of the minor, it is quite essential that the original provision of the existing law should be left undisturbed.

The proviso to clause 9 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 and is capable of acting as the natural guardian of her minor child."

Pandit K. C. Sharma (Meerut Distt. —South): It does not extend to property, but it is limited to the person.

Shri Bogawat: What I mean to say is that the father should have the right to appoint the guardian for the minor's property in place of the mother, and that power should not be taken away.

Pandit Thakur Das Bhargava: How is that being taken away?

Shri Bogawat: The provision says here only in respect of the person. It also mentions that after the father, the mother will be the natural guardian and after the mother the person appointed by the will, will come into the picture—not before that time. So long as the mother is alive, the person appointed by the will of the father will have no right, I think, to manage the estate of the minor.

Shri Tek Chand: That is in clause 9(1) of the Bill, in the proviso.

Shri Bogawat: Yes, it is there in the proviso.

Then as regards the guardianship of the illegitimate child, there is always a difference of opinion as to how the child is to be looked after. According to sub-clause (b) of the Explanation under clause 2, "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" is a Hindu by religion within the meaning of this Bill. If we look to section 6 of the existing Hindu Law it is clearly mentioned there in sub-section (3) that it applies to the illegitimate children of a Christian father by a Hindu mother who are brought up as Hindus. Those are the clear words. And in sub-section (1) of section 7 of Hindu Law it is provided that it applies to the illegitimate children of a Hindu father by a Christian mother who are brought up as Christians, or to the illegitimate children of a Hindu father by a Mahomedan mother.

These are the clear provisions under the existing Hindu law, and in the present Bill also such a provision should be incorporated so that there would not be any difficulty in finding out whether the illegitimate child is a Hindu or a non-Hindu.

Mr. Deputy-Speaker: So long as the other religionists are not prepared to accept, or this does not apply, the hon. Member feels the change is necessary?

Shri Bogawat: My submission is that I do not go beyond the existing law. What is there in the existing law should at least be taken advantage of and all the provisions should be made clear. That is my humble submission.

I am very glad to see that under sub-clause (3) of clause 9 a good provision is made that "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."

Shri K. K. Basu (Diamond Harbour): The Law Minister is not here. Is there anybody to convey this to the Law Minister?

उपाध्यक्ष महोदय : बिल चल रहा है।

श्री के० के बसु : चल तो जरूर रहा है।

The Deputy Minister of Railways and Transport (Shri Alagesan): Sir, I shall be taking notes on behalf of Government.

Mr. Deputy-Speaker: The Deputy Railway Minister is taking charge of it so that it may be put through quicker!

Shri Tek Chand: The Bill is in locomotion!

Shri Bogawat: In the present Bill, as drafted, there are so many flaws and difficulties created. All these difficulties should be removed and the Bill should be brought in conformity with the existing law. If there had been any difficulty in the existing law, I could have understood and I would have welcomed a change. But all the changes that are made in the present Bill are not in the interest of the minor or of the minor's estate. Difficulties are created and there is confusion worse confounded. I submit that all these things must disappear, the existing law as it stands must be considered carefully and the provisions should be amended accordingly. I also make a request that the Select Committee may consider all these points and either the present Bill should be improved or the existing law should come in its place.

Mr. Deputy-Speaker: I shall now call upon Pandit Thakur Das Bhargava. After he finishes, I will call one or two lady Members.

पंडित ठाकुर दास भार्गव : जनाब डिप्टी स्पीकर साहब, अभी मैं ने एक बड़ी मुदल्लिल

[पंडित ठाकुर दास भार्गव]

तकरीर श्री चैटर्जी की सुनी, जिस में उन्होंने हवाला दिया फंडामैंटल राइट्स का, कांस्टिट्यूशन का और कहा कि हिन्दू ला के बारे में हिन्दू ला का कोई इन्स्टालमैंट इस हाउस में नहीं आना चाहिए। ऐसा कानून बनना चाहिए जो सारे हिन्दुस्तान के वास्ते एक हो। मैं अर्ज करना चाहता हूं कि यह सिलसिला कोई नया नहीं है। जो पुराना हिन्दू कोड बिल था जब वह आया तब भी यही आर्गूमेंट दिया गया था। आखीर में यह हुआ कि हिन्दू कोड बिल सेलेक्ट कमेटी के सुपुर्द हुआ. इस हाउस ने उसके प्रिंसिपुल को मान कर सुपुर्द किया।

इस बिल में मैं बहस की इस गहराई में नहीं जाना चाहता कि आया यह सारे हिन्दुस्तान के लिए हो या कि सिर्फ हिन्दू और मुसलमानों के मुताल्लिक कोई कानून कांस्टिट्यूशन के बरखिलाफ होगा या नहीं क्योंकि जो कुछ मैं अर्ज करना चाहता हूं वह इस से बिल्कुल मुख्तलिफ है। गो कि मैं इस बात को नहीं मान सकता जैसा कि कल मेरे भाई श्री दंशपांडे ने फरमाया था कि दरअस्ल इस हाउस को कोई हक नहीं है कि वह कोई ऐसा कानून बनाए जो कि सिर्फ एक सेक्शन आफ पापुलेशन के वास्ते हो। अगर मैं इस झगड़े में पड़ूंगा तो बड़ी गलती करूंगा। लेकिन एक बात बिल्कुल साफ है जिस को मैं जानता हूं और जिस के अन्दर किसी को भी नाराजगी नहीं होगी साथ ही जिस को इस हाउस का हर एक मेम्बर मानेगा और वह यह है कि अगर कोई सिविल कोड बन सकता हो या कोई सिविल कोड मौजूद हो, अगर कोई मौजूद न हो तो उस को बनाने की कोशिश की जाए. अगर मौजूद हो तो उस को छोड़ा न जाए। इस निगेटिव बात को हर एक आदमी मानेगा। कांस्टिट्यूशन की दफा ४४ में साफ तौर पर लिखा हुआ है कि हम एक यूनिफार्म सिविल कोड हिन्दुस्तान भर के लिए बनाने की कोशिश करेंगे। अगर कोई सिविल कोड हमारी खुशकिस्मती से मौजूद हो जो सब को एप्लाई करता हो तो उसको इस बिल में हिन्दू कोड बना देना सरीहन गलती है और यह गलती हमारे ला मिनिस्टर साहब कर रहे हैं। मेरी नाकिस राय में इस वक्त हिन्दुस्तान में माइनारिटी और गार्जियनशिप का यूनिफार्म सिविल ला मौजूद है और उसके साथ खेलना जायज नहीं है। उसको नीचा डाउन कर देना, हिन्दू के वास्ते मखसूस कर देना या मुसलमानों के वास्ते मखसूस कर देना या यह कह देना कि जो हिन्दू नहीं है वह इसके अन्दर नहीं आते हैं, गलत होगा। और यह गलती इस बिल से की जा रही है। मेरा यह दावा है कि आज के दिन अगर किसी चीज के बारे में यूनिफार्म सिविल कोड है तो वह माइनारिटी और गार्जियनशिप के वास्ते है। अभी चटर्जी साहब ने शिकायत की और कल देशपांडे साहब बड़े जोर से शिकायत कर रहे थे कि गवर्नमेंट आफ इंडिया लोगों के पर्सनल ला के अन्दर इन्टरफियर करती है।

[SARDAR HUKAM SINGH *in the Chair*]

वह भूल जाते हैं कि मैजारिटी एक्ट हिन्दू ला और मुसलमान ला दोनों के ऊपर एन्क्रोचमेंट है। हिन्दू ला के मुताबिक एक शख्स १६ बरस की उम्र में बलगत को पहुंचता है और मुस्लिम ला में भी १८ वर्ष की उमर मुकर्रर नहीं है लेकिन मेजारिटी एक्ट सब के लिए १८ साल मुकर्रर करता है। हम जानते हैं कि सभी के वास्ते शारदा एक्ट पास हुआ और उस में यह उम्र १५ साल कर दी है यह हिन्दू ला के भी बरखिलाफ है और मुसलिम ला के भी बरखिलाफ है। मैं आप को पुरानी कहानी सुनाना चाहता हूं। जब शारदा एक्ट हाउस के अन्दर आया तो मालवीय जी ने उस की बड़ी हिमायत की और कहा कि हिन्दुओं के वास्ते यह बहुत बड़ी चीज है। इस पर जिन्ना साहब उठे और उन्होंने कहा कि यह क्या गजब है। क्या मुसलमानों में यह बिदतें नहीं हैं। छोटी उमर की शादी हटाने का कानून मुसलमानों के लिए भी होना चाहिए. और सारे हिन्दुस्तान के वास्ते एक्ट बनना शुरू हुआ। जब वह बनने लगा तो उस कमेटी के, जिसका मैं भी एक मेम्बर था, तीन मुसलमान साहबान भी मेम्बर थे. उन्होंने सारे हिन्दुस्तान का दौरा किया और देखा कि वह बिदतें और खराबियां

मुसलमानों के अन्दर भी मौजूद थीं। उस जमाने में यह कोशिश की गई कि शारदा एक्ट सारे हिन्दुस्तान के वास्ते बनाया जाए। लेकिन उस वक्त आर्य समाजियों ने अपने अखबारों में लिखना शुरू कर दिया कि मोहम्मद साहब ने मुसम्मात आयशा से किस उम्र में शादी की? हम इस शरियत को तब्दील करना चाहते हैं। इसका नतीजा यह हुआ कि हमारे मरहूम मोहम्मद अली साहब ने क्वीन्स गार्डन में गुस्से में आ कर कि आर्य समाजियों ने क्यों ऐसा लिख दिया, उस शारदा एक्ट को तोड़ा। यह जो कोशिश हमारे आर्य समाजियों ने की उस से यह नुकसानात हुए हैं।

दरअस्ल जब हम एक कानून बनाएं, जो कानून सारे हिन्दुस्तान के लिए अच्छा हो, उसके अन्दर इस तरह की हुज्जतें करना वाजिब नहीं हैं। जब आज कल गार्जियन्स एंड वार्ड्स एक्ट, १९६० सारे हिन्दुस्तान के अन्दर नाफिज है तो कोई वजह नहीं मालूम होती कि अगर हम कोई तरमीम माइनारिटी एंड गार्जियनशिप एक्ट में करना चाहें तो उसको न कर के हिंदुओं के लिए अलाहदा माइनारिटी एंड गार्जियनशिप एक्ट बनाएं। मैं यह अर्ज करना चाहता हूं कि जो कानून इस वक्त हैं वह हिन्दुओं, मुसलमानों और क्रिस्चियनों पर यकसां लागू होता हैं। अगर उसमें कोई तरमीम करने की जरूरत थी तो वह की जा सकती थी। लेकिन यह बात समझ में नहीं आती कि सिर्फ हिन्दुओं के लिए ही एक अलैहदा एक्ट बनाया जाए।

मैं जब इस बिल को देखता हूं तो मुझे हैरानी होती हैं कि क्यों इस बिल के बनाने वालों का ध्यान इस तरफ नहीं गया, क्यों उनकी, जिन्हों ने इस बिल को पेश किया, समझ में यह बात नहीं आई कि इस बिल के अंदर कोई नई चीज नहीं हैं जो सिर्फ हिन्दुओं पर ही लागू होती हो और दूसरों पर न लागू होती हो। तो जनाबे वाला! अब मैं इस बिल को क्लाज बाई क्लाज लेता हूं। क्लाज (१) नाम के बारे में हैं और इसलिए कि कहां कहां यह बिल एप्लाई करे। क्लाज (२) यह हैं कि किन किन लोगों पर यह बिल एप्लाई होगा। क्लाज (३) डैफीनिशन के बारे में हैं। क्लाज (४) भी इस एक्ट के ओवर राइडिंग इफैक्ट्स के बारे में हैं। अब मैं, क्लाज (५) पर आता हूं। यहां से ओपरेटिव पार्ट शुरू होता हैं। इस क्लाज के बारे में नोट्स आन क्लाजिज में लिखा हुआ हैं कि इस क्लाज को सिलैक्ट कमिटी ने जोड़ा हैं

"This clause re-enacts the existing law."

तो फिर इस क्लाज की कोई जरूरत नहीं हैं

"It only restates the existing law"

क्लाज (६) के बारे में लिखा हुआ हैं

"This clause exactly reproduces the existing law. What is the use of it also."

क्लाज (७) के बारे में लिखा हैं

"The existing restrictions on the powers of the natural guardian of a Hindu minor have been re-cast more or less on the lines of similar restrictions in the Guardian and Wards Act, 1890".

तो यह जो पावर्ज आफ नेचुरल गार्जियन हैं वह सब के बारे में एक सी होनी चाहिएं, यह नहीं कि सिर्फ हिन्दुओं पर ही इन को लगाया जाए और मुसलमानों या ईसाइयों पर न लगाया जाए। ऐसा नहीं होना चाहिए कि एक के बारे में कुछ रिस्ट्रिक्शन्ज लगा दी जाएं और दूसरों के वास्ते वो न लगाई जाएं। यह बहुत नामुनासिब सी चीज हैं। जो जिम्मेवारियां एक हिन्दू नेचुरल गार्जियन को निभानी होती हैं वही एक मुस्लिम गार्जियन को भी निभानी पड़ती हैं और वही एक क्रिस्चियन गार्जियन को भी निभानी होती हैं। इस वास्ते इस क्लाज को खास हिन्दुओं पर लागू करने की कोई जरूरत नहीं है और यह सब पर लागू होनी चाहिए।

यह जो क्लाज (८) हैं इसके बारे में लिखा हैं

"Under the present law, the natural guardian entrust the custody and education of his minor children to another person but such entrustment

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is revocable. The Court will, however, interfere to prevent revocation".

This is the civil law. तो इस के होने या न होने से भी कोई फर्क नहीं पड़ता।

Clause 9. Under the existing law, even the mother can be excluded from the guardianship by the father. She has also no power to appoint a testamentary guardian.

सिर्फ यह एक ऐसी दफा है कि जिस के जरिए जो इस वक्त हिन्दू ला है उस में ज्यादा से ज्यादा तरमीम की जा रही है लेकिन यह तरमीम इस तरह की है कि वह सिर्फ हिंदुओं से ही ताल्लुक नहीं रखती। rights of mother, mother से ताल्लुक रखती है या औरतों को हकूक देने से ताल्लुक रखती है एक मुसलमान मां या एक हिन्दू मां अपने बच्चों के साथ उसी तरह से मुहब्बत करती है जैसे कि कोई और मां करती है। अगर एक हिन्दू मां गार्जियन हो सकती है तो मैं पूछना चाहता हूं कि क्या एक मुसलमान मां या क्रिस्चियन मां गार्जियन नहीं हो सकती ? क्या डिफरेंस है, एक हिन्दू मां, एक मुसलमान मां और एक क्रिस्चियन मां में ? देयर इज नो डिफरेंस एंट आल। इस वास्ते यह सेक्शन भी सब पर लागू होना चाहिए।

क्लाज (१०) एक अनएक्सेंपशनेबल प्रिंसिपल या पॉसट्यूलेट (unexceptionable principle postulate) करती है।

A Hindu boy or girl should be brought up as a Hindu. This need not be put in the Act at all. It is not necessary.

जब गार्जियन मुकर्रर होगा तो क्या आप उससे यह एक्सपेक्ट करेंगे कि जो लड़का या लड़की उसके सुपुर्द की गई है वह उसका मजहब तबदील कर दे। इस वास्ते इसकी कोई जरूरत नहीं है।

Clause 11. Under the existing law, a *de facto* guardian has the same power to alienating the property of his ward as a natural guardian. This clause abolishes *de facto* guardians.

तो मैं अर्ज करना चाहता हूं कि जब इस एक्ट में डि फैक्टो गार्जियन को खतम करना चाहते हैं और उसको अधिकार नहीं देना चाहते हैं जो कि नैचुरल गार्जियन को दिए गए हैं तो इसको इस एक्ट में लाने की क्या जरूरत थी। यह तरमीम एग्जिस्टिंग ला में की जा सकती थी। इस एक्ट में इसको लाने की कोई जरूरत नहीं है।

Clause 12. So long as the joint family system exists, this provision, which is in accordance with the existing law is necessary.

क्योंकि यह भी पहले ला में है इस वास्ते इसकी भी जरूरत नहीं।

क्लाज (१२) के बारे में मैं बड़े अदब से पूछना चाहता हूं कि इस एक्ट में कौन सी ऐसी चीज है जिसको कि हिन्दुओं के ऊपर हिन्दूज एंज सच एप्लाई करने की जरूरत महसूस हुई और दूसरों पर नहीं।

This is the existing law.

इन सब बातों को देखते हुए मैं कह सकता हूं कि यह हिन्दू ला आफ माइनॉरिटी एंड गार्जियनशिप नहीं।

This is the general law of minority and guardianship.

इसी तरह से गार्जियनशिप एंड वार्ड्ज एक्ट ६५ बरस से चला आ रहा है और उसमें कोई तरमीम करने की जरूरत महसूस नहीं हुई। इसलिए हिन्दू माइनॉरिटी एंड गार्जियनशिप एक्ट की कोई जरूरत नहीं है। मेरी अदब से गुजारिश है

It is a misconceived piece of legislation. It is absolutely unnecessary for the Hindus.

अगर यह सैक्शन पर एप्लाई करता तो मैं समझता हूं कि इसकी थोड़ी बहुत जरूरत हो सकती थी

लेकिन क्योंकि यह सिर्फ हिन्दुओं पर एप्लाई करता है मुझे इसकी कोई जरूरत महसूस नहीं होती। और मैं समझता हूं कि यह हाउस इसे पास करने में जस्टिफाइड नहीं होगा।

जनाबे वाला आज हिन्दुस्तान में २६ करोड़ लोग रहते हैं जिस में से बहुत ज्यादा हिस्सा हिन्दुओं का है। मैं अदब से पूछना चाहता हूं कि कितने मुक्कदमात गार्जियनशिप के एक्ट के तहत अब तक कोर्ट्स में आए हैं। इस किस्म के निहायत ही कम मुक्कदमात आते हैं। असली गवर्नमेंट और निहायत कामयाब गवर्नमेंट वह है जो लिवर की तरह काम करती है। मुझे पता नहीं मेरा लिवर किस वक्त काम करता है। वही हैल्दी सिसटम होता है जिसमें आदमी को पता नहीं लगता कि लिवर कहां है और काम करता है या नहीं। अच्छी गवर्नमेंट वही होती है जो लोगों की लाइफ के साथ किसी तरह इंटरफीयर नहीं करती और सब जातियों को एक बराबर समझती है....

पंडित कं० सी० शर्मा: बहुत पुरानी बातें करते हैं आप।

पंडित ठाकुर दास भार्गव: मेरे दोस्त ने ऐसे वक्त में बात कही है जिस वक्त कि उसका कोई मतलब नहीं है। अगर मेरे लायक दोस्त ने उस वक्त जब कि इसका कुछ मतलब होता यह बात कही होती तो मैं जवाब भी दे देता।

सभापति महोदय: इस वास्ते आप जारी रखें।

पंडित ठाकुर दास भार्गव: मुझे हमेशा जारी रखना है, लेकिन जब कोई बीच में बोल पड़ता है तो मुझे जरूर जवाब देना पड़ता है। तो मैं अर्ज कर रहा था वह गवर्नमेंट अच्छी गवर्नमेंट होती है जो लोगों की लाइफ में इंटरफीयर नहीं करती। तो मैं पूछना चाहता हूं कि कितने ऐसे मुक्कदमात हैं जो कि गार्जियनशिप एक्ट के तहत डिस्ट्रिक्ट कोर्ट्स में दायर किए गए हैं। और उनका क्या हश्र हुआ है। बरसों तक उनका कोई फैसला नहीं होता और पेशियां पड़ती रहती हैं। तो मैं अदब से अर्ज करना चाहता हूं कि क्या आप चाहते हैं कि जजों की कोर्ट्स दरख्वास्तों से भर जाएं? अगर आप यह नहीं चाहते तो आप ने यह नैचुरल और अननैचुरल गार्जियन का झगड़ा क्यों खड़ा कर दिया है। अगर हिन्दू ला में अननैचुरल गार्जियन नहीं होता है तो मुसलमानों में भी अननैचुरल गार्जियन नहीं है। मैं इस नए सिलसिले को देखकर बहुत हैरान हूं। कोई शख्स जो हिन्दुस्तान की सिविलाइजेशन से वाकिफ है, कोई शख्स जो हिन्दुस्तान की फैमिलीज के, और खास तौर से हिन्दुओं की फैमिलीज के कांस्टीट्यूशन से वाकिफ है वह जानता है कि अगर कोई बच्चा आरफन हो जाता है, उसके मां बाप मर जाते हैं, तो खानदान वाले उन से जहां तक हो सकता है उसको प्रोटेक्शन देते हैं और उसकी परवाह करते हैं। आप गांवों में जा कर देखें कि अगर किसी बच्चे के मां बाप मर जाते हैं और उसकी परवरिश करने वाला कोई नहीं रहता तो गांव वाले उसकी परवरिश करते हैं। यह ठीक है कि आज इंडीवीजुअल टेंडेंसीज बढ़ रही हैं, ताहम मैं जानता हूं कि अभी फैमिली टाइज बहुत कुछ बाकी हैं और आरफन बच्चे अनप्रोटेक्टेड नहीं रहते और आपने कानून में जो प्रोटेक्शन लड़के और लड़की को दिया हुआ है वह काफी है। आज भी गार्जियन का एक्ट वाइडेबल है। अगर गार्जियन ने माइनर की भलाई के लिए कोई काम नहीं किया है तो वह बड़ा हो कर उसके खिलाफ कार्रवाई कर सकता है। इतना ही ला क्या कम है? इस ला के रहते लड़के को बहुत प्रोटेक्शन है। लेकिन अगर आप उसकी जायदाद के लिए नया कानून बना देंगे तो इससे उसका बहुत नुकसान होगा। मेरे ख्याल से इस को पास करने से सोसाइटी में लोगों को सख्त दिक्कत हो जाएगी और मैं समझता हूं कि इस दिक्कत का अन्दाजा उन लोगों को नहीं है जो कि इस बिल को लाए हैं।

आज अगर मैं इस बिल को एक मिनट के लिए ठीक मान भी लूं तो देखिए कि इसके अंदर मां बाप क्या कर सकते हैं। आजकल लैंड के लिए सरकार सीलिंग मुकर्रर करने जा रही है। मैं ने सुना है कि हमारे यहां पंजाब में तो

[पंडित ठाकुर दास भार्गव]

शायद ३० एकड़ सीलिंग रखी जाएगी, और ट्रावनकोर-कोचीन में १५ एकड़ ही रहेगी। ऐसी हालत में इम्मूवेबल प्रापर्टी रह ही क्या जाएगी। लेकिन मूवेबल प्रापर्टी चाहे एक करोड़ रुपए की हो उसके लिए इस कानून में कुछ भी दर्ज नहीं हैं। इसका इस बिल से कोई जिक्र नहीं हैं कि अगर उसके बैंक के शेयर्स हैं कैश हैं, डिबेंचर्स हैं, उनका क्या होगा। उसके लिए कोई प्राविजन नहीं हैं। लेकिन उनको इम्मूवेबल प्रापर्टी बहुत प्यारी है जो उनकी होती जा रही हैं और जो कि सीलिंग मुकर्रर होने की वजह से बहुत थोड़ी रह जाएगी। वह प्रापर्टी तो खुद भी ऐसी हैं जो कि प्रोटेक्टेड रहेगी। इसके वास्ते इस कानून के अन्दर एक गार्जियन कोर्ट से मुकर्रर होगा जिसको वही इख्तियार होंगे जो कि नेचुरल गार्जियन को होते हैं। यह हिन्दू ला और मुस्लिम ला और जहां तक मैं समझता हूं क्रिश्चियन ला के भी खिलाफ हैं। मैं अदब से पूछना चाहता हूं कि इसकी आपको क्या जरूरत महसूस हुई? आपको क्या तकलीफ महसूस हुई? हमारे सामने कोई एवीडेंस नहीं लाई गई जिससे साबित होता कि इस कानून को लाने की जरूरत थी। मैं अदब से अर्ज करना चाहता हूं कि यह बहुत डास्टिक कानून हैं। गार्जियन्स एंड वार्ड्स एक्ट के रहते हुए इसकी कोई जरूरत नहीं। और इसका नतीजा यह होगा कि अदालतों में यही मुकदमे भर जाएंगे और कोई दूसरे केस नहीं रह जाएंगे।

अब आप मुलाहिजा फरमाइए कि इसमें दादा को नेचुरल गार्जियन नहीं माना हैं। आप जानते हैं कि एक दादा को अपना पोता कितना प्यारा हो सकता हैं। वह उसको उसके बाप से ज्यादा प्यार करता हैं। अब उसके लिए भी जरूरी हैं कि वह कोर्ट में जाए और गार्जियन मुकर्रर हो। इसी तरह से और बीसों मिसालें हैं जिन में इस कानून से दिक्कतें पैदा हो जाएंगी और जिनका कोई इलाज इसमें नहीं दिया गया हैं और जिनके बारे में आनरेबिल मिनिस्टर साहब ने नहीं सोचा हैं। मैं आप से पूछना चाहता हूं कि आप ने इसमें मैरिड गर्ल, मैरिड बाय, अनमैरिड गर्ल, अनमैरिड बाय के लिए तो प्राविजन रखा हैं, लेकिन विडो के वास्ते आपने कुछ नहीं रखा। अनमैरिड बाय और अनमैरिड गर्ल का गार्जियन बाप हो सकता हैं, मैरिड गर्ल का गार्जियन उसका हसबेंड हो सकता हैं, लेकिन विडो का गार्जियन कौन होगा यह आपने नहीं रखा। इस मुल्क के अन्दर तो एक बरस से कम उम्र तक की विडोज काफी बड़ी तादाद में मौजूद हैं....

Shri Asoka Mehta (Bhandara): After the Sarda Act?

Pandit Thakur Das Bhargava: What after the Sarda Act? Government makes laws but cannot enforce them. What is the use of having these laws?

शायद आपको मालूम नहीं। आज भी हमारे देश में देहातों में छोटी उम्र में बहुत शादियां हो रही हैं। और अगर १८ साल के कम उम्र की विडोज का हिसाब लगाया जाए तो उनकी तादाद लाखों तक पहुंचेगी। मेरे ख्याल से उनकी तादाद बीस लाख से कम न होगी। मैं ने एक बार यहां हाउस में इसके फिगर्स दिए थे। तो इन विडोज का कोई भी नेचुरल गार्जियन नहीं हैं। तो इसके मानी क्या हैं? क्या उसके परसन का गार्जियन नहीं हैं इस वास्ते क्या kidnapping out of guardian's custody goes away as an offence? उसकी जायदाद पर कोई कब्जा कर ले? उसके लिए कोई कोर्ट में नहीं आवेगा? तो ऐसी हालत में क्या होगा? मेरे ख्याल में इस तरह का कानून जिसमें इतनी कमियां हैं वह हमारे लिए वाजिब नहीं होगा।

मैं एक और पाइंट आफ व्यू आपके सामने रखना चाहता हूं। आज जिस मैरिज ला पर राज्य सभा में बहस हो रही हैं उसके अन्दर एक लड़का एक लड़की से शादी करता हैं और शादी करने के बाद अगर लड़का अपना मजहब तबदील कर लेता हैं तो वह शादी डिजाल्व नहीं होती

और न वाइड कर दी जाती हैं। ऐसा प्रोविजन है कि लड़की इस वजह से डाइवोर्स हासिल कर ले। उसको तीन साल तक डाइवोर्स की इजाजत नहीं हैं। तो ऐसी हालत में उसका क्या बनेगा? आज एक लड़के ने एक लड़की से शादी कर ली और लड़के ने अपना मजहब तबदील कर लिया। ऐसी हालत में लड़की का कौन गार्जियन होगा। कोई गार्जियन नहीं होगा क्योंकि उसका हसबैंड हिन्दू नहीं रहा और इसलिए वह गार्जियन नहीं हो सकता इस बिल में लिखा हैं। तो ऐसी हालत में उसका कौन गार्जियन होगा? यह चीज बहुत बड़ी हैं। इस कानून के हिस्से आपस में कांट्रेडिक्टरी हैं। एक हिस्सा कुछ कहता हैं दूसरा हिस्सा कुछ और कहता हैं इसमें आपने यह दर्ज कर दिया हैं:

"If he ceases to be a Hindu, he ceases to be a guardian. But who will be the guardian of that woman, you have not said.

Shri M. S. Gurupadaswamy (Mysore): The father.

Pandit Thakur Das Bhargava: No, it is not possible. I am speaking of a married woman. So far as a married woman is concerned there is no doubt that someone from the family of the husband can be the guardian of that widow. This is also a lacuna. For this there is nothing in this law.

अभी मेरे मोहतरिम दोस्त चटर्जी साहब ने हिन्दू जाइंट फैमिली के बारे में कहा। हमारे यहां पुराने पंजाब चीफ कोर्ट ने फैसला किया था कि अनडिवाइडेड हिन्दू फैमिली के लिए किसी को माइनर का गार्जियन न बनाया जाय। मुझे पता नहीं कि वही अस्तियारात जो कि कैलकटा हाईकोर्ट को हैं हमारे कोर्ट को आजकल हैं या नहीं। मान लीजिये कि वह अस्तियारात नहीं हैं तब तो यह सूरत होगी कि इस कानून में ऐसा प्रावीजन रखा जाय कि हिन्दू जाइंट फैमिली में कोई दूसरा गार्जियन न बन सके। मैं अदब से अर्ज करूंगा कि यह इम्पार्टेंट कानून हैं। मैं तो चाहता हूं कि लैटर्स पेटेंट का भी ला हाई कोर्ट्स से हटा लिया जाय। हिन्दू जाइंट फैमिली का जो कन्सेप्शन हैं वह तो अजीबोगरीब हैं। उसका तरीका तो सोशलिस्टिक और कोआपरेटिव तरीका हैं। मैं अर्ज करना चाहता हूं कि एक अनडिवाइडेड हिन्दू फैमिली में तो वह वक्त ही नहीं हो सकता कि माइनर की कितनी जायदाद हैं क्योंकि वहां तो जितने भी एडल्ट हैं, और जितने भी माइनर हैं, सब का उसमें हिस्सा होता हैं। इसलिए मैं अर्ज करूंगा कि हाईकोर्ट को इस तरह का इख्तियार देना जायज नहीं हैं। जबतक पार्टीशन न हो जाय तब तक पता नहीं चल सकता कि किसकी कितनी प्रापर्टी हैं। इसलिए कौन किसका गार्जियन बनाया जायगा? गवर्नमेंट के बहुत से कानूनों में जाइंट हिन्दू फैमिली को तोड़ने की कोशिश की गयी लेकिन वह अभी तक कायम हैं। मैं नहीं चाहता कि किसी कानून के जरिये इस इंस्टीट्यूशन को खत्म किया जाय। वह तो आहिस्ता आहिस्ता अपने आप ही खत्म हो रहा हैं। आप क्यों एक हथौड़ा और उसमें मारना चाहते हैं। मैं तो नहीं चाहता कि इस नये बिल में यह पावर दी जाय। मैं तो चाहता हूं कि इसको निकाल दिया जाय ताकि हिन्दू जाइंट फैमिली महफूज रह सके।

इसके अलावा जाइंट हिंदू फैमिली में एक बहुत अच्छी चीज और भी हैं। जाइंट हिन्दू फैमिली की सारी जायदाद उसके सारे मेम्बरों की होती हैं। सब लोग उसको बढ़ाते हैं और इस तरह से माइनर का हिस्सा भी बढ़ता जाता हैं। उन सब लोगों की मेहनत का सारा फायदा उस माइनर को भी पहुंचता हैं। लेकिन अब अगर कभी काम में नुकसान हो जाय और प्रापर्टी बेचनी पड़े तो इसका भी खानदानवालों को इख्तियार होना चाहिए। अगर यह इख्तियार नहीं होगा तो यह चीज बहुत गैर मुन्सिफाना होगी जो कि जायज नहीं हैं। तो मैं अर्ज करूंगा कि कितनी ही ऐसी बातें हैं जो कि इस कानून में आती हैं और जो कि पुराने गार्जियन्स एंड वार्ड्स एक्ट के मुखालिफ हैं। इसलिए मैं यह अर्ज करना चाहता हूं कि इस बिल में इस चीज को आप न रखें ताकि हिन्दू

[पंडित ठाकुर दास भार्गव]

जाइंट फैमिली महफूज रहे और उसका पार्टीशन न हो। मैं समझता हूं कि उसका पार्टीशन इस तरह से करना नाजायज होगा।

2 P.M.

इस नुक्ते निगाह से मैं आनरेबुल मिनिस्टर साहब की खिदमत में अर्ज करूंगा कि अगर इस चीज के अन्दर कोई नई चीज नहीं है जिसको वह बनाना चाहते हैं और जो कि सारे देश की सब कम्युनिटीयों के वास्ते एप्लीकेबुल न हो तो इस बिल को लाने का क्या फायदा। इसमें आप डिफैक्टो गार्जियन को उड़ा देना चाहते हैं, मेरी गुजारिश है कि हिन्दुस्तान के खास हालात में डिफैक्टो गार्जियन को जायज न मानना कि कोई किसी किस्म का उन्हें इख्तियार न रहे, यह बड़ी भारी गलती हम से होगी। मैं खुश हूं कि इसमें यह ही लिखा है डिफैक्टो गार्जियन जहां तक प्रापरटी का सवाल है

"Not to deal with minors property".

इसमें परसन का जिक्र नहीं है, हांलाकि यह भी काफी खराबी की बात है। आज हम जानते हैं और सिविल प्रोसीज्यार कोड से जो बखूबी वाकिफ हैं वह जानते होंगे कि कोर्ट "गार्जियन एंड लाइटम" मुकर्रर करता है और गार्जियन मुकर्रर करने के बाबत उसमें लिखा है कि कोई भी ऐसा शख्स जिसका कि एंडवर्स इंटरेस्ट न हो ऐनी परसन कैन बी एपायन्टेड, चाहे उस माथनर का वह रिलेटिव हो या न हो कोर्ट की इजाजत के बगैर कुछ नहीं हो पाता।

डिफैक्टो गार्जियन के होने से किसी माइनर को नुकसान नहीं होने वाला है क्योंकि उसको वहीं तक काम करने का इख्तियार है जहां तक कि वह माइनर के फायदे और उसकी नेसेसेटी के वास्ते हो। कानून में जो हमने माइनर के चारों तरफ प्रोटेक्टिव विग फेंका हुआ है वह उनका बचाव करता है और किसी किस्म से उनको गार्जियन से नुकसान पहुंचने का खतरा नहीं रहता, क्योंकि कोर्ट की इजाजत लिये वगैर वह गार्जियन किसी तरह की तबदीली प्रापरटी में नहीं कर सकता और मैं ने तो आज तक नहीं देखा कि गवर्नमेंट ने किसी के खिलाफ ऐसा मुकदमा चलाया हो कि उसने माइनर की जायदाद खा ली हो या हड़प ली हो। और जैसा मैंने पहले भी कहा था क्या हिन्दू ला क्या मुस्लिम ला, आखिरी गार्जियन हर माइनर की, गवर्नमेंट है यह हमारे होम मिनिस्टर हैं। मैंने एक मर्तबा यह भी कहा था कि सारे बच्चों की अल्टीमेट मां होम मिनिस्टर हैं, मां इसलिये कहता हूं कि मां का हक सबसे ज्यादा होता है, मां, बाप दोनों समझ लीजिये यह हमारे होम मिनिस्टर मुल्क भर के बच्चों के होते हैं। मैं अदब से पूछना चाहता हूं कि जिस मां बाप के इतने सारे बच्चे हों, उसने कभी किसी बच्चे की तरफ तवज्जह दी है? यह सरकार की अल्टीमेट ड्यूटी है और आप चाहते हैं कि इन का भला हो तो उनके जो रिश्तेदार हैं उनके गार्जियनशिप के क्लेम को आप न हटाइये, ऐसा करके आप उन नाबालिग बच्चों को कोई प्रोटेक्शन नहीं दे रहे हैं। उनको रहने दीजिये। जो प्रोटेक्टर्स हैं, नेचुरल गार्जियंस हैं जैसे दादा, भाई, चाचा और हम जानते हैं कि बड़ा भाई बाप की जगह काम करता है उसको यह कहना कि तुम्हारा कोई हक नहीं, चाचा का कोई हक नहीं है, यह वाजिब और दुरुस्त नहीं है और ऐसा करके आप माइनर्स का कोई फायदा नहीं कर रहे हैं। फर्ज कीजिए कि भाई या चाचा कोई खराब काम भी कर दें, थोड़ी बहुत उस नाबालिग की जायदाद को खत्म भी कर दें तो भी क्या, मैं पूछना चाहता हूं कि सरकार कहां से उनके लिये करोड़ों ऐसे गार्जियंस लायेगी जो इतने ईमानदार होंगे और जो उन नेचुरल गार्जियंस के बनिस्बत उन नाबालिग बच्चों के हक की तरफ ज्यादा तवज्जह करेंगे। मेरी समझ में इस मुल्क की खास हालत को देखते हुए नेचुरल गार्जियंस को इस का हक न देना सख्त बेइंसाफी होगी और नेचुरल गार्जियंस की जैसी तारीफ आपने इसमें रक्खी है जो नतो हिन्दू

ला में हैं, न मुस्लिम ला में हैं और न ही क्रिश्चियन ला में हैं और यह दुरुस्त होनी चाहिये। एक शख्स एक लड़की को सारी उम्र के वास्ते एक इंसान के सिपुर्द कर सकता है "एज ए गार्जियन आफ हर परसन" और "एज ए गार्जियन फार मैरिज" लेकिन वह उसकी चार बीघे जमीन या सौ, दो सौ रुपये के मकान को उसकी भूख और प्यास मिटाने के वास्ते मुंतकिल नहीं कर सकता। यह तो उसको हक है कि सारे जिस्म को दे दे, सारी लड़की को शादी में दे दे क्योंकि ला के मुताबिक वह गार्जियन फार मैरिज है लेकिन गार्जियन फार प्रापरटी नहीं है। जायदाद के बारे में जब यहां सवाल पेश था तो मेरे दोस्त कहते थे कि प्रापरटी इज आल थेफ्ट और यहां हम देखते हैं प्रापरटी इतनी प्यारी है, परसन से भी ज्यादा उनको प्रापरटी प्यारी है। मेरी नाकिस राय में यह सारा का सारा बिल बिल्कुल गैर जरूरी है और इसका रिजल्ट देश के ऊपर डिजास्ट्रस हो सकता है क्योंकि यह हिन्दू ला का इंसटालमेंट नहीं है। इसका हिन्दू ला से वास्ता नहीं है अगर इसका वास्ता है तो गार्जियन ला से है। एक चीज जो इसके अन्दर खास बनी है वह यह है कि इसके जरिये औरतों को कुछ ज्यादा हक्क दिये गये हैं।

मसलन् एक नाबालिग बच्चे के बाप के बाद अगर उसकी मां मौजूद हो तो उस बच्चे का गार्जियन मां को रहना होगा, मुझे इससे इख्तलाफ नहीं है लेकिन मैं इस बारे में अपनी हिन्दू बहिनों, मुसलमान बहिनों और क्रिश्चियन बहिनों में कोई फर्क नहीं चाहता। मुसलमान और क्रिश्चियन मां भी अपने बच्चों को उतनी ही मुहब्बत करती हैं जितनी कि एक हिन्दू मां अपने बच्चे से मुहब्बत करती है, इसलिये मां की गार्जियनशिप के बारे में इन तीनों कौमों में कोई फर्क नहीं होना चाहिये। आप इसके लिये गार्जियंस एन्ड वार्ड्स एक्ट में तरमीम करें, ऐसी बात नहीं है कि आप देश हित के लिये कोई मेजर तबदीली करें तो हम उसको सपोर्ट न करें लेकिन आप हिन्दू ला के बहाने से कोई ऐसी चीज करना चाहें जिसको सारा देश नहीं मानेगा और जिसके अन्दर हिन्दुओं का नुकसान होता हो, उसको जरूर हम मानने को तैयार नहीं हैं। यह असल में हिन्दू ला के बरखिलाफ है। कोडिफिकेशन का यह मतलब नहीं होता कि आप असली हिन्दू ला जो इतने वर्षों से चला आया है बिला वजह उसको आप तबदील कर दें। क्या आपके पास कोई ऐसी शिकायत आयी है या एविडेंस पेश की गयी है? यह सारा ला आपका खराब है, इससे तो देश को नुकसान पहुंचता है। इन वजूहात से मैं अदब से अर्ज करना चाहता हूं कि सेलेक्ट कमेटी में इस बिल को ले जाने से लम्बा चौड़ा फायदा नहीं होगा। देश के अन्दर जो कुछ खर्च होगा और यहां पर उसके ऊपर जितनी मेहनत की जायगी, बेहतर यह होगा कि गार्जियंस एन्ड वार्ड्स एक्ट में तरमीम करने के वास्ते कोई बिल लाइये। मैं यह नहीं मंजूर करता कि हिन्दू ला आफ गार्जियनशिप और गार्जियनशिप का ला यूनीफार्म नहीं है। भारतीय संविधान की धारा ४४ में दिये गये डाइरेक्टिव प्रिंसिपल्स में एक यूनिफार्म कोड बनाने का जो आदेश है, वैसा यूनिफार्म कोड हमारे सामने आया है, ऐसा मैं नहीं मानता। हिन्दू की कुछ उम्र, और मुसलमान की कुछ उम्र, मैं ऐसे कोड को हाथ लगाने को तैयार नहीं हूं। यूनिफार्म कोड के साथ खिलवाड़ करना और उसको ऐसी शक्ल देना जैसे हिन्दू पानी और मुसलमान पानी दुरुस्त नहीं है, उसको नेरो करना देश के इसेंशियल मफाद के बरखिलाफ है।

Some Hon. Members *rose*—

Mr. Chairman: Shri Subba Rao.

Shri P. Subba Rao (Nowrangpur): Mr. Chairman, Sir...

Mr. Chairman: The Deputy-Speaker had promised that he would call some lady Members, but none stood up. Therefore, I had to call another Member.

Shri Tek Chand: Mrs. Sen was in the process of getting up.

Mr. Chairman: I waited for some time, but none stood up. Therefore, I had to call the hon. Member.

Shrimati Uma Nehru (Sitapur Distt. *cum* Kheri Distt.—West): We did not stand because we did not know whether you would give us a chance. Otherwise, we would have stood up.

Mr. Chairman: Should the promise precede the standing up? Mr Subba Rao may proceed with his speech.

Shri P. Subba Rao: This Bill is ill-conceived, unnecessary and full of lacunae. Unfortunately, there is a craze for codification, and Parliament is now sitting for 200 days in the year; and when considering the rate at which Bill after Bill is introduced in Parliament, even if we sit for 300 days, the Bills cannot be finished. And this craze for codification has come in. Especially in respect of laws that will grow by custom, there is no necessity to codify. In England, I read, most of the laws are not codified—the law of property, the law of contracts and all other laws. But in India, probably the British had set in this codification; and with regard to the personal laws of Hindus and Mohammedans with regard to marriage and divorce, they have kept them apart. They are now studying the Hindu and Mohammedan law, and the craze has set in to codify this Hindu law.

Our Government professes that it is a secular State. At the same time, it constantly reminds us that there are several religions, and our national flag is a constant reminder that there are several religions. The deep orange is significant of the Hindus, the green of the Muslims and the white of the Parsees, Christians and Jews. Of course, there are flags having these colours in other countries but these colours have no significance except in India.

Our Government wants to give respect to both. One section of the House wants that there should be a uniform civil code and there should be only secular laws and all religions should be done away with, while another section of the House resents interference in religion. Of course, both have got justification because the Government is in a way, encouraging both. We have got the Special Marriage Act which reminds us that our society is secular, and there is the Hindu Marriage and Divorce Bill which, at the same time, tries to please the Hindus—simultaneously displeasing them by interfering on matters which ought not to be interfered with by the Government. There is also the Guardians and Wards Act which is, more or less, secular, and now they have brought in the Hindu Minority and Guardianship Bill. Tomorrow a Mohammedan Minority and Guardianship Bill may come. Then, with regard to the right of inheritance, there is already a Succession Act, but another piece of the Hindu Code, the Inheritance Bill, will come.

We have to consider whether there is any necessity for codification of existing laws. There is already a Hindu law with regard to minority and guardianship. Society is not static; it is growing and progressive. But a section of the people want to introduce revolutionary changes. We have to consider whether any changes are necessary, and then only there is place for codification. For example, one such is the supplementing of the fundamental rights declared by the Constitution, that equality of status and opportunity will be given to all. That must be supplemented. We find that a section of Indians are treated as untouchables and so to remove that untouchability, to uphold the fundamental rights declared by the Constitution, an Untouchability (Offences) Bill is quite necessary.

Shri B. S. Murthy (Eluru): Only Bill, not untouchability!

Shri P. Subba Rao: A Bill that gives equal opportunity and equal status to

the so-called untouchables is quite necessary—I can understand that.

We know that child marriage is an evil born of Hindu society. The society felt that that evil should be put an end to, and there is the Child Marriage Restraint Act. Another thing is that if you want to introduce any changes in law, where people feel that some changes are necessary, that can be done by bringing in special Bills to modify the existing laws. For example, a section of the people felt that marriage between *sagotras* should be allowed. I believe there is a Bill validating *sagotra* marriage. In such a way, we can introduce changes, that is, by supplementing Bills. But there is no necessity to change the whole of the Hindu law once for all. Again, to set right conflicting judicial decisions, sometimes a Bill is necessary.

Applying these tests, I find that there is no necessity to introduce this Bill at all. Another point is that piecemeal legislation, instead of doing good, may bring in complications. The Hindu Minority and Guardianship Bill which is now introduced here infringes on the rights of coparcenary and other things. Of course, I will come to the point whether coparcenary rights are excluded or not, but anyhow it infringes on their rights. This cannot be considered piecemeal, without a law of inheritance and a law with regards to debts, alienations etc. under the Hindu law. From that point of view, this is ill-conceived, because it already anticipates changes in the other portions of Hindu law such as the law of inheritance.

Another point is that there cannot be a uniform civil code unless there is a uniform religion for the whole of India. So far as marriage, divorce and other things are concerned, each religion has got its own rules. If we want to have a uniform code, there should be a uniform religion for the whole of India. So on that ground, I oppose the idea of having a uniform civil code except in matters which are not religious, such as regulation and procedure in Courts and the way in which evidence has to be taken and so on.

Coming to the Bill itself, this Act applies to any person who is a Hindu by religion etc. and any other person domiciled in India who is not a Muslim, Christian, Parsi or Jew. Probably this includes the aboriginals who are sometimes treated in the census reports as not Hindus. There are also followers of the Radhaswami, Saibaba and Haranath faiths. All these persons are not included, though followers of the Brahmo, Prarthana and Arya Samaj are included. Then comes (c) which says:

> "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..."

With regard to clause 3, 'minor' means a person who has not completed the age of eighteen years. I am of opinion that the age of majority should be fixed at twenty-one. As soon as a person attains the age of eighteen, he is not competent to dispose of his property. I have seen instances where people have become beggers within a year of their attaining majority. I know the case of a prince who was given his kingdom at the age of eighteen—of course, it is now integrated—who squandered away all his wealth amounting to several lakhs of rupees. A voter is not given the right to exercise franchise till he is twentyone; that means he is incapable of choosing his representative in the legislature till then. But now he is given the power to squander away his property. So I am frankly of the opinion that the age of majority should be fixed at twenty-one. (*Interruptions*).

Coming to clause 5 which says,

> "The natural guardians of a Hindu minor in respect of the

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

I fail to understand whether 'his or her' refers to the guardian or the minor. Of course, the intention of the Bill seems to be to refer, probably, to the minor, but that is not clear from the wording 'excluding his or her undivided interest in joint family property'. Then it says: 'in the case of a boy or unmarried girl—the father, and after him, the mother'. Why after him? Sometimes the father may be disabled, in which case the mother should be the guardian. He may be of unsound mind, he may be suffering from leprosy or some other contagious disease and unable to manage or look after the affairs. So the phrase, "the father and after him the mother," is most unwise

Then, it is said:

> "provided, that the custody of a minor girl who has not completed the age of three years shall ordinarily be with the mother;"

The boy or girl cannot be separated from the mother just immediately after the completion of three years. Where we have no authority, we have to look to other religions and take guidance. Under Muhammadan law, I think the custody of a child up to the age of seven is given to the mother. I do believe that the age of three years should be raised to seven.

With regard to sub-clause (c), in the case of a married girl, the husband is supposed to be the guardian. I do not want to cover the same ground which has already been covered by some of my friends. Though the marriage laws disable a person to marry unless he attains the age of 18 years, there are several cases where minors are married and the law only says that the marriage cannot be declared invalid but there may be a penalty. And, so, there are minor husbands. Supposing the minor takes the guardianship of the wife and dies immediately. There is a lacuna here Is it the husband's relations that are to take charge of the property or the father?

Then, there is the provision:

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

That means that if the mother ceases to be a Hindu she can continue to be the guardian while the father cannot, unless we assume that he includes she

Clause 6 says that the natural guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption. "Family" is a wide term and it may include not only the father and mother of the adopted son but also other relatives. So, while clause 5 defines the natural guardian as the mother and father of the minor, there is a different terminology here. The same terminology should be used here also.

Clause 7(2) says that the natural guardian shall not, without the previous permission of the Court mortgage or charge etc., any part of the immovable property of the minor. This unduly infringes upon the rights of the father. There is no case where the father abuses the right. Where the father abuses the right of protecting his son, then the next friend can resort to the Court and have it set right. If for everything the father has to go to the Court, he will have to spend lots of money and that will not be in the interest of the minor. We know nowadays that litigation is costly and there is any amount of delay. Even the power of lease is strictly restricted to five years. That is unnecessary, and the lease may continue for any length of time provided it does not exceed more than one year beyond

the date of the minor's attaining majority.

Then, it is provided that a Hindu father may appoint a testamentary guardian for any minor children 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 shall be deemed to authorise any person to act as the guardian of the person of the minor so long as the mother is alive and is capable of acting as the natural guardian of her minor child. So, the father has no power to appoint a testamentary guardian in preference to the mother. The father is the best judge. When he knows that the mother is incapable of managing the property of the minor, he should be given the power to appoint a testamentary guardian. Even if the mother is alive, the father knows whether she is capable of acting or has the capacity to act or not.

Generally women in our country, most of them, are not educated and are not capable of managing the property of minors with prudence. Of course, they have no bad intention but they have not got sufficient worldly experience and they may be cheated by others. In this connection, I may say that in ancient Roman law, women were prohibited to be sureties. Originally women were given rights over property and very soon they squandered away the property and so, immediately, there was an amendment that they should not be accepted as sureties because once they stand as sureties when the time comes, the property is gone.

Secondly, the German philosopher Schopenhaur gave credit to the Hindus. These are his words:

> "Of all the nations in the world, it is the Hindus that know how to respect a woman and how to control the property, at the same time."

And, he quoted Manu as saying that a woman should be under the guardianship of her father, husband or son and perpetual guardianship of the woman is justified. This is accepted by a German philosopher who had never seen India and he gave credit to Manu for limiting woman's rights over property, that they can enjoy the property, the annual income, but cannot dispose of the property, because men alone earn and they alone understand the difficulty and women are never allowed to dispose of property. He has praised Manu to the skies.

An Hon. Member: Antiquarian notions.

Shrimati Sucheta Kripalani: He was very anti-woman.

Shri K. K. Basu: Increase the representation of women.

Mr. Chairman: The next chance to speak is going to a woman.

Shri P. Subba Rao: Is it possible not allow a *de facto* guardian to deal with property at all. Supposing the father dies and there is no mother. What is to happen? What is to happen to the dead body of the father? There may be no money in the house. Even for the funeral rites you will have to go to Court.

Acharya Kripalani (Bhagalpur cum Purnea): Let the dead bury their dead.

Shri P. Sabha Rao: Is it possible for the man to run to the Court keeping the dead body inside the house? The performance of funeral rites has been regarded as religious by the Hindu society. What about the protection of the children when the father dies leaving no cash, or with little property with which the guardian cannot interfere? The child must be thrown into the streets. This clause 11 is unnecessary.

Then I come to clause 12. It reads:

> "Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest;

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

Of course, the proviso says that the High Court may appoint. That clearly shows that this is testamentary guardian. How can there be a testamentary guardian so long as the father is alive? So long as he is alive, he would be the manager of the property but not any other adult member of the family. The language is vague.

Then to approach the High Court would be rather too costly. There should be a limit, say, for property worth Rs. 1,000 or Rs. 2,000, the High Court need not be approached. It should be the District Judge. In my opinion, there should be no limit to the power of the District Judge. The District Court should be competent to appoint. And, if there is anybody who feels aggrieved, he may have a right of appeal to the High Court. So, High Court should be deleted and in its place, District Court should be substituted. I am of the opinion that even subordinate courts like the Munsif's court should be competent enough for this purpose of appointing the guardian. If there is any injustice then there can be revision.

With these few observations I resume my seat.

Shrimati Uma Nehru *rose—*

Shri Pataskar: The debate is to close at 3 o'clock.

Mr. Chairman: Yes, I know, but how long does the hon. Minister like to have?

Shri Pataskar: There are about 20 minutes now. Ten minutes may be given to the hon. Member who has risen.

Mr. Chairman: Yes.

श्रीमती उमा नेहरू: जनाब चेयरमैन साहब, मैं ज्यादा वक्त नहीं लूंगी क्योंकि मैं जानती हूं कि अभी सरकार को भी जवाब देना है। मैं बहुत देर से व्याख्यान सुन रही हूं और स्त्रियों के बारे में कोई ऐसा पहलू नहीं है जिसकी चर्चा न हुई हो। उनके बारे में कहा गया कि नाकाबिल हैं, वह इतनी काबिल नहीं हैं कि उनको इतना अधिकार मिल सके, वह प्रापर्टी को मैनेज नहीं कर सकेंगी, वह इगनोरैंट हैं, वगैरह वगैरह। मैं अपोजीशन के भाइयों से कहना चाहती हूं कि उनको अपोजीशन के लिए इन बातों को नहीं कहना चाहिए था। मैं ने देखा कि चटर्जी साहब जब बोल रहे थे तो वे हंसते जाते थे, जिससे मालूम होता था कि उनको खुद उन बातों पर यकीन नहीं है, पर वह अपोजीशन के लिहाज से उनको कह रहे हैं। मैं चाहती हूं कि जो बिल हमारे सामने आया है अगर उस में कुछ गलती है तो उसको ठीक किया जाए। इसीलिए सिलेक्ट कमेटी मुकर्रर की गई है। लेकिन मैं यह नहीं मानती कि इसके आने की जरूरत ही नहीं थी। जब आज ला का कोडीफिकेशन हो रहा है तब तो इसके आने की जरूरत अवश्य थी। यह चीजें हलके हलके आयेंगी और फिर सब मिल कर एक चीज हो जाएगी। मैं नहीं चाहती थी कि हिन्दू कोड बिल इस तरह टुकड़े टुकड़े हो कर आता। लेकिन हमारे कुछ भाई इतने दकियानूसी ख्यालात के हैं कि उनकी वजह से हिन्दूकोड बिल को पूरा नहीं लाया जा सका। मुझे तो यह देख कर बहुत दुःख हो रहा है कि इसको पूरा न लाकर हम इसको टुकड़ों में ला रहे हैं। मैं तो चाहती थी कि हिन्दूकोड बिल सारा का सारा आता। फिर भी आज मुझे खुशी है कि चाहे टुकड़े टुकड़े हो कर ही सही आ तो रहा है। हमको उन्नति करना जरूरी है। जब इस तरह के कानून लाए जाते हैं तो अक्सर उनकी मुखालिफत करने के लिए ऋषियों और मुनियों का नाम लिया जाता है। मैं तो कहती हूं कि अगर आज वे ऋषि और मुनि जिन्दा होते तो वह भी बदल जाते और हमारी तरक्की होती। अगर वे लोग आज जिन्दा होते तो उनके विचार भी बदलते।

दूसरी बात प्रापर्टी के बारे में कही गई कि बच्चे की प्रापर्टी का गार्जियन कौन हो। बच्चे के लिए मां के सिवा और कौन गार्जियन हो सकता है। मेरी समझ में यह बात नहीं आती कि बाप के मरने के बाद चूंकि मां इतनी काबिल नहीं है, क्योंकि उसको इतनी शिक्षा नहीं है, इसलिए दूसरे आदमी को बच्चे की प्रापर्टी का गार्जियन मुकर्रर किया जाए। मैं तो समझती हूं कि यह एक औरत के लिए बहुत बड़ी जिल्लत होगी अगर उसके बच्चे के लिए कोई दूसरा आदमी गार्जियन मुकर्रर किया जाए। यह तो हमें बिल्कुल बरदाश्त नहीं है और मैं तो कहती हूं कि सिलेक्ट कमेटी इस पर तो बिल्कुल विचार ही न करे। मुझे सिर्फ यही कहना है कि बच्चे की कस्टडी उसकी मां को दी जाए। हमारे मद्रास के भाई जानते हैं कि ट्रावनकोर-कोचीन में और मलाबार में जहां पर मैट्रियार्कल सिस्टम है वहां पर औरतें ही सारा इन्तिजाम करती हैं, वही सारी प्रापर्टी को संभालती हैं। इससे किसी को शिकायत नहीं है। तो फिर आज यह कैसे कहा जा सकता है कि दक्षिण में तो स्त्रियां प्रापर्टी का इन्तिजाम कर सकती हैं पर उत्तर भारत में वैसा नहीं कर सकतीं

मुझे इस वक्त एक बात याद आ गई। लखनऊ में एक रईस थे। मैं उनका नाम नहीं लूंगी। उनकी स्त्री पढ़ी लिखी नहीं थी पर उसमें स्ट्रांग कामन सेंस थी जो कि किसी भी कानून से ज्यादा अच्छी होती है। उन रईस साहब की हालत यह थी कि वह नाच रंग में अपनी सारी प्रापर्टी को खत्म कर रहे थे। उस औरत ने जो कि बिल्कुल पढ़ी नहीं थी एक अर्जी गवर्नमेंट को दी कि मैं और मेरे बच्चे बिल्कुल वगैर पैसे के हो जाएंगे क्योंकि मेरे पति ऐसों आराम में मस्त हैं। तब गवर्नमेंट उस प्रापर्टी की गार्जियन बनी और उस प्रापर्टी को कोर्ट आफ वार्ड्स में ले लिया गया। आज कहा जाता है कि ये औरतें अपने बच्चे की कस्टडी के काबिल नहीं हैं। मैं उन भाइयों से जो यह कहते हैं यह पूछना चाहती हूं कि जो रुपये वह अपने घर ले जाते हैं उसको जितनी हिफाजत से उनकी स्त्रियां रखती हैं उतनी हिफाजत से वे खुद नहीं रख सकते। मैं कहती हूं कि औरत को जिम्मेदारी बहुत होती है। अगर औरत को अपने बच्चे की जिम्मेदारी न दी जाए तो यह समाज के साथ बेइंसाफी होगी।

यह भी कहा गया कि हमको समाज के साथ चलना है। ठाकुर दास जी ने कहा कि समाज की जो हालत है उसके साथ ही हमको चलना है। तो मैं उनसे कहूंगी कि समाज तो बहुत आगे बढ़ गया है, उनको यह नहीं दिखाई देता है। लेकिन अगर समाज आगे बढ़ गया है और उनको ऐसा नहीं दिखलाई देता है तो इसमें हमारा क्या दोष है। हम रोज देखते हैं कि भारत के नौजवान आगे बढ़ रहे हैं और हमको रोज उनके लिए नए नए कानूनों की जरूरत महसूस हो रही है। यह जो कानून सिलेक्ट कमेटी में जा रहा है इसको हम पूरी मदद करेंगी। हमको समाज में माता और पूजनीया का स्थान दिया गया है और हमको आदरणीया कहा जाता है। मुझे आशा है कि इस बात को ध्यान में रखते हुए सिलेक्ट कमेटी इस बिल पर विचार करेगी और हमको अख्तियार देगी कि हम अपने बच्चों की और उनकी प्रापर्टी की देखभाल करें।

Mr. Chairman: There are only about 20 minutes left. I find one more Member, Sardar Iqbal Singh, wishing to speak for the first time—his maiden speech. If he would be finishing his speech within five minutes, he may speak.

सरदार इकबाल सिंह (फाजिल्का सिख): जनाब साहिबे सदर, मुझे तो उम्मीद नहीं थी कि आप मुझे बोलने का मौका देंगे क्योंकि वक्त बहुत थोड़ा रह गया था और वह भी मिनिस्टर साहब का था।

मैं इस बिल पर अपने ख्यालात इस नाते रखना चाहता हूं कि यह बिल सिक्ख कम्युनिटी पर भी लागू होगा। बहुत से भाई इसकी मुखालिफत कर रहे हैं। उनका ख्याल है कि सामाजिक कानून में तब्दीली नहीं होनी चाहिए

[सरदार इकबाल सिंह]

क्योंकि ऐसा करने से उस समाज पर और उस मजहब के मानने वालों पर बुरा असर पड़ेगा। मैं समझता हूं कि आजकल के जमाने को देखते हुए हमको अपने कानूनों में तब्दीली करनी चाहिए। मैं अपने बुजुर्ग ठाकुर दास जी से इत्तिफाक नहीं करता कि इस बिल को लाने की कोई जरूरत ही नहीं थी। यह तो हिन्दू कोड बिल का एक हिस्सा है। इसके कुछ हिस्से अभी राज्य सभा में हैं, और कुछ और आने वाले हैं, और क्योंकि उन बिलों का असर खासतौर पर बच्चों और नाबालिगों पर पड़ेगा जो कि उनकी जद में आवेंगे, इसलिए मैं समझता हूं कि इस बिल का लाना जरूरी था।

इस बिल की मुखालिफत की जा रही है, लेकिन मैं समझता हूं कि आज जब कि जमाना बदल रहा है और इस सबब से समाज में कुछ त्रुटियां आ रही हैं, उस वक्त उनको दूर करने के लिए कानून की जरूरत थी। आजकल खासतौर से ऐसे हालात हैं जब कि जमीन के मुताल्लिक कानून बदल रहा है, मैं समझता हूं कि बच्चों और नाबालिगों के हुकूक को महफूज रखने के लिए इस तरह के कानून के लाने की जरूरत थी। लेकिन इसके साथ साथ मैं यह भी देखता हूं कि इस बिल में जो दफात आई हैं उनसे मकसद पूरा नहीं होता। इस बिल में जो दफात हैं वे पहले के बिल से भी कमजोर हैं। आज के जमाने में जब कि प्रापर्टी के सिलसिले में रोज कानून तबदील हो रहा है गार्जियन को उसकी रखवाली करने के लिए बहुत कम ताकत दी गई है। इस बिल से जो ताकत गार्जियन को दी गई है वह मैं समझता हूं कि पहले बिलों से भी कम है। इस बिल में जो ताकत दी गई है वह सन् १८९० के गार्जियन एंड वार्ड्स एक्ट से बहुत कम है। मैं समझता हूं कि आजकल के कम्प्लीकेटेड हालात में यह बिल कामयाब नहीं होगा। हम देखते हैं कि जब भी कभी कोई सामाजिक सुधार का बिल आया, उसकी मुखालफत इस बिना पर की गई कि उसके जरिए से मजहब अथवा धर्म में तबदीली होगी और जो लाइन आफ आर्गुमेंट्स और जिस किस्म की मुखालिफत आज से सौ साल पहले या एक सौ पचीस साल पहले की जाती थी, वही आज फिर सुनने को मिल रही है। हमारे यहां जब सती प्रथा को रोकने का बिल आया था उस वक्त जिस ढंग से मुखालिफत की गई थी वही वजूहात आज भी दिए जा रहे हैं कि हमारे धर्म को बदला जा रहा है। वही वजूहात हमेशा उन लोगों की तरफ से दिए जाते हैं जो कि समाज को एक जगह बांध कर रखना चाहते हैं, जो चाहते हैं कि समाज में कोई तब्दीली न हो और समाज को स्टैटिक रखना चाहते हैं। वही लाइन आफ आर्गुमेंट्स आज भी सुनने में आई हैं। इस बिल की दफा १२ का मकसद नाबालिग बच्चों के लिए गार्जियन्स मुकर्रर करने का है और जाहिर है कि कोई गार्जियन्स एक्ट जो कि उनकी बेहतरी के लिए नहीं होगा वह एक्ट रिवोकेबुल है।

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

उपाध्यक्ष महोदय: अब आपको अपनी स्पीच खत्म करनी चाहिए।

सरदार इकबाल सिंह: इन चन्द अल्फाज के साथ जैसा आपका हुक्म है, मैं ज्यादा न कह कर इस बिल का समर्थन करता हूं।

Shri Pataskar: Sir, I have been listening very carefully to the debate in this House on this simple social measure which need not have created, I think, such long discussions. Unfortunately, on an analysis of what I have been able to hear, I find that suspicion, prejudice and misconception are at the bottom of many of the criticisms which have been levelled at this Bill.

As I said in the beginning, this is a part of the Hindu Code which at one stage was introduced, discussed, Select Committee was appointed and it went through so many stages, and this is one of the most simplest parts of that Code.

Naturally, those who are opposed, either by prejudice or on some other

grounds, to the codification of the Hindu Law form one category of the critics of this Bill. Probably their idea is that there should be no codification of the Hindu Law. But, I fail to understand this: that their faith in Manu and Yajnya Valkya need not drive them to the conclusion that there should be no codification of the Hindu Law for the simple reason that, when I listened to the debate, most of the eminent lawyers and eminent persons of the legal profession who referred to this question, referred to Mulla's Hindu Code which was an unofficial and unauthorised attempt to codify Hindu Law that is administered in different ways at the present moment. It appears they have no objection to that Code on which they rely—even the advocates who are outside this House—but, they have every sort of objection to the codification of Hindu Law. What can I say, Sir? It is no good invoking the names of Manu and Yajnya Valkya. After all what they did was, one 2000 years back and the other 1400 years back. If we try to stick, to adhere to the words and to the arrangements which they then suggested for a society which existed in those days, I think even Manu himself, if by any chance he is in Heaven—or somewhere-else I don't know—will change his suggestions now.

Mr. Deputy-Speaker: Why should the hon. Minister grudge even that?

Shri S. S. More: He is doubtful about the future of the law-makers.

Shri Pataskar: Apart from that, in all seriousness I would say—and that is what I am trying to—that I am not one of those who will say that all that Manu did 2000 years back should be condemned by circumstances that exist in the year 1954. But, I am one of those who feel that we can see what he did; what are the basic principles and if we adhere to them, then only what we are trying to do now is the right thing. The Hindu Law is not a static thing. Manu never meant it to be so and I do not think any of the commentators who changed it or the customs recognise it. All that point to one factor: that the Hindu society itself—by whatever name you may call it—is not static It is a dynamic process and it is right that in the year 1954 we should take note of the changing circumstances and the changing times. We should try to adapt our laws to the conditions that exist and the Hindu Code is a humble and small attempt in the process of evolution.

For the satisfaction of my learned friend Shri V. G. Deshpande who is here, even if you refer to Manu, Manu himself has said:

वेदोऽखिलं धर्ममूलं स्मृतिशीलं च तद्विदाम्।
आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ॥

These are the principles on which he based his law. It is not that what Manu wrote 2000 years back; what was good in those times will be good now in the year 1954. Even his admirers will not say that. Now, I need not dilate on that point. That is why I said that part of the criticism mainly rest on the plea that this part of the Hindu Code.....

Shri Nand Lal Sharma (Sikar): What is meant by आत्मनस्तुष्टि: ?

Shri Pataskar: I know Sanskrit fairly well though I may not be as great a Shastri or Pandit as my hon. friend.

Therefore, I would say, that on that ground there is one kind of objection.

The next thing is we should see what is being done in this Bill. Let us look at it not merely from the point of view of that it is a part of the Hindu Code, but as a piece of what we are doing now on its merit. Then you will find, as I said, that except in some small particulars it entirely conforms with the existing law with regard to the minors among Hindus, only with some variations to which I will come to. On that point, Sir, I claim on the authority of Manu himself that this House has got a right to amend and make suitable laws for the protection

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of minors because the Hindu Law vests the guardianship of the minor on the sovereign. This is not an English thing. This is from Manu, Chapter VIII, verse 27. Even in his days, as I said, the basic principles are there. If unfortunately the parents die, there is a minor and nobody takes care of it, even Manu recognises that there must be somebody and in case there is none it is the sovereign who will be there. Now, Sir, in the year 1954, sovereigns have gone and the sovereign Parliament is there. Therefore, it is the duty of the Parliament now to make adequate provision for the protection of minors. That is what is being done. You may criticise and you may say that there are some failings. That I can very well understand. I do not understand those learned erudite gentlemen who oppose this merely because something is done by Parliament. Why not we do it?

Another argument which is levelled is that while there is article 44 why do you enact this only for Hindus and not for Muslims and others. Article 44 clearly supports what I am doing now. It says:

> "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

It only says that "The State shall endeavour...", because the Constitution makers also knew that such a task cannot be done immediately. So far as the Hindu Law is concerned there are so many texts and so many interpretations by different codes. Therefore, an attempt is being made to codify them. It is, therefore, as I said, the process of codification of Hindu Law is nothing but an endeavour as envisaged in article 44 to secure for the citizens a uniform civil code. My learned friends who spoke so much about a uniform civil code, I do not know whether ultimately when it comes they will stick to what they say now. But, I can say one thing: that we believe that this Hindu Code is an endeavour on our part to first of all consolidate a very large section admittedly. Because, as was said, it may be applied to Hindus who form a large portion of the people and it will, so far as possible create some unity among them in the first place. Then we will come to the next.

Sardar Hukam Singh (Kapurthala-Bhatinda). If I may be permitted to interfere.....

Mr. Deputy-Speaker: Intervene and not 'interfere'.

Sardar Hukam Singh: When Pandit Thakur Das Bhargava spoke the hon. Minister was not here. What he meant was that there is already a code for Hindus and Muslims so far as minority and guardianship is concerned. We are not going to achieve that object which we had laid down in article 44 but we are going against it by now making a law for Hindus separate from the Muslims. That is what he said.

Shri Pataskar: There is also the third type of criticism to which I am just coming to, but these are the two other criticisms. If it is there in the Hindu Code, why do you want this Bill? Virtually it amounts to this: Why is it necessary to have this Bill? Ultimately, some time or other we have to codify, as I said, the branches of the Hindu law and that is the only justification for bringing forward this Bill. We have got the Marriage and Divorce Bill; we are going to have the Hindu Minority and Guardianship Bill passed and we are shortly going to have a further Bill relating to succession amongst Hindus. Therefore, there is no harm in bringing forward this Bill. What I find is that much of the criticism was based on prejudice, suspicion and fear that this is part of something which is to come before and that it is much better to strike it even at this stage. Otherwise, this is a very innocent measure. There is the Guardians and Wards Act, and the plea was made: Why not amend the Guardians and Wards Act? The Guardians and Ward Act is still

kept intact and this is only a supplemental provision to that Act, only in respect of Hindus, because we are trying to look at it as a part of the Hindu Code, and when the time comes for us to have a uniform Code, naturally it will be looked at from a different point of view.

I will try to analyse some of the criticisms with regard to the details of the Bill. With regard to the interpretations, etc., if there is anything that could be remedied, naturally the Select Committee will take all that into consideration.

About the major changes, first there was an attack on section 2. What is there in section 2? The section only tries to say as to whom the law will be applicable. As we know, at the present moment it is difficult to say it precisely and hence the smaller definition. The Rau Committee tried to frame a definition and what it did was that it put many things by way of illustration, and the Select Committee that was appointed by this House to consider that, instead of doing that, wanted to change it in the form of a section in which it has been put now. Therefore, if somebody suggests a method which would be more appropriate for the purpose, naturally the Select Committee will look into it. The only object is that we want to make this law applicable to all except Christians, Muslims and Parsis, for whom there are some other provisions. Beyond that if it is possible to improve the definition—I think it is hardly possible—the Select Committee will certainly consider it.

Then I go to the application of the Act, The definition of 'minor' is given as a person who has not completed the age of eighteen years. There is hardly anything which could be said to be objectionable there. In the Indian Majority Act, this is in force from 1875, and the age of majority there is approximately correct, and there is no harm in keeping it at that level. We have tried to define who are the natural guardians and, therefore, this was necessary. Who are the natural guardians recognised in the Hindu law? There are no such guardians recognised in the Muslim or Christian laws. Therefore, this has been done and I also find that there is not any change made in that section. Much of the argument was based on the fact as to why we want this overriding section of the Act. It is true that some of the old Members were there in those days and there was no such provision in the original Hindu Code, but this was thought necessary when the matter went to the Select Committee stage. What is the good of this Bill without this provision? We want to codify the law; we do not want the question of interpretation raked up in the court of law and it is to prevent that that this has been done, and there should be a provision like that as contained in clause 4. By 'natural guardians' we recognise only the father and the mother. Many Members vehemently argued that in joint families, there are uncles and cousins and what not, but at this stage I do not like to take up the question of joint families. So far as the Bill is concerned, I have tried to keep out discussion of that topic, who should be the natural guardians? If at all 'natural guardians' have to be recognised, they can only be the father and the mother and under this clause we recognise them as the natural guardians. We know that uncles at times may be good. So far as the present Bill is concerned, there is no bar against any uncle taking care of his nephew. The only thing is that he cannot interfere with the property of the nephew. If such uncles are only going to be good by being able to manage the property of the minor nephew, then it is better that some restriction is put on them. Good uncles will always continue to take care of their nephews, and there is nothing to worry about them so far as the passing of this Bill is concerned. They should not touch the property, which is not the property of the joint family, but which is the property of the nephew. At least we in Maharashtra know—and my friend Shri More also knows—the saying about the managers

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minors and there is certainly a prejudice against that. They are dealing with a property which does not belong to them.

The next provision which my hon. friend Shri Bogawat and some other hon. Members vehemently opposed was about the provision that the natural guardians shall take the permission of the Court before dealing with the property. Otherwise, the result has been a lot of litigation up till now. There are so many rulings of the Privy Council, and High Courts and there is a vast amount of litigation on that. Now, if we are trying to justify this on the ground that the uncle requires it for the education of the minor nephew or for the advancement of his interests, why should he not go to the Court? Supposing there is a very honest uncle, very much acting in the interests of the minor, very much in love with the nephew and it does become necessary, then what the law says is that he will make an application to the Court. All these cases likely to be so few.

Shri Altekar: But what time will it take?

Shri Pataskar: It might take time, but he will have to wait. The minor's property will be safe only after the permission of the Court. It belongs to the minor and he wants to dispose of it. Suppose the minor, after becoming a major, will have to go to the Court and the Court will have to see whether such disposal should be set aside. In fifteen years everything might disappear of the minor's property and so protection is the fundamental concern of the sovereign and even in the Hindu law, they make a provision that he will make an application to the Court and the Court's sanction obtained. How that can be shortened is a thing which we might consider at the Select Committee stage. That is a different matter. Does not our experience show that for years we put the minor in such a position that at the time when he wants to agitate against the question of being alienated by the natural guardian, he finds it very difficult? Therefore, a simple provision has been provided that he will make an application to the Court. I looked at the wording of the Gurdians and Wards Act and the provisions of section 29 are not applicable.

Shri S. S. More: Supposing he has gone to the Court and the Court has given permission, will it be *res judicata* if the minor becomes a major and complains that even this alienation with the permission of the Court is *mala fide*.

Shri Pataskar: I have examined the question, but I do not think it will be complte *res judicata*. In actual experience Shri More will find that if there is a minor's estate worth Rs. 10,000, and the guardian proposes to sell it, he goes to the market but nobody will offer him more than Rs. 3,000 or Rs. 4,000.

3 P.M.

Shri S. S. More: May I ask.....

Mr. Deputy-Speaker: Why should the hon. Members ask about it? If there is a guardian appointed by the Court, for selling the property of the minor that guardian has to apply for the permission of the Court. What happens to that will happen to this. Is it *res judicata* when a minor files a complaint or a suit for alienation? If it is *res judicata* there it will be *res judicata* here also. What is the good of going into those principles which he is copying here?

Shri S. S. More: With due defer ence, as for as the present position is concerned regarding Hindus, there is some latitude for the minors to contest alienations by his or her guardian.

Mr. Deputy-Speaker: He becomes a guardian now.

Shri S. S. More: Are we going to perpetuate some evil because it is already on the statute-book?

Shri Pataskar: That matter will be examined, because I do not think it is free from doubt.

Shri S. S. More: That is what I wanted to ask.

Shri Pataskar: But the intial objection raised is: why should we go to Court?

Shri S. S. More: There we agree.

Shri Pataskar: The fundamental object is that the property does not belong to him but to somebody else, which he is protecting. Therefore I do not see there is anything in this point. I believe this was the most hotly contested part of the Bill.

Then, reference was made to the provisions relating to testamentary guardian where it is said 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". That also is consistent with the principle that we are enunciating that the father and the mother are naturally the best persons to take care of the interests of the minors. Therefore, even if the father makes a will and appoints a guardian, we do not want to deprive the mother of the guardinship. Suppose it is argued that a woman, on account of ignorance or illiteracy or bad association, is not fit to be the guardian. In that case anybody who is interested, any stranger even, can take advantage of the provisions of the Guarians and Wards Act and make suitable arrangements. Therefore, this also is a very simple provision. The whole idea is to codify the Hindu law with such modifications as are necessitated by the present times so far as this matter is concerned.

Then there was another question as to why, if the Hindu father changes his religion, he should cease to be the guardian. Well, the reason is obvious. At this stage we are going to make provision for the guardianship of minors who are Hindus. Naturally therefore it stands to reason that we should not in this Act say that anybody who cease to be a Hindu and changes his religion should be the guardian of a minor who is a Hindu. If that man, that Hindu father, by conviction wants to become, say, a Christian, nobody prevents him from becoming a Christian. But in that case it is also desirable that such a sober person who for certain reasons wants to change his religion, may as well cease to be the guardian of the minor so long as the minor has not reached age when he could decide for himself what religion he should accept. So there is nothing wrong in this provision. This matter has been considered by several committees, by Select Committees of this House, has been discussed in this House for the last fourteen years and more. Therefore I say that this is a very simple measure, and if at all there are some modifications necessitated, I am prepared to consider them in the Select Committee on their own merits.

As I said, clause 13 is the paramount clause in this Bill, and it gives an idea as to what we propose to do. Everything that is needed for the protection of the minor is being done under this Bill.

Then I was amazed to find that my friend Mr. Chatterjee raised an objection under article 15 of the Constitution. What is it? The article says that "the State shall not discriminate against any citizen on grounds only of religion". What is the discrimination? Not only that. There is clause (3) of the article which clearly says that "nothing in this article shall prevent the State from making any special provision for women and children." And this minority question is a question concerning children for which specifically the provision has been made that "nothing in this article shall prevent the State from making special provision".

Shri S. S. More: What about the different ages for majority?

Shri Pataskar: I will consider that. I am at present concerned only with the objection that was raised.

This is a very simple measure which is necessitated by the change in the

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circumstances of the society, and I hope it will receive the support not only of those who are anxious to have the Hindu Code early—because that is the common desire of at least the majority of us—but also of other sections who also I am sure will on a deeper consideration come to the conclusion that what we are doing now would have been done by Manu if he were alive today.

Mr. Deputy-Speaker: I shall now put the motion to the vote of the House. The question is:

"That this House while concurring in the recommendation of the Rajya Saha that the House do join in the Joint Committee of the Houses on the Bill to amend and codify certain parts of law relating to minority and guardianship among Hindus made in the motion adopted by the Rajya Sabha at its sitting held on the 25th August, 1954 and communicated to this House on the 27th August, 1954:

(a) recommends to the Rajya Sabha that the Joint Committee be instructed to report on or before the 31st March 1955; and

(b) resolves that the following Members of the Lok Sabha be nominated to serve on the said Joint Committee, namely, Shri Narendra P. Nathwani, Shri Moreshwar Dinkar Joshi, Shri Badshah Gupta, Shri Sohan Lal Dhusiya, Shri P. Ramaswamy, Shri B. L. Chandak, Shri Liladhar Joshi, Shri Mathura Prasad Mishra, Shri Mahendra Nath Singh, Shri Bheekha Bhai, Shri Raghubar Dayal Misra, Shri M. L. Dwivedi, Dr. M. V. Gangadhara Siva, Shri C. R. Narasimhan, Shri H. Siddananjappa, Shrimati Subhadra Joshi, Shrimati Ila Palchoudhuri, Shri Kanhu Charan Jena, Shri Bimalaprosad Chaliha Shri Bhola Raut, Shri P. R. Kanavade Patil, Sardar Hukam Singh, Shri S. V. L. Narasimham, Shrimati Renu Chakravartty, Shri Anandchand, Shri Shankar Shantaram More, Shri Jaswantraj Mehta, Shri K. S. Raghavachari, Shri Bhawani Singh, and Shri H. P. Pataskar."

The motion was adopted.

PREVENTIVE DETENTION (AMENDMENT) BILL

Mr. Deputy-Speaker: The House will now take up the Preventive Detention (Amendment) Bill.

Shri S. S. More (Sholapur): It is a very innocent Bill!

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill further to amend the Preventive Detention Act, 1950, be taken into consideration."

I find that notice has been given of motions to refer this short Bill to a Select Committee and there is also a motion to circulate it for eliciting public opinion. In the normal course I would not have had any objection for reference of the Bill to a Select Committee or Joint Committee but in this particular case I am unable to take that course, for really there is nothing to consider about. The Bill is one of the shortest imaginable. It merely desires the House to change "1954" into "1957", to extend the Act by another period of three years.

You must remember that two years ago, this House spent a considerable time, I believe days and days, in going over this Bill or rather this Act in great detail. Clause by clause it was considered. At that time, the Select Committee went into the Amending Bill at very great length and then it was open to a general discussion in this House. By consent