

the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 27, as amended, stand part of the Bill".

The motion was adopted.

Clause 27, as amended, was added to the Bill.

Clauses 28 to 31, Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri M. C. Shah: I beg to move:

"That the Bill, as amended, be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

HINDU MINORITY AND GUARDIANSHIP BILL

The Minister of Legal Affairs (Shri Pataskar): I beg to move:

"That the Bill to amend and codify certain parts of the law relating to minority and guardianship among Hindus, as passed by Rajya Sabha, be taken into consideration".

This is a very simple measure and the simplest part of the original Hindu Code. We have already passed the Succession Act and the Marriage Act so far as Hindus are concerned.

This Bill which is in addition to the provisions of the present Guardians and Wards Act is intended to preserve some of the special features so far as

the question of guardianship amongst Hindus is concerned. Because, as I would presently explain, this is in addition to the provisions of the Guardians and Wards Act and not in derogation of it.

The history of this simple measure is this. This Bill was introduced as far back as 9th April, 1953; and, ultimately it was referred to a Select Committee. It was also considered, at a certain stage, by both Houses and it was passed by the Rajya Sabha also on the 7th April, 1955. On account of the importance of the other parts as well as of the fact that it was thought that it would be much desirable that this part and the remaining parts should be taken after the important parts of the Hindu Code had been taken up and passed by this House, this was delayed.

I would not take long and I would briefly—probably as it is now more than a year that this Bill was considered by this House—go through the few provisions that are contained in this Bill. This has got only 13 clauses. The first clause is a merely formal one. The clause relating to extent is also the usual one which has already been passed with respect to other Bills which we have passed.

Clause 2 is important. In order to assure persons that what is tried to be done by this Bill is in addition to the provisions of the Guardians and Wards Act, it is expressly mentioned here.

Clause 3 relates to the application of this Act and it is the same as has been inserted in the other two Acts which we have already passed. So, I need not say anything about that.

Clause 4 relate to definitions and they are also very simple. The first is a definition of a minor which is the same as is contained in the Indian Majority Act. 'Minor' means a person who has not completed the age of 18 years. Then there is a definition of guardian. It has been stated that

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guardians are of the following categories, natural guardians, guardians appointed by the will of the minor's father or mother, a guardian appointed or declared by a court and a person empowered to act as such by or under any enactment relating to any court of wards. As lawyers are aware, these are usual categories of guardians. Natural guardian is just a peculiar feature of Hindu law and he is defined in sub-clause (c), which means any of the guardians mentioned in section 6. Clause 6 lays down who are the natural guardians for the purposes of this Act.

Clause 5 is over-riding effect of the Act. I think it is the same as has found a place in other Acts relating to the other parts of the Hindu Code. Clause 6 is a very simple one and it is in accordance practically—with some slight modifications—with the present rule with respect to natural guardians. It says:

"The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are—

In the case of a boy or an unmarried girl—the father, and after him, the mother."

Then, in the case of an illegitimate boy or an illegitimate unmarried girl—the mother. We know that in the case of an illegitimate boy or girl, naturally the mother is the natural guardian and in the case of a married girl, naturally, the husband is the natural guardian. It is also provided that no person shall be entitled to act as the natural guardian of a minor if he has ceased to be a Hindu. It is a provision of Hindu law that if a person is converted to another religion, then, there is no reason why he should retain his right as a natural guardian which he can claim only as a Hindu. Therefore, I believe that that provision is there. Then there is the provision regarding those who have final-

ly renounced the world by becoming hermits etc. We know that so far as Hindus are concerned, there are people who sever their connections with worldly life. Naturally, in those circumstances, it is not desirable that those persons should continue to be guardians of minors. Therefore, I think, all of us will agree that clause 6 follows the lines on which natural guardians are, as a matter of fact, recognised at present.

Then, clause 7 is very simple. It only means that in the case of an adopted son, the adoptive father and after him the adoptive mother are the natural guardians. I think that also is in conformity with existing law.

There is clause 8 which defines the powers of a natural guardian and it is important to note that this is also one of the important sections. It only means that the natural guardian of a Hindu minor has power, "subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant."

I think, so far as this portion is concerned, there will be, probably, no dispute. What is said further is—

"The natural guardian shall not, without the previous permission of the court,—mortgage or charge, or transfer by sale, gift" etc. "any part of the immovable property of the minor, or 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."

It will be seen that this provision is intended to protect the minor's property. It may so happen that a person is the guardian of a minor son who has inherited property from his mother. After the death of the

mother, the father becomes the guardian and he has again married and has children by that marriage. In such a situation it is thought desirable that if at all such a natural guardian were to alienate property, he should be able to do so only with the permission of the court, that is, when the matter has been examined at some stage by the court. My friend, Shri Chatterjee, will admit in most such cases the minor's interests are not properly looked after. That is the provision in this clause.

Clause 8 contains provisions as to the procedure to be followed. It is the same procedure as has been prescribed by the Guardians and Wards Act. At the time of the discussion of clauses we may have occasion to refer to this and so I will not go into the details of this clause now.

Clause 9 relates to testamentary guardians. The Hindu father has been given the power, as the natural guardian of the minor, to appoint a guardian if he wants to appoint somebody by will. But there is a restriction so far as the property is concerned that it shall be other than the undivided interest referred to in section 12. The appointment made shall have no effect if the father predeceases the mother. Supposing there is a minor. The natural guardian is the father. If after the death of the father, the mother is alive and the father has appointed a testamentary guardian, then, what is provided here is that that guardian shall be revived if the mother dies without appointing as guardian another person. This is also a wholesome provision to safeguard the interests of the minor.

Here it is provided that:

"A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such,

may, by will, appoint a guardian for any of them."

In certain cases, the mother also has been given the right to appoint testamentary guardian. Supposing the father has changed his religion; he is disentitled to act as the guardian. Then the power is given to the mother to appoint a testamentary guardian. I hope this provision will also be found to be in the best interests of the minor.

There is also a provision for the mother as the natural guardian of illegitimate children to appoint a testamentary guardian. I think these are all simple provisions and, probably, there may not be much controversy about them.

Clause 10 is very simple; a minor shall not be the guardian of another minor. I think it is obvious. At the same time, it was thought necessary to include a provision like that. This is what is done by clause 10.

On the last occasion I explained that *de facto* guardians are abolished. At the present moment, under the Hindu law, guardians are recognised. But as hon. Members will be aware, in all cases of *de facto* guardianships, that is, in the case of unfortunate minors who are left with no parents nor any near relations, it may be that somebody has to act as a *de facto* guardian of the minor. It is provided here that such a *de facto* guardian cannot dispose of or deal with the property of the minor. Naturally he can make application under the Guardians and Wards Act and get the permission of the Court to deal with the property, but it is not desirable to allow any person on the ground of his or her being the *de facto* guardian of the minor to dispose of the property of the minor. There have been various cases in the past where there was long drawn litigation as to whether it was in the interest of the minor or not. All such litigation will be avoided by this salutary provision.

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Clause 12 deals with the question of guardian for minor's undivided interest in joint family property and it says:

"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."

Consistent with the theory of joint family, in spite of the fact that we have passed the Hindu Succession Act, the joint family will continue, and, therefore, it has been provided that in the case of joint families it is not desirable to introduce a third party as guardian as there will be conflict between him and the adult member of the joint family who is the manager. It is from that point of view that this provision has been incorporated in clause 12.

It has been made clear in clause 13 that in the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration. There might be cases where we have to follow strictly the rules and therefore it has been provided that primarily the only consideration that should apply in making the appointment of a guardian is the welfare of the minor himself. Then it is provided here—

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

This follows as a corollary of the principle underlying clause 13. I hope this is a very simple measure and non-controversial in its character and it is only intended for the purpose of protecting the interests of the minor as well as to make provision for recognition of natural guardians, which

is a peculiar feature of the Hindu law.

This is a very simple and non-controversial measure and its provisions have been considered by this House. The measure was also considered by the Joint Committee. Rajya Sabha also has carefully considered all these provisions. I am sure that this measure is simple in its character and does not give ground for any controversy in this matter. I know that probably there are some clauses here which are really repetitions of the clause—with respect to the application of the Act, with respect to the extent, etc. But I am sure that we have all thoroughly discussed every word of these clauses on two or three occasions before and I hope hon. Members of the House will now reconcile themselves to the present provisions—because some of them did not agree to some provisions. I hope that the hon. Members will not concentrate on the old controversies, but concentrate on the salient features of this Bill, which to my mind are the recognition of the natural guardians, which is a peculiar feature of the Hindu law, and the abolition of *de facto* guardians. These are the two main points. I think there is very little room for controversy in this matter. I commend this measure for the acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to amend and codify certain parts of the law relating to minority and guardianship among Hindus, as passed by Rajya Sabha, be taken into consideration."

Shri N. C. Chatterjee (Hooghly): I always dislike a Bill with thirteen clauses.

Mr. Deputy-Speaker: Sometimes one is helpless.

Shri N. C. Chatterjee: I am afraid the hon. Minister has oversimplified it by saying that it is a very simple measure of 13 simple clauses. I want to draw your attention to two clauses, that is, clause 5 and clause 6, which

require special consideration of Parliament.

We are saying in clause 6 that there should be natural guardians and that a natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property shall be, in the case of a boy or an unmarried girl, the father, and after him, the mother. In clause 11 we are pronouncing a doom on all *de facto* guardians. I am afraid this is not an improvement but it is a retrograde measure. It will not be for the welfare of minors throughout Hindus than to say that from tomorrow there shall be no *de facto* guardians. The only guardians known in law, the natural guardians, shall be the father and the mother. Supposing the mother is dead and the father is married to another lady, then what happens? As you know, in Hindu society it often happens that in such cases there is persecution of the progeny of the first wife. Am I to understand that there is nobody except the father to look to the interests of the minor? I think the old Hindu law is far better in this respect. If the father and the mother are going to remain as natural guardians and nobody else to look after the minors under the law, there will be great difficulty. I find that Shrimati Ila Palchoudhury has put in a strong note of dissent and I maintain that she has put forward cogent arguments which should appeal to this honourable House. She says—

"The very fact of debarring other relatives from guardianship breaks up the mental effect of social customs and social pressure. As it is, sometimes there will be great difficulty in getting minor children cared for, particularly when there is not much money or property left for them. In such cases it has been the social pressure that played a great part in getting the children looked after. If law itself debars other relatives, it will give them a very good excuse to shirk their responsibility."

She has put forward another argument which also merits consideration, the psychological aspect. It will also have a very bad influence on the minors themselves. The minor is not always a child of three or four or five years of age, but may be 15 or 16 or 14 or 17 years old. In that most impressionable period of her life, she will have to be looked after by somebody. Therefore, I think it is not a wholesome provision. What is the harm in giving also the paternal grandfather or grandmother or the maternal grandfather or grandmother or the paternal and maternal uncles, in suitable cases, the right to be recognised as natural guardians? It is very very hard that when there is no father or no mother, the *de facto* guardian, who is competent to function, should be deprived of his right and responsibility in this matter. Supposing the father is dead and the mother is dead, what will happen to the minor? You cannot possibly expect that in every case the people will go to the District Judge, move the Court under the Guardians and Wards Act and get somebody appointed. You are declaring in clause 11—

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

That means that in the absence of the father and the mother—supposing there is a desirable boy available for marrying an unmarried girl of the age of 17 and her father and mother are not there, they are dead—even the uncle cannot do anything. If the grandfather is there, he cannot function and he cannot even deal with the moveable property for the purpose of marrying the girl. I do not think this is a desirable provision as this will really help the minor. I am quite sure that the hon. Minister is inspired by a good motive; his real objective is to do something good for the lasting welfare of the unfortunate

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minors. I am afraid that doing away with the age old customs and rights and age old guardians will not be desirable in the society as it is constituted today. In other countries, the State or the Crown is looked upon as *paresa patria* and sometimes the Advocate-General or some State authority takes steps for getting a guardian appointed. There is no such provision here. What will happen if either of the parents is dead and the other is not competent or desirable to function as a natural guardian? I would like the hon. Minister and the House to give some thought to it.

Shrimati Renu Chakravarty has pointed out something which merits very serious consideration. She says:

"The Bill provides that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. But in our opinion the age limit should be raised to twelve because we hold that for the proper and healthy development of a child a mother's care and guidance upto that age is necessary."

Whether it is ten or twelve, I do not think that the age of five is a desirable age. Something should be done to raise that age.

Shri More has gone further and says:

"Girls, whether married or unmarried should ordinarily be in the custody of the mother till they attain puberty".

I do not like that expression. Anyhow, something should be done for the purpose of raising the age in such cases.

Shrimati Renu Chakravarty has said that in a secular India there should be no forfeiture of guardianship rights in the case of change of religion. I submit that the hon. Minister is right when he points out that when a man changes his religion he cannot continue to be the guar-

dian of a Hindu minor because he has got to rear up the child according to the customs and tenets of the faith to which he or she belongs. It would not be right to allow somebody who has changed the religion to become the guardian. It may be that the tenets of his religion may be completely at variance with the minor's.

There are also other clauses which require careful consideration. The powers of the natural guardian are also being very much restricted in clause 8. I maintain seriously that by passing this Bill you will put a very undesirable and unwholesome fetter on the rights of the father and mother. The father may be dead; the mother is there. She has got to marry a girl and the girl has got property, only immovable property. For legal necessity, she cannot even mortgage that property. There could be no better necessity than finding a suitable son-in-law for a marriagable daughter and the mother could not sell the property unless and until she goes through the cumbersome procedure of going to a court of law and getting its sanction. This is not a legislation to promote the welfare of the people for whose benefit you are legislating.

Look at clause 8. It reads:

"(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor...."

Supposing there is a property worth Rs. 5 lakhs and a minor girl has got to be married, even then, the mother

cannot mortgage or sell any part of the property except with the previous permission of the court.

Mr. Deputy-Speaker: Perhaps the idea may be this. Now that the girl has a share, why spend anything on her marriage?

Shri U. M. Trivedi (Chittor): That is very logical. Perhaps the Minister forgot the existence of that law.

Shri Pataskar: I have not forgotten anything.

Shri N. C. Chatterjee: He is inducing us to enact, or inducing this Parliament inspite of us, to enact, this law. One has got to spend some money when one has got to marry one's daughter.

Mr. Deputy-Speaker: He thought that men like yourselves had reconciled themselves to the new position.

Shri N. C. Chatterjee: He is indulging in a wish. I wish it was correct. Anyhow, we have got to reconcile ourselves to so many things, at least temporarily.

Today the main difference between a court guardian and a natural guardian is this. The former cannot raise Rs. 100 or even 10 rupees on any property unless the permission of the court is taken. It is a costly procedure. In my part of India, it means a reference to a court nazir who makes elaborate investigation, invites objections, and so on and all this takes six months or more and then the thing is finalised. The father and the mother are placed on a high pedestal. Can anybody possibly think that a court would be more solicitous and in a better position to judge of the welfare of the minor than the father or mother? When you are restricting the natural guardianship to the father and the mother and giving powers to the natural guardian to do everything reasonable and pro-

per for the benefit of the minor, why do you not trust the father and the mother? Why drive them to a court of law and ask it to sit in judgment over the father's judgment or the mother's judgment and find out whether it is a desirable transaction, whether this property should be mortgaged or that, and so on. I submit that this is really bringing down the father and the mother to a lower pedestal. It is a retrograde step.

I have not clearly thought it out but it seems that there will be some difficulty with regard to the duplication of statutes operating in the same sphere or area. The Guardians and Wards Act continues to be in force. I do not know whether there will be any clash or inconsistency of authorities in the same sector. The Guardians and Wards Act shall apply to and in respect of an application for obtaining the permission of the court. It is provided in clause 8 (5). So, all this procedure shall have to be gone through.

Shri More has said that the necessity to secure the previous permission of the court will add to the volume of work of the courts, will entail expenses and cause delay. Permission given by a court, he adds, will give some foundation to the assumption that the transaction effected was for the benefit of the minor and when challenging the same it will have to be proved that it was not to his benefit and the onus in most cases will be difficult to discharge.

Mr. Deputy-Speaker: Is the hon. Member likely to take some more time?

Shri N. C. Chatterjee: Yes, Sir.

Mr. Deputy-Speaker: Then, he may continue tomorrow.

The Lok Sabha then adjourned till Eleven of the clock on Tuesday the 17th July, 1956.