MACHARI): I beg to lay on the Table a copy of each of the following papers under sub-section (2) of section 16 of the Tariff Commission Act, 1951: —

(i) Ministry of Commerce and Industry Notification No. 21 (3)-T.B./54, dated the 24th March 1955, superseding the Government Notification of even number dated the 14tli February 1955. [Placed in Library. *See* No. S-l 10/55.]

(ii) Tariff Commission's letter No. TC / ID / E/88/Comp/53/HTl dated the 2nd March 1955. [Placed in Library. *See* No. S-110/55.)

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

THE MINISTER IN THE MINISTRY or LAW (SHRI H. V. PATASKAR) : Sir, yesterday I referred to some of the general objections which were raised in respect of the present Bill. I now propose to meet lie objection as to why this Bill is :.iot extended to Jammu and Kashmir. Sir, this question was raised even at the time the other parts of the Hindu Code, namely, the Marriage Bill and the other Bill were introduced. Once for all I would like to make it clear that it is not from a desire not to make it applicable to the State of Jammu and Kashmir that these pans arc not being included, but there is the constitutional difficulty, namely, that we have not got the legislative capacity to legislate in this connection for the State of Jammu and Kashmir and Ladakh. For instance, we have power to legislate under the Concurrent List, Item No. 5, which is "Marriage and Divorce; infants and minors:", etc. Article 370 of the Constitution, clause (1), lays down:

"Notwithstanding anything in this Constitution,—

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State."

Now there is a Constitution Order of 1954 which has been issued by the President with the concurrence of the State of Jammu and Kashmir and it specifically mentions that the State List and the Concurrent List shall be omitted. It is therefore perfectly clear that the Concurrent List having been omitted in this order which has been issued under article 370 of the Constitution, we have absolutely no legislative capacity in the matter of this item No. 5, which is included in the Concurrent List, to legislate for the State of Jammu and Kashmir. Therefore I really fail to understand from what point of view this question is being raised from time to time. After all, as we all know, though Jammu and Kashmir and Ladakh are part of the Indian territory, still there is some difference between the powers which we exercise in respect of that State and with respect to the other States in the Union, and I do not think it serves any useful purpose, while considering a Bill of this nature, always to harp on -the fact as to why we do not extend this to the State of Jammu and Kashmir when it is patent on the face of it, and in view of the agreement as to what we have to do under the Constitution we can do it only with the concurrence of the State, and the State may agree after some time. As a matter of fact, looking to the history of that place, it is clear that things are trying to settle down, and in the delicate state of affairs so far as that part is concerned, I do not think in a simple measure like this we could always go on rais-

[Shri H. V. Pataskar.] ing this question and try to charge the Government with not being bold enough to make it applicable to Jammu and Kashmir or to raise the point that if you can make the law applicable with respect to the exports and imports to that territory, why don't you make this simple thing? Well, the answer is that with respect to them they have conceded it; they have accepted it and we do it. After all we know the history through which it has passed. It had its own Constituent Assembly and they made their own Constitution .....

SHRI H. C. MATHUR: On a point of submission, Sir. No Member on the floor of this House said that the Government was not bold enough to extend this measure. The only reference was that the Government should have consulted that Government. Every Member recognises that it is only with the concurrence and the consent of the Kashmir Government that this enactment could be extended to them, and the only suggestion made by the lady Member was that if the Kashmir Government had been consulted they would have given their ready consent to a measure like this. Nobody accused the Government of this lack of strength.

SHRI H. V. PATASKAR: Even that is a misconception. It is not that if the State Government today says that they consent to this, we could have this passed and made applicable to that State. That will not do. We must have the President's Order amended. So it is much better that we should leave it at that stage and naturally the time may come when the Government can consult them and then probably the President's Order can be modified, but for the present, as matters stand, I do not think it will serve any purpose to pursue the matter any further.

SHRIMATI LILAVATI MUNSHI: Have they been consulted?

SHRI H. V. PATASKAR: No question of consultation arises in respect of a State which says that we have no legislative power in this connection, but I can say what we can do. We can ask them after this Bill is passed, to have a similar legislation passed by their Legislative Assembly. They have their own constitution. They have got a Legislative Assembly and it is not a State just like other.....

SHRIMATI LILAVATI MUNSHI: The same argument can apply to the other things which you have passed here, I mean to one other Bill which has been made applicable to them. If that was not the case, then in this Government can consult them and make it applicable. There is nothing wrong.

SHIU H. V. PATASKAR: In that matter there was no question of consultation and so far as export and import are concerned, in that very order which has been issued by the President, the State has given us the power to legislate for that subject ancj- therefore there is no example there. Here also the proper course would be that.— after we pass this Bill there will be no difficulty—we may recommend that they may get their legislature to pass a similar piece of legislation. That would be the proper way and I do not see any reason why they won't do it. At the present stage therefore I do not think that anything more can be done.

My friend was saying that nobody charged the Government in this regard. Of course I do not want to go to the length of quoting, but I think at times, when the objection was raised, one of them at any rate hinted that somehow or other we are not going to make it applicable for reasons for which we could offer no explanation. I would not like to dilate on this point except to say that we have realised that as a matter of fact we have no legislative capacity to legislate so far as Jammu and Kashmir is concerned for the time being and therefore we leave it out of this consideration.

Then, Sir, another very general argument after hearing which I

thought it was a little strange was that after all this Bill is concerned with those minors who own some property, but what about those people, those orphans who have neither any guardians nor possess any property? Well, that is an entirely different problem and I pointed out yesterday the scope of the present Bill. Therefore that should be the subject matter of a separate Bill. For taking care of orphanages and all such institutions I think there is the Children's Bill which was introduced and there are other Bills which are being introduced and there was a Private Member's Bill, of my hon. friend over there.

And the Government is fully cognisant of the problem but it has nothing to do with this. Therefore any criticism of this Bill on the score that it does not deal with the question of those unfortunate orphans who do not possess any property is not justified for the simple reason that looking to what we are doing here, this is not an Orphanages. Bill and therefore such criticism is no way justified.

So much in reply to the general objections that were raised. I will now try to reply to some of the objections that were raised against the specific clauses of the Bill. I would not like to refer to the particular hon- Members who raised objections because several of them have raised common points. I shall only cursorily go through the various clauses so ihat at a subsequent stage when the amendments are taken up, they can be considered at length. Several points were raised and one of them was with respect to the definition of the word 'Hindu'. It has already been very elaborately discussed on so many previous occasions and there have been arguments on both sides, but I think that everybody by this time knows as to whom we want to make this law applicable. This was also discussed very exhaustively when the Special Marriage Bill was considered and passed so far as this House is concerned. So I will not dilate on this point any further.

As far as clause 3 relating to definitions is concerned, I do not think there has been much criticism about that.

Clause 4 is almost a non-controversial clause and there is nothing to be said on that.

With respect to clause 5, I should think there has been some sort of a misunderstanding. As I have said already, what we propose to do here is to recognise natural guardians who are already recognised under the Hindu Law as now administered in our country though there may be no codification. We want just to recognise those natural guardians who are the father and the mother. It is therefore proper and reasonable that we should not expand this list. Many hon. Members suggested that this list of natural guardians should be expanded. Some suggested that the brother should be included; some others wanted to include the maternal uncle, while yet others wanted that maternal grandfather and paternal grandfather should be included. All these may be quite good relations. I would point out that it is a peculiar feature of the Hindu Law as it stands at present and as it is administered now that the natural guardians are recognised. I do not think that, except probably the Muslim Law, there is any other law which recognises any such thing. Yesterday I gave the reasons—and I would not like to repeat again to day—as to why the Government did not desire that this list of natural guardians should be expanded. In the first place, our objective of having a uniform code might be defeated by what we might do in that connection because after all it may be possible that when we want to make one uniform code applicable to all, there may be no objection on the part of other people also to whom this law may be made applicable. It is all right if the mother and father are made the natural guardians of the minors concerned, but it would certainly be an uncommon thing to have here a provision by which all sorts of relations would be included among natural guardians. I do not think it would be a safe procedure to expand this list because all that we are trying to do is only to recognise those that are I already recognised as such by the law

[Shri H. V. Pataskar.] as administered in the country. I think therefore that it is desirable that only the father and mother should be recognised as natural guardians. I do not want to go into more detailed consideration of this point now, as there are so many amendments on this question and as it is likely to be raised again.

Objection was also raised to subclause (a) of clause 5. It provides that in the case of a boy or an unmarried girl the natural guardian shall be the father, and after him, the mother. And I think that is the present law also. Then there is also a proviso given here which says, 'provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.' There has been a good deal of debate on this. The Rau Committee had fixed mit at three years but the Joint Committee has increased it to five years. Now, there are so many proposals put forward. Some say that there should be a uniform increase in this age from five to eight, ten or twelve. Others say that in the case of girls there should be a different age fixed. Some have felt that in the case of girls, it should be till her attainment of puberty or some such period and some have gone to the length of saying that in the case of girls it should be till she is married. In this connection what I would like to point out to hon. Members is that a close examination of this provision will show that what we are trying to do is to make provision for limited number of cases. Normally it will be the father or the mother who will be the natural guardian and in many cases we expect that the father and mother will both be there and then no question arises at all. If the father dies, then the mother will become the guardian and there also the question does not arise. The question of custody of the minor will probably arise only in cases where the father and the mother are fighting or are at variance with each other. In such a contingency the question will arise as to who shall have the custody of the minor, And it is from that limited point of view that we are trying to deal with this question. This is not concerned with guardianship but with, the custody. All that has been done is to indicate that ordinarily the custody of the child should be with the mother till a particular age. It is nobody's desire that the child should be weaned away. It is only in those cases where there is some sort of a dispute between the father and the mother about the custody of the child—not about the guardianship—that this provision will come in. The idea underlying this provision is to give an indication to the court—even that is not absolute because it may be that the mother is incapable of having custody owing to various reasons and in such cases the court may not entrust the custody of the minor to her—that the custody of the minor who has not completed the age of five years should ordinarily be with the mother. So we need not at all go into the question whether the father is more fit or the mother is more fit. It is only, as I have said, in exceptional cases that the question of custody will arise. This provision here will therefore be applicable only in a limited number of cases and the object is not to distinguish or differentiate between the father and the mother or man and woman but simply to lay down a simple proposition that in the case of young children ordinarily they should be allowed to remain with the mother. This simple provision need not be taken as if we are going to do something by which the rights of guardianship are differentiated as between the father and the mother. All that sort of thing is not necessary. It is just a simple provision and if you look at this provision from that limited point of view, I think that all the heat that has been introduced in the debate so far as this is concerned could be avoided. We are only saying that in such rare cases where unfortunately for the minor there is a dispute between the father and the mother, then normally the mother should have the custody of the child till the age of five years.

Supposing we say the custody of the girl should remain with the mother till she is married, then in such a case, who is to bear the expenses for the marriage? All sorts of questions will arise. In that case, even if we provide like this, the father will be the natural guardian; and the question of guardianship will not be settled if we compulsorily give the custody of the child, whether girl or boy, to the mother. The other day some hon. Members raised the question as to what will happen to the maintenance. How will the mother maintain that child and provide for its education, for marriage, and all those things? There fore, I think it is much better to look at the provision from the simple point of view from which it has been intro duced and not to introduce all these complications in sub-clause (a) of clause 5. If the question is agitated with respect to guardianship that the father is not a desirable person, is in a way unfit to be a guardian, then naturally it is open to the mother to go to a court and get herself appoint ed a guardian and take the money for the maintenance of the child from the father. And the Court will be cogni zant of that matter and will do all that is necessary. It is only from this simple point of view of giving an indication with respect to custody that it has been mentioned in this clause 5; and, therefore, looked at from that point of view, I do not think it is.....

SHRI M. GOVINDA REDDY: What if we omit the proviso which gives room for all these interpretations?

SHRI H. V. PATASKAR: Well, that will be considered at the proper time. If it is thought that this limited indication that is given in this clause need not also be given, then we will consider that when the amendments come. But I should like to make it perfectly clear that the only object with which these words have been used is to give an indication in case of a dispute between the father and the mother as regards custody. Ordinarily the mother shall have the custody of a small child, say of three years or five years, and the child should not be weaned away, so to say, from the breast of the mother.

SHRI P. S. RAJAGOPAL NAIDU: Sir, I have got one doubt in this matter. 1 would like to know what is the difference between guardianship of the person of the minor and the custody of the minor. Can the father be the guardian of the person of the minor and the mother have the custody of the minor?

SHRI H. V. PATASKAR: There is a difference, because in spite of the fact that the custody of the child is with the mother, the guardianship will be with the father, so that he will be made liable for the maintenance, education, medical aid and all those things, which will be a burden on the guardian himself, not because the mother has custody. That is the distinction. The mother is entitled to have merely the custody of the child and not the guardianship of the child. I think that distinction is perfectly clear.

Then, Sir, I think there was not much dispute with regard to subclause (b); nor with respect to subclause (c).

Now, I come to the proviso which also led to a good deal of discussion in this House. What is that proviso? It reads:

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

"What is unnatural there?" I ask. We are going to recognise the natural guardian only in respect of Hindus. Look at the question from a very simple point of view, that this is a clause which tries to recognise natural guardians amongst the Hindus. Apart from all other considerations like 'a secular State' or otherwise, what we have said is that he will cease to be a natural guardian.

[MR. DEPUTY CHAIRMAN in the Chair.]

He will cease to be a natural guardian if he ceases to be a Hindu. The

[Shri H. V. Pataskar.] wording is: "Provided that no person shall be entitled to act as the natural guardian cf a minor under the provisions of this section if he has ceased to be a Hindu." He may even continue to be the guardian, but he shall not be entitled to act as the natural guardian if he has ceased to be a Hindu. As I said, it is logical. Supposing there is a Hindu father; he is the natural guardian of his son. When will that question arise? Of course, in respect of the person it may arise at any time. In respect of property it will arise only when the minor has inherited property. Arid we say that a person who has ceased to be a Hindu will not have the benefit of being entitled to be a natural guardian under Hindu Law, because the natural guardians are recognised, are a special feature of this law. Therefore, consistent with that, what we are doing is natural, it follows as a corollary. That is, when we are going to accept the natural guardians only so far as Hindus are concerned, then we say, if he ceases to be a Hindu, then naturally he could not claim to be a natural guardian. If he is a good father, he can continue to be the guardian of his minor. Nobody takes away the child from him. In respect of property, it may be really unsafe when the minor has inherited some property from a third person. Here is a father who for good or bad reasons has chosen to follow a different religion. Naturally it may mean that he has less love for his family life—it may be, I do not know., He may be a very good father and very convinced of the fact that some other religion is better.

Normally, therefore, it stands to reason that a person who has been given the right of being recognised as natural guardian because he is a Hindu—I do not understand why he should be entitled to act as natural guardian when he has ceased to be a Hindu. That is the simple object with which this provision has been made. And I do not think it in any way conflicts with the ideas of our being a secular State or any other things that Have been said on the floor of this House. As I said, we do not take away the child from him. If he ceases to be a Hindu, but if he is a good father still, and if it is in the interests of the child that, in spite of the fact that the father has changed his religion, he should continue to be the guardian, he can get himself appointed a guardian or he can continue to be a guardian. Therefore, I think it is a proper construction as to why and how this provision has been made in this clause 5. I do not think there is any justification for referring to it as something which we are introducing as communal, or religious or in any of these categories. Therefore, I think this provision is quite good.

Then there was something said about this sub-clause (b) of the proviso:

> "If he has completely and finally renounced the world by becoming a hermit *(vanaprastha)* or an ascetic *(yati or sanyasi)* or a perpetual religious student *(naishthika brah-machari)."*

The whole idea underlying this clause is this. I do not know whether people will continue to become hermits and *"naishthika brahmacharis"* and all that, but if in an odd case a man ceases to take any interest in worldly affairs and the minor has got certain property then the idea is that such a man has become unfit to be a natural guardian on account of the path that he has voluntarily chosen to follow. If he does not remain fit to manage that property, then he should cease to do so. There were some arguments as to what is meant by "completely and finally renouncing the world." Well, that also is difficult to define, but I can say one thing. We know that there are some *sanyasis* who want to go to the Himalayas for certain periods—say for one year or two years —and somebody says he has become a hermit or *vanaprastha.* He may make arrangements for this temporary period for the care of his own children, where there is nobody else to take care of them. And, therefore, there is no desire to take this right away from such people. But if somebody wants to renounce completely and go away to some dis-

tant part for *"tapasya"* or anything of that kind, then naturally such a man becomes unfit to be the natural guar dian of his minor children. In order that the difficulty may be avoided.....

SHRIMATI LILAVATI MUNSHI: It is a wrong translation of one word.

SHRI H. V. PATASKAR: So far as the translation is concerned, as I said before on the occasion of a similar Bill, what we have done is, we have tried to use these very words so as to make clear what we mean by them. The idea of introducing the original Sanskrit words like *"yati", "naishthika brahmachari",* etc., is only to make clear what we mean by the several words which have been used as translations of these words in English.

SHRIMATI LILAVATI MUNSHI: Sir, that is no reason why the translation should be wrong.

SHRI B. K. P. SINHA: How does the word *"naishthika brahmachari"* come in here? A natural guardian can never become a *"naishthika brahmachari"* for a *naishthika brahmachari* is a celibate from his early life. A *"grihas-tha"* can become a *"sanyasi"* or a *"vanaprastha".*

SHRI H. V. PATASKAR: We shall examine that point. The hon. Member may be correct.

MR. DEPUTY CHAIRMAN: Dr. Kane defined *"naishthika brahmachari"* as a person who burns the Vedic fire every day and he said that there may not be any person at all of that type and it is probably a superfluous provision.

SHRIMATI LILAVATI MUNSHI: If he is a *"naishthika brahmachari",* how can he have children?

SHRI H. V. PATASKAR: If it is the wish of hon. Members, I shall have this examined. This provision, as I said, is not one of the most important parts of this Bill. It is only in case of some contingency which might arise that we have provided this.

MR. DEPUTY CHAIRMAN: It is a very rare contingency.

SHRI H. V. PATASKAR: I will not take much time of the House. I do not profess to be either a good translator or to know all the ingredients of a *"naishthika brahmachari".* Dr. Kane has studied this more than anyone else.

Then, Sir, there is not much objection with respect to clause 6 of the Bill. But there was a lot of discussion with respect to clause 7, dealing with the powers of a natural guardian. And the main argument advanced was that it would be very difficult for a natural guardian to get the previous permission of the Court to mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor. In this connection, Sir, I would like to put this aspect of the matter for the consideration of this House. The provision about natural guardians, as I said, is only an exception, so far as this Hindu Law is concerned. There are other systems of law where there are no natural guardians. And no trouble has at all arisen, because there are no natural guardians. Here, for certain reasons, we thought that now that they have come to be recognised for the last so many years, let these natural guardians, the father and the mother, be provided for. And we thought it better that even in the case of a natural guardian, if he disposes of the property of the minor, let that action of the natural guardian be judged by some independent body. And there could be no better machinery than the court. And so, yesterday, I had referred to this provision indirectly in my remarks, and therefore I would not dilate on that point.

Then, Sir, there was another point which was the subject matter of a good deal of discussion. In the original Bill, as it was, there was also subclause (b) after sub-clause (a), which said that "The natural guardian shall not, without the previous permission of the Court lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority." I am

[Shri H. V. Pataskar.] aware that there is a similar provision in the present Guardians and Wards Act. But what I want to submit is that at the time when the Guardians and Wards Act was passed, the land legislation which has become so very-necessary now was not a problem before them. Now, as we know, there is a talk about this land legislation from State to State. There are various kinds of legislations on this subject. And we are not in a position to know exactly what form this land legislation might take in the future. It was purely from that point of view that we thought of leaving it. But it was argued that in the absence of any specific provision, a man might make a lease of 99 years. As a matter of fact, even that can be challenged after the minor has attained majority.

Sir, this sub-clause (1) of clause 7 says: "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 realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant." So we have made it clear that what the natural guardian is supposed to do is to do all acts which are necessary or reasonable and proper for the benefit of the minor. And I do not think it can be argued that a lease for 99 years, or any lease of that kind, will be to the benefit of the minor. However, if it is though; that—I also envisage it—in the course of management it may become necessary to give leases, etc., then some provision might be made so that the permission of the Court may be obtained. But in that case, the whole machinery will have to be examined and we will have to find out whether a lease should be granted or it should not be granted. From that point of view, I shall have no objection if some such provision is made, either a new one, or the one which is consistent with our land legislation policy. But as I was pointing out, whenever we think of this problem, we should also take into consideration very seriously as to whether, in view of the form or the unknown form which our land legislation might take, it would be worth while to see as to what the effect of such a provision in this Bill will be. To my mind, some power may be exercised by the guardian, as it is; but then we should make it clear that the lease should be in consonance with the minor's interests and with the land legislation of that particular State. I think some such provision may be made, because after all, it will be difficult for us to foresee as to what type of leases will have to be granted consistent with the laws that may be passed in the various States. That was the only idea why this was omitted. But if it is found that we can restore it without harming the general cause, then I think, that is worthy of being considered at a later stage. I think the whole idea of incorporating clause 7 is to safeguard the interests of the minors. If that is realised, then naturally it should remain. The only argument that was used for removing the restriction on the powers of the natural guardian was that it would take so much time to go to a court and to get that necessary permission. And, my idea, so far as this provision is concerned, is a very clear one that we can make it as simple as we can. The whole basis of this provision is that when it becomes necessary for the natural guardian even to transfer or mortgage or charge the property of the minor, let it not be done solely by him on his own responsibility, but let it be examined by some sort of an independent machinery. And it is with that idea that we have this provision. And a similar provision is contained in section 29 of the Guardians and Wards Act. In such a case, notices need not be issued. What is required to be done is that it should be placed before some court and there should be some examination to the effect that whatever is being done by the guardian is not for his own benefit, or is not done recklessly, or is not done through ignorance, but whatever is done is really necessary from the point of view of the minor's interests. And it would be much better if that

matter is dealt with at that stage. And I have already explained how that would be beneficial from the point 01 view of the preservation of the minor's estate. I think, therefore, that we shall consider that point when we come to that clause in detail. But some such provision is necessary, and there is no doubt about that.

Then, Sir, as regards testamentary guardians, I have already said yesterday as to why this power is to be given to the natural guardians to appoint, by will, some guardian. Now this clause also raised a good deal of discussion in the House. After all, what is this clause?

It says:

> "It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion to which the father belonged at the time of the minor's birth and, in the case of an illegitimate child, in the religion to which the mother belonged at the time of the minor's birth."

I would also like hon. Members to consider the original provision which was there in this Bill. To my mind that was a very simple provision, a wholesome provision. This was clause 10 of the original Bill, which reads like this

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

In clause 2 we have said that this Act applies "to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat oil. a follower of the Brahmo, Prarthana or Arya Samaj" and "to any person who is a Buddhist, Jaina or Sikh by religion." These are the various forms of the Hindu religion, but a Sikh claims thiit he is a Sikh by religion, a Jain claims that he is a Jaina by religion, a Buddhist claims that he is a Buddhist by religion, and it was from that point of view that we changed the original clause to read:

> "It shall be the duty of the guardian of a Hindu minor to bring up the minor in the religion to which the father belonged at the time of the minor's birth."

If the original wording had been retained, then a boy who was born as a jain oft a Sikh or a Buddhist or a Brahmo or follower of some other form of the Hindu religion, could be brought up in any of these forms of the Hindu religion and there would have been no objection to this, so far as the provision in the Bill was concerned. The only provision was that he should be brought up as a Hindu, which was a wider term. What is now provided in the revised draft is that, if the boy is a Jain or a Buddhist or a Sikh, then he must be brought up as a Jain or a Buddhist cr a Sikh. In view of the fact that there were difficulties in denning what the Hindu religion is and the original provision was much wider, we thought that the provision now made would make the scope a little bit narrower than what it was; that is to say, if the boy is a Jain or a Buddhist at the time of his birth, then he should be brought up as a Jain or a Buddhist. That was probably the desire of the Members of the Select Committee in making this change that the boy should be brought up in the particular form of Hindu religion to which his father belonged at the time of his birth. It may be argued: Why should we, interfere with the faith of the child? Is it not better that he should be brought up in the same form of the Hindu religion to which his father belonged at the time of his birth? That is why it has been provided here that he should be brought up in the religion to which his father belonged. It does not mean that if anybody belonging to some other form of the Hindu religion is the guardian, he must be removed. This only means that it shall be the duty of that guardian to bring up the minor in the faith to which his father belonged. That is the idea underlying this change. Of course, it is open to the House to accept this or to retain the original clause which to my mind, was a little wider. But I leave it entirely to the House because I feel that so far as social legislation is

tShri H. V. Pataskar.] concerned, it should not be governed by the inclination of the Government or of any particular person but should be governed by the inclinations of the majority of those who have to pass such a legislation. I leave it to the House u< decide. As I said the other day, practical considerations demand that normally a boy should be allowed to continue to be brought up in the religion to which his father belonged or in the culture to which his father belonged until such time as he becomes a major and decides for himself as to what he should or should not do.

Thti. I come to clause 11 about the *ae facto* guardians not dealing with the minor's property. I have already stated my reasons yesterday. I feel very strongly and past experience also has confirmed this that de *facto* guardians must not be allowed to deal with the property of the minor. It is not as if nobody can be the guardian of the minor. Suppose there is no father or mother. Any relation can take charge of the minor child. My friend, Mr. K. B. Lall, who runs an orphanage, is the guardian of the children in his orphanage. He need not go to any court. He can do his work which is of very great social importance. What is laid down is that "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." This does not mean ha't nobody can be the de *facto* guardian of the minor. This only means that he cannot in the name of being the *de facto* guardian dispose of, or deal with, the property of the minor, till he becomes a major.

SHRI P. S. RAJAGOPAL NAIDU (Madras): What is the meaning of the words "deal with"?

SHRI H. V. PATASKAR: The term 'deal with' has been also used in other Acts. If it is possible, however, to make this more specific or improve upon this, we shall consider it.

MR. DEPUTY CHAIRMAN: Some expenditure will have to be incurred in the interregnum before the *de facto* guardian obtains a certificate from court. Will it amount to 'dealing with'?

SHRI H. V. PATASKAR: It will.

MR. DEPUTY CHAIRMAN: During the interregnum, what is he to do?

SHRI H. V. PATASKAR: Suppose a boy has unfortunately no father or mother. The intention is that nobody, merely because he acts as a *de facto* guardian, should be allowed to dispose of or deal with the property of the minor.

DR. W. S. BARLINGAY: (Madhya Pradesh): Even the managing of the minor's estate may come under 'deal with'.

MR. DEPUTY CHAIRMAN: It is possible that the guardian may have to incur certain expenses for the benefit of the minor. Can he do it without the permission of the court?

SHRI H. V. PATASKAR: No.

MR. DEPUTY CHAIRMAN: Then, what is to become of the minor? Some time may elapse before the guardian approaches the court and ge,ts its permission.

SHRI BHUPESH GUPTA: He cannot incur.

SHRI H. V. PATASKAR: Nobody can deal with the property of the minor except the father or the mother who of course can do it.

MR. DEPUTY CHAIRMAN: The minor boy has to pay his examination fees. He cannot wait till the court issues its orders.

SHRI H. V. PATASKAR: Let us take a concrete case. There is a minor boy without parents and he has got some property. I do not think that, if there is property, no relations of that boy would come forward to take care of that boy, pending the orders of the court.

MR. DEPUTY CHAIRMAN: Is it so easy as all that?

SHRI P. S. RAJAGOPAL NAIDU: Will not even the administration of the property of the minor amount to dealing with it? Even if the estate of the minor is administered for the benefit of the minor, it might mean dealing with the minor's property.

SHRI H. V. PATASKAR: Suppose there is a minor boy who has got some property. Let us choose between the two alternatives. Is it desirable that somebody, simply because he happens to be the *de facto* guardian, should be allowed to deal with the minor's property, or is it desirable that we should leave things as they are and say that nobody should be allowed to deal with the property of the minor till he attains majority?

What is the better course? What is more in the interest of the minor? I will only concern myself, so far as this Bill is concerned, with the interest of the minor till he attains majority. I know there might be some hard cases or there might be some difficulties but 1 think they are not so insuperable because there are no *de facto* guardians recognised in other systems of law.

DR. W. S. BARLINGAY: May I suggest that after the father and the mother, we may recognize some further legal guardian? That will be a solution of the problem.

MR. DEPUTY CHAIRMAN: There are some amendments to that effect. He is now dealing with *de facto* guardians.

SHRI H. V. PATASKAR: We will consider it later. For the time being this is a provision which is very wholesome and which has been deliberately put in there.

Regarding the guardian to be appointed for the undivided interest in joint family, I think the matter has been argued on both sides. I think that clause 12 is very wholesome. If at all the joint family continues—I don't know what shape it will take after the other Bill is passed and if ultimately the decision of Parliament is that the joint family will not remain, then this will be an innocuous provision—but if it does remain, is it desirable from the minor's point of view, that when there is a joint family of which the minor is a member and there is a Karta of the family and he is managing the property and the father is recognized as the natural guardian, is it desirable that there should be some other person who should be appointed as guardian and he would create complications? Even under the Guardians and Wards Act there is an exception. Some of the High Courts have already these powers and we want to preserve them. Except in exceptional cases, if at all the joint family continues to be a normal feature, then the interest of the minor belonging to that joint family will be better preserved by that Manager of the family because he is already managing for all. What is the necessity of doing this? That was the idea with which this clause 12 has been put in. Then the appointment or declaration of any person as guardian of a Hindu minor by a Court is there and we are not disturbing the existing law. At present the Calcutta and Bombay High Courts have held that they have the power, in spite of whatever is contained in Guardians and Wards Act, to appoint guardians even in respect of minors who belong^ to a joint Hindu family. The idea is as far as possible, not to disturb what is there and which is not in any way objectionable because after all the Court will interfere only in very exceptional cases. Normally, nobody wants to interfere when things are done in a proper manner.

Clause 13 has been introduced in order to make all doubts clear as to what we intend to do by this Bill. It says:

> "In the appointment or declaration of any person as guardian of a Hindu minor by a Court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provision *fit* this Act or of any law relating to

[Shri H. V. Pataskar.] 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."

No other consideration of religion or caste will arise.

I find that there has been some sort of a misconception with respect to what we are trying to do by this Bill and I hope I have atleast been able to clear some of the doubts that were raised and naturally I was very glad to have the benefit of the hon. Members who had certain doubts of their own. They placed them before the House and I had the benefit of listening to them and I think it seems to be the general desire that we agree to the principle underlying this Bill. With respect to the details, naturally we shall come to them at a later stage.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall take up clause by clause consideration.

Clause 2.

SHRI H. C. DASAPPA (Mysore): Sir, I move:

1. "That at page 2, line 9, the words 'or re-convert' be deleted."

MR. DEPUTY CHAIRMAN: The amendment and the clause are open for discussion.

SHRI H. C. DASAPPA: Sir, I don't think I should take the time of the House This is more or less a verbal alteration. It does not interfere with the substance or the content of the clause. Sub-clause (iii) of Explanation to Clause 2(1) runs like this:

"Any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion."

It does not matter whether one is a convert or a re-convert. It does not matter how often he gets converted. A Hindu can be a Hindu not only by birth but by conversion also. So I thought this is a verbal alteration which ought to go into the Bill and that would be also a proper wording. But my attention has been drawn to the fact that in the other Bill—the Hindu Marriage Bill—the Rajya Sabha has subscribed to the clause as it is found now here in this very Bill and that wisdom should have dawned on us earlier to have it amended. I am not very particular about pressing my view point. I only thought that the Bill would be improved in shape and form if my amendment was accepted, and I leave it to the hon. Law Minister to do what he thinks best.

SHRI B. K. P. SINHA (Bihar): I think this word 're-convert' has been put forth because once the question was raised whether the word 'convert' covers 're-convert' or not. It was agitated upon. Ultimately the decision was that the word 'convert' means a re-convert also. I think to put the whole matter beyond any doubt, the draftsman has put a provision like this. That is all I have to say.

DR. W. S. BARLINGAY (Madhya Pradesh): All that I wanted to say was that we may or may not agree with Mr. Dasappa but the point is, if we retain the draft as it is, nothing is lost.

1 P.M.

SHRI H. V. PATASKAR: The whole idea is this. We want that it should be applicable to any person who is a convert to Hinduism, from being a Buddhist or Sikh, or Jain. Then it was pointed out that where he is a reconvert there should be something more. So we put this thing in. As a matter of fact, it was discussed, and when we have one unified code, then this may, if necessary, be considered. But there is no need for such an amendment now.

MR. DEPUTY CHAIRMAN: Does It mean that the hon. Member wants to withdraw his amendment?

SHRI H. C. DASAPPA: Yes, I request leave of the House to withdraw my amendment.

The * amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: So I shall now put the question.

The question is:

That clause 2 stand part of the Bill.

The motion was adopted.

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now the House stands adjourned till 2-30 P.M.

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

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

MR. DEPUTY CHAIRMAN: Clause 3.

There is an amendment in the name of Mr. Vaidya.

SHRI H. C. DASAPPA: He is not here, Sir.

MR. DEPUTY CHAIRMAN: He is absent. That amendment is not moved.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 5.

PANDIT S. S. N. TANKHA: Sir, I move:

3. "That at page 3, for lines 7 to 10, the following be substituted, namely: —

'(a) in the case of a boy or an unmarried girl—the father, and after him, the mother, and after them the following persons in the order named, namely, father's father, father's mother, father's brother (the elder being preferred to the younger), mother's father, mother's mother. and mother's brother (the elder being preferred to the younger), provided that the custody of a minor boy who has not attained the age of eight years, and of a girl who has not attained the age of twelve years, shall ordinarily be with the mother;'."

6. "That at page 3, lines 8—9, for the words 'the custody of a minor who has not completed the age of five years', the words 'the custody of a boy who has not completed the age of seven years and of a girl who has not completed the age of twelve years' be substituted."

SHRI M. G O V I N D A REDDY (Mysore): Sir, I beg to move:

4. "That at page 3, for lines 7 to 10, the following be substituted, namely:

'(a) in the case of a boy or an unmarried girl—the father, after him, the mother, after the mother, the grandfather, after the grandfather, the brother and after him, the paternal uncle;'."

12. "That at page 3, at the end of line 12, after the words the 'father', the following be inserted, name ly:

'and after the father, the brother'."

13. "That at page 3, line 13, for the word 'husband', the words 'father, after him the mother and after her, the husband' be substi tuted."

SHRI KISHEN CHAND: Sir, I beg to move:

5. "That at page 3, line 8, after the words 'the mother' the following be inserted, namely:

'and after her, the paternal grandfather, the paternal grandmother, the maternal grandfather, the maternal grandmother, and the maternal uncle in this sequence'."

*For teft of amendment, *vide* col. 4821 *supra.*

SHRI H. C. DASAPPA: Sir, I beg to move:

7. "That at page 3, lines 8-10, for the words 'provided that the custody of a minor who has not com-ple.oi the age of five years shall ordinarily be with the mother', the following be substituted, namely: —

'provided that the custody of a minor boy who has not completed the age of five years and of an unmarried minor girl shall ordinarily be with the mother'."

18. "That at page 3, lines 17-19, -the words 'by becoming a hermit *(vanaprastha)* or an ascetic *(yati* or sanyasi) or a perpetual religious student *(naistlnka brahmachari)'* be deleted."

53. "That at page 3, line 8, after the word 'mother' the words 'and after them the following persons in the order named, namely, father's father, father's mother, father's brother (the elder being preferred to the younger), mother's father mother's mother and mother's brother (the elder being preferred to the younger)' be inserted."

54. "That at page 3, at the end of line 10, after the word 'mother', the following further proviso be inserted, namely: —

'provided further that it shall be open to either the father or the mother to appoint any one other than those enumerated above after the mother as guardian for the minors by will;'"

SHRI S. N. MAZUMDAR: Sir. I toeg to move:

10. 'That at page 3, line 9, for the words 'five years', the words 'twelve years' be substituted."

16. "That at page 3, line 16 be deleted."

PANDIT S. S. N. TANKHA: Sir, I beg to move:

15. "That at page 3, line 14, after the words 'no person shall', the word 'ordinarily' be inserted."

17. "That at page 3, line 17, the words 'completely and finally' be deleted."

SHRI B. K. P. SINHA: Sir I beg to move:

19. "That at page 3, line 19 be deleted."

SHRI R. C. GUPTA: Sir, I beg to move:

20. "That at page 3, after line 19. the following be inserted namely: —

'(c) if he is unfit to act as such and the Court declares him as unfit in proceedings for the appointment of a guardian'."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now before the House.

PANDIT S. S. N. TANKHA: Sir, in amendment No. 3 which I have just moved, I have provided for the insertion of certain further relations to be classed as natural guardians besides the father and the mother and in amendment number six I have desired that the age prescribed in clause 5 (a) be changed from five years to seven years in the case of a boy and twelve years in the case of a girl. There is some little discrepancy regarding the age of the boy in amendment number three and amendment number six inasmuch as amendment number three mentions eight years as the age of the boy up to which age his custody is to remain with the mother and amendment number six mentions this as seven years.

SHRI H. C. DASAPPA: May I humbly suggest that the proviso may be taken up and considered separately and the list of natural guardians be dealt with in the first instance because there are separate amendments given to the proviso. They may be split up.

MR. DEPUTY CHAIRMAN: There may be common discussion but I shall put them separately to the vote.

PANDIT S. S. N. TANKHA: Amendment Nos. 3 and 6 which I have tabled do not relate to the proviso to sub-clauses (a), (b) and (c) of clause 5 but they relate to subclause (a) of clause 5 only. Now, why I have desired that the following persons, namely, the father's father, father's mother, father's brother (the elder being preferred to the younger), mother's father, mother's mother and mother's brother (the elder being preferred to the younger) should be included as natural guardians for the minors after the father and the mother is because up till now it is these very persons who were usually looking after the interests of the minors when their parents were not alive. Now, Sir, we see that in clause 11 these very persons, namely, the so-called *de facto* guardians have been eliminated; hence the necessity of providing for these persons to take care of the children in the absence of their parents. I am aware of the fact, Sir, that under the present Hindu law only the father and the mother are the natural guardians of the minor.

MR. DEPUTY CHAIRMAN: The hon. Minister, while replying to the debate, said that the *de facto* guardians have not been abolished. The only thing is that they cannot dispose of or deal with property without the permission of the court. That is what the hon. Minister said.

PANDIT S. S. N. TANKHA: They have not been given any status. TMc is what I mean. The status of the de *facto* guardians has been done away with and hence it is that these very persons who were upto now the so-called *de facto* guardians of the minors have been refused to be recognized as their guardians in law. Now, that status having gone, I wish that their status as guardians in the absence of the natural guardians should be recognised at some place or the other under the Bill. The best place in which they could be provided for and recognised is to givp them a place in the list of natura[1] guardians after the parents are dead I am also aware of the fact, Sir, that even in the Muham-madan law, the natural guardians are only the father and the mother and not the other relations but, as I have just submitted, because of the non-recognition of the other relatives as guardians, de facto or otherwise, I have found it necessary to have them included in the list of natural guardians. Now, why I want this to be done is this. As I have stated earlier, the mental outlook of a person is changed by the non-recognition of his status in law. As soon as a person comes to know that the law does not give him a status and does not recognise his character of a guardian to the minors, he begins to think that it is none of his duty to look after the interests of those whose care was his bounden duty so long as he was recognised as a guardian to my mind and this change of mental outlook plays a great part in one's actions.

Therefore, Sir, I think it is very necessary that these relations be recognised as natural guardians under the Bill. Now if there is any fear that these persons being remoter relatives—although personally speaking I do not think that a grandfather or a grandmother, either paternal or maternal, are relations more removed to the minors, but all the same, if it is feared that they might dispose of the property of their wards against their interests then I would submit that while giving them the status of natural guardians it may be provided that they will not be able to part away with the property or to charge or encumber the property of their wards in any manner except with the oermission of the court, and with tfiat stipulation, Sir, I think their

[Pandit S. S. N. Tankha.] inclusion in the list of natural guardians will play a very healthy part in the upbringing of the minors. I am in entire agreement with the Minute of Dissent No. I which has been appended to this Select Committee Report by Mrs. Ila Palchoudhuri and I would draw the attention of the hon. Members to the reasoning given in that Minute of Dissent. She has rightly pointed out: "If only father and mother are going to remain as natural guardians, there will be great difficulty in some cases for the minor. 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. On the other hand, it will also have a very bad influence on the minors themselves. A 'minor' is not always a child of three or four or six or seven years, but may be of any age upto eighteen. In fact, the most mouldable and troublesome years—say froPi eight to seventeen or eighteen—will certainly be adversely affected by the knowledge that nobody has any legal right to guide them except his father and mother. After their death, should that happen, the minor will either feel absolutely lost and forsaken or feel the implications of a very unwholesome freedom; neither of these conditions is desirable."

She has therefore made suggestions similar to those tabled by me.

Then, Sir, shall I take up the other amendment about age also along with this?

Mi.. DEPUTY CHAIRMAN: Yes.

PANDIT S. S. N. T A N K H A : As regards the age, namely ab 10 what would be the suitable age at which a boy and a girl should be allowed to be removed from the custody of the mother, so far, as you are aware Sir, the law was and is that the father was the natural guardian of his minor children irrespective of their age-limit, and it often happened that whenever the husband and the wif: were not on good terms and fell out the first and the most convenient weapon which the husband employed to fight against the wife with was to attempt to take away the custody of the children from the mother. That has been a frequent occurrence in the courts of law and there have been very many cases where even children of very tender age, namely, of three, or four, or five years have been deprived of the custody of their mother. I consider such a thing most unwholesome from the point of view of the welfare of the children, as J am definitely of the view that for a boy or a girl of young and tender age no other person is in a better position than the mother herself to look after their care and comfort. The father may have the greatest love for his children, but all the same, man having so many duties to perform outside the home is not in a position to look after the well-being and care of children of tender age so well as the mother can. At an age when the children become of school-going age then of course the matter is different because from that age the father plays a greater part in their upbringing and in their schooling and as such I have suggested that the age of the boy should be fixed at seven years or eight years at which he may if found necessary be removed from the custody of the mother. Now, Sir, I find support for this proposition from the Muhammadan Law also wherein bot"^ under the Hanafi Law which is the law for the *Sunni* Muhammadans a well as in the Shafi law which is the law for the *Shia* Muhammadans, the custody of the boy remains with the

mother up to the age seven and that of the daughter up to the age of puberty though of course the mother is not recognised as first natural guardian under that law also. Therefore, Sir, I maintain that, if it is intended by the hon. the Law Minister to bring the law of the Hindus, Mohammadans, Christians and Parsis, etc., in line with one another and ultimately to bring about a uniform code for all religions, then it is only right and proper that we should try and follow the other religions also in the matters before us and therefore, Sir, the Muhammadan law having provided for these two separate ages namely, for boys and girls as I have stated earlier, it will be only rignt on our part to fix those ages in this law of ours also. Moreover, Sir, I feel that the Select Committee, when it went into this question, must doubtless have found the need and recognised the utility of advancing the age of the children before which their custody may not be removed from the mother and the Select Committee came to the conclusion that after all it is necessary that the mother should have the custody of her children up to a certain age which was not provided under the law up till now. Therefore I would submit that when the Select Committee has held that the age should be fixed at live, we will not be going very much beyond the intention of the Select Committee if we merely increase the age of the boy from five to seven and in the case of a girl from seven to twelve or seven to puberty. It is said by many of the critics who are against this proposition, that seven years of age is rather an advanced age for the custody of the boy to be removed from the mother and that five years is a proper age.

But I will submit that seven years even in the case of a boy is not at all an age before which it will be in the interest of the child to be removed from the custody of the mother. As for the daughter, I have no doubt in my mind that the daughter's custody is best with the mother rather than with the father and as such we will be doing no injury but will be acting only in her interest if we provide that the custody of the girl should continue to be with the mother up to the age of twelve or if the House is so agreeable up to the age of her marriage. Therefore, Sir, with these words I commend my amendments to the House for acceptance.

SHRI BHUPESH GUPTA: Sir, I am opposed to amendment No. 3 whereby the number of natural guardians is sought to be increased by the hon. the mover of that amendment. He referred to the Minute of Dissent by Shrimati Ila Palchoudhuri where it is said that the awareness on the part of the minor that he has none with legal right to look after him would have some kind of a bad effect on him. Am I to understand that a minor will be bothered about what is legal right or not? The minor child will go by natural considerations, the facts of life as he experiences. Therefore he or she would not be bothered at all as to whether the person who is looking after him has got certain rights in the eyes of the law or not. That would be immaterial for him or for her. In any case we do not expect young boys and girls of that age to think in terms of legal rights and legal liabilities. That sort of thing just does not happen in life. It may be that there will be some people who go and tell them, whisper into their ears, that such and such people looking after them do not have legal rights. But I do not think that we should encourage this sort of thing being said to young children.

Now, the point that my friend Shri Tankha has made needs to be answered. He thinks that if the legal right is not given to the brother or the persons he has named in his amendment, they will not be interested in looking after the minor children but do I understand that they wouM

[Shri Bhupesh Gupta.] place certain legal rights found in the Statute Book above their considerations of love and sympathy for the minor children? That also does not happen in life. If some relatives undertake the responsibilities of looking after minor children, they will be actuated by good motives and by sympathy and love and they would not be interested in finding out as to what the legal position is. The question will arise only when that person is called upon to deal with the properties or when he feels that he should alienate or charge certain properties. And in that case the Court is open to him. He can go there and get the authority of the court, as I said earlier. Therefore, let us not view this matter from that angle. Natural love is something which I think is more important in this case than the so-called considerations of law. After all, what is our experience in our life? A good brother is not interested in finding out what his legal rights are when a situation arises, when he has to look after his young minor brother. He just takes upon himself the responsibility of looking after him. He is not concerned as to what the rights are. This brother is also supposed to be a social creature and has to function in the social set-up. If there is a question of alienating certain properties or charging certain properties, may be he would be interested in getting his plans or his actions more or less endorsed by the court of law. That sort of thing would be resorted to by people functioning in the present social set-up. There is nothing to prevent him from doing it. I concede in certain cases, in cases of urgency, difficulties may arise, as, for instance, you were mentioning the case of a brother about to sit for an examination wanting to obtain fees. If it so happens that the guardian, assumes responsibility just a day before the last date for the payment of the examination *eps and if it is to be a question of making out a cheque, then there may be a little difficulty because the permission of the court or the authority of the court will not have been obtained. But in such a case the situation can be managed. Sometimes those who are well off will make out the cheque or produce the cash and then they may be reimbursed from the properties of the minor after obtaining the consent of the court. Now, the whole approach as far as we can make out from this Bill is to guard against certain adverse contingencies. If you alter this clause then you will not be guarding against those contingencies. If our experience had been that all brothers behave perfectly well, that they are all decent and honourable beings and that all these people who are *de facto* guardians become de jure guardians in order only to serve the interests of the minor children, then we would not have been interested in bringing forward a legislation of this kind. But in the past we have had a different type of experiences. Only when a minor child has certain properties, we found large number of relatives queueing up for assuming the great role of guardianship. That is what happens in life. If a destitute child is there, you do not find very many *de facto* or *de jure* guardians. You only find in such cases those who have got natural love for the child, namely, father or mother, or in some cases brothers and other relatives. But generally the trouble arises only in respect of cases where properties are involved and it so happens in an acquisitive society like ours, when we run after properties and when property becomes an emblem of prestige and honour, that we defalcate the funds of the minor in order to advance our positions in society. Thus we land ourselves in a mess. And when the minor becomes major, he goes to the court of law and begins to challenge almost every transaction that may have been made. That is how things happen. Therefore having regard to what has been happening all the time, having regard to certain vices

which are there because of certain social disequilibrium, I think this provision should remain as it is.

Now, the hon. Mr. Tankha should have moved an amendment to clause 4 if he wanted to enlarge the scope of the natural guardians. He wants to introduce those elements through the backdoor by resorting to an amendment to clause 5. If you accept his amendment here, it means that clause 4 becomes altogether a farce, and much of the effect of that clause will be gone by this amendment. Therefore I think it would not be proper at this stage to accept this amendment. Much has been said about this. I refuse to think that we are such people who would not like to look after our minor relatives just because hon. Members of Parliament have not passed a law recognising certain rights or just because there is not a law on our Statute Book which says that a particular relation is the natural guardian. A natural guardian is a natural guardian. Natural love flows like the Ganges whether you are a legal guardian or not. You do not require a law in order to give it recognition. The question of recognition will come only when the position of being a guardian is brought to bear upon the treatment of certain types of properties. Only then the question will arise and I do not know how it is inconsistent for a guardian to go to a court of law and seek he authority of the law. If they are genuinely natural guardians they would not, I believe, be bothered as to how the law thinks about them because they know that they can love the children and look after them. There is nothing in the law to prevent that sort of thing. Only when they have to deal with certain properties they have to go to 3 P.M. a court of law and seek its approval. Nothing beyond that. That is all. Now, I cannot see as to why the hon. Members here should be so much interested in increasing the number of natural guardians; by introducing this term involving a lot of people, a lot of unpalatable things had happened in the past. We can leave it to the de *facto* guardians to function as guardians in fact and we can leave it to them to decide as to whether to go to a court of law and seek its consent when it comes to the question of dealing with property. Therefore, I would ask the hon. Minister not to yield to such pressure here, because pressure is being brought to bear upon him and, from the speeches that have been made, I feel that his mind is open both ways. If his mind is open to-the progressive amendments that we have tabled from this side and that side of the House, that is all right; we hope that he will accept these amendments; but if his mind is open also to reactionary and retrograde.,,,,,

SHRI B. K. P. SINHA: Your amendments are all reactionary; none of tnem progressive.

SHRI BHUPESH GUPTA: ..... and reactionary amendments that have been offered here, then, of course, we hope that the mind had better be closed, because if you open the window of that mind, lots of things will enter and I do not know what will happen ultimately. Therefore, I think that these amendments will not be accepted by this House with regard to lengthening the list of natural guardians.

MR. DEPUTY CHAIRMAN: AH those who have moved amendments will speak first.

SHRI M. GOVINDA REDDY: The principle underlying my amendment No. 4 is one of adding to the list of natural guardians. I followed the reply of the hon. Law Minister with great respect and attention. Arguments against enlarging the scope of natural guardianship are mainly three. On_e is, this is the present law. Father and mother are at present recognized as natural guardians and we should confine only to these two natural guardians. The other argument is, if we should begin

[Shri M. Govinda Reddy.] to enlarge the scope of these natural guardians, and add on near relations, there will be no end to it. One may say, grandfather, uncle, then father-in-law, or brother. It may go anywhere; so, we will not be arriving at any definite degree of relationship where we could stop and which could be taken as a final natural guardianship. And, so, there are difficulties in that. The third argument is that we are now progressing towards evolving a common Civil Code. If we are going to evolve a common Civil Code, whatever we may enact now must be so simple enough as to enable it to be included without much difficulty, without much controversy, in a common Civil Code. I agree with this latter view and nobody will be happier than I to have a common Civil Code even today if it is possible; and if our Government could make up their minds to bring forward a common Civil Code, I welcome with open arms. But that day is far off. In support of my amendment I plead only practical difficulties. Now, the *de facto* guardian is done away with. Supposing a minor is left without either a father or a mother, then according to the law which we are now making the minor will be left in a vacuum. The hon. Law Minister says: why should we think that he is in a vacuum? There are other relations. This law does not prevent those relations from taking care of the minor. This is a plausible argument, but it is not a sound argument, for this reason. A near relation can take care of the minor, but he cannot take care of the property, under clause II of this Bill.

SHRI BHUPESH GUPTA: He can generally take care of the property.

SHRI M. GOVINDA REDDY: It is Impossible for any relation, excepting the natural guardian, to deal with the property of any minor. What is the definition of 'dealing with the property' as used in clause 11 of this Bill? You step into the minor's property, you are dealing with the minor's property; you are cultivating the minor's fields, you are dealing with the minor's property; you are harvesting the minor's crop, you are dealing with the minor's property. Anything that you do in relation to the property would be dealing with the property. Can it be said, is it commonsense to say, that there may be a guardian and still he cannot do anything with the property, atleast to see that the property is taken good care of, prevent it from being wasted, or the yield that could be got from the property is realised before the permission of the Court could be obtained as per clause 7? There must be some arrangement for that. Now there is no arrangement and the hon. Law Minister also says: "No, this law does not prevent anybody from taking care of the minor and from maintaining him." We must take human facts as they are. If a minor is left with no property, then the springs of sympathy ' will be moved in the relation and anybody will take care of him. But suppose a minor is left with property, the natural reaction would be: "Why should I not spend money from the minor's property when he has got property; and why should I be prevented from utilising the resources of that property for the benefit of the minor?" This will be the natural reaction. The third thing is that there will be a natural resentment in the guardian who thinks that he is doing everything possible in the interests of the minor, for the benefit of the minor, but the law as it stands binds his hands not to improve the minor's property or to even take care of it. That is a sentiment which we should reckon with. It is all right if a minor is left an orphan, without any property. Then any natural guardian, however remote he may be, or any relation, however remote he may be, will have sympathy for the minor. But when a minor has property, then all natural springs are exhaustea. Then he will ieei mat when tne

minor has property 'I must make use of the property for his benefit.' He may not misuse it, but he must have freedom atleast to take care of it for his benefit. Now, we are closing the door for all sorts of things and we are leaving the minor in a vacuum; and we know that the Law Minister assured us that he would see his way *to* make the question of getting the permission of the Court as easy as possible. I would like to know if there could be an easier way. Instead of going through the normal procedure, only this relief could be obtained from the court by filing an application and the court may hear the application and grant it. Without any delay it would be all right. But there are many limitations. But the court must be convinced of the necessity, that it is to the evident advantage of the minor to allow the minor's property to be mortgaged or charg-ad, or transferred or alienated and this means delay. These restrictions are imposed with the result that the minor is left without help in the absence of a natural guardian. Nobody can say with any plausibility that the court will grant as a matter of course any certificate. Well, Sir, for these reasons, it would be better to enlarge the scope of the natural guardians of the minor. After all, What is the risk there? What harm is there? What is the danger in enlarging the scope of natural guardian? Ther$_e$ is no danger, since we have placed restrictions on the powers to deal with that property. Why should we not have two or three degrees more as natural guardians" As far as the complexity of the degrees, as far as the unending degree, is concerned, we can arrive at some suitable settlement, if we accept the principle that the natural guardian may be enlarged. We can arrive at seme common degrees, there is no difficulty. Practically speaking, the minor would be placed in much more difficulty with only two natural guardians, than he would be with more natural guardians than even under 19 RSD.

the existing law. Therefore, I would still like to urge the Law Minister to see his way to enlarge the natural guardianship in however small degrees it may be after the father and mother.

MR. DEPUTY CHAIRMAN: Have you got anything to add regarding your amendments Nos. 12 and 13? All the amendments are open for discussion now.

SHRI M. GOVINDA REDDY: Yes, Sir. Amendment No. 12 is the same. The same arguments which apply to my amendment No. 4 apply to amendment No. 12 also.

In regard to amendment No. 13, I say that the husband should not be considered the guardian of a minor wife. While speaking generally on the Bill I have advanced arguments for this. If she is married and if she is with the husband, it is all right. But before she is married, if she is a minor, the better persons who can take care of the minor wife would be naturally h°r own parents rather than the husband. Of course, that is the law; I have no legal strength to plead.....

DIWAN CHAMAN LALL: Before she is married, the husband does not come in at all.

MR. DEPUTY CHAIRMAN: The husband does not come in at all.

SHRI M. GOVINDA REDDY: No, Sir, minor wife.

DIWAN CHAMAN LALL: Minor wife must have a husband.

SHRI M. GOVINDA REDDY: Sir, if the married girl is with the hu~ band, that is all right. But we are not presuming such a situation where a minor married girl remains with the husband. The married girl, when she is a minor, will be in the house of her parents. So. naturally the best persons that would take care of the

[Shri M. Govinda Reddy.] gin would be the parents, and not the husband.

MR. DEPUTY CHAIRMAN: A girl who is about 16 or 17 years of age?

SHRI M. GOVINDA REDDY: Sir if that is so it is all right. But, however, I do not press that. But I generally consider that father and mother, when she is young enougn and when she is not living with her husband, are the best people to take care of the girl.

SHRI KISHEN CHAND: Mr. Deputy Chairman, my amendment is slightly different from that of Mr. Tankha, inasmuch as I think that in me absence of the father and the mother, it should be the paternal grandfather, the paternal grandmother, the maternal grandfather, the maternal grandmother and the maternal uncle. I submit that I have tried to exclude the paternal uncle specifically because I think that in the case of a joint property, the quarrel always takes place between the uncle and the nephew. And, therefore, to avoid that, I have purposely excluded him. I did not want to say very much. But the remarks of Mr. Bhupesh Gupta have raised certain points which, I think, arise due to a misunderstanding. Why we want to add these relatives for being appointed as natural guardians is specifically for the reason that supposing these relatives are not included here, and if the father and the mother are not alive, naturally somebody has got to become the guardian. And supposing a third party or anybody who may be interested in the property goes to the court and raises the question that so and so is acting as a *de facto* guardian and he is an unsuitable person, then it would be very difficult for the grandfather and the grandmother to approach the court and try to establish that they are really proper persons.

SHRI BHUPESH GUPTA: H_e probably does not know the difference between a *de facto* guardian and a natural guardian. You can ask the people in the villages.....

SHRI KISHEN CHAND: It is not a question of asking them about the difference between a de *facto* and a natural guardian. Here the point is that the right of the de *facto* guardians can be questioned in any law courts, and it would be putting the grandmother and the grandfather to very great inconvenience, if they have got to go to the court and get from the court a certificate that they can be guardians. It is quite possible, Sir, that some third party may approach the court and get a decision from the court in its own favour to become the guardian, and in that way, harm the interests of the minor. Therefore, I think, when we are considering the list of natural guardians, thereby facilitating the appointment of a guardian, there is no harm in extending the list. The question that the list can be increased indefinitely does not arise, because you see that it is confined to the grandfather and the grandmother, both on the paternal and the maternal side. When sjch a restriction is put, I do not see any objection which can be raised to my suggestion. With regard to the management of the property, whether it is there or not there, it will come in a subsequent clause. Whether this guardian should have the right to dispose of the property or not to dispose of the property without permission of the court, is a subsequent consideration. Here the main consideration is the interest of the minor, and in that, Sir, unless you have these other relatives, the interests of the minor will suffer.

Then, Sir, I come to the next point. I strongly oppose the amendment moved by Mr. Tankha wherein he wants to raise the age of the child, in whose case the custody of the person of the child will remain with the mother. At the time of the first read-

ing of the Bill, I found certain lady Members of this House, out of a desire for equaiicy between the two sexes suffering from a sense of inferiority complex. Whenever anybody dis agrees with them, according to them, he is backward, he has got orthodox views, and he is not forward enough. I really cannot understand this men tality of theirs. Possibly, they want to change the biological facts of life. Sir, whenever we are discussing certain problems in this House .....

PANDIT S. S. N. TANKHA: Biological facts are being changed by nature itself.

SHRI KISHEN CHAND: Then pro bably Mr. Tankha is creating a new world of his own. I do not know how the biological laws are being changed. We are not yet av/are of..... (Interruption.) ....., well any how, Sir, these are certain reali ties. You ask any person who is at least connected with delinquent child ren, and he will say that in families where the father, or at least the male person, is not in charge of the house hold, is not in charge of that minor child, delinquency cften occurs. Especially in the case of a boy, it is Ihe physical force or the physical presence of his father and his real ; 'id proper guidance that build the character of the boy. Therefore, I do not think that it is a question of superiority or inferiority of sexes, nor is it a question of the rights of the mother being abrogated. But it is a j very simple question that in the interests of the boy, it is very essential that once he has attained the age of five, he should be under the guar dianship of the father.

Sir, certain hon. Members spoke very glowingly of the contribution made by mothers to the building up of the character of their children. But that does not mean, or it does not imply, that they do not pay an equal respect to their fathers. According to the Hindu *Shastras,* it is the bounden duty of the son to really pay full respect to his father. And therefore, Sir, we should not be led away by sentiments because certain hon. Members say that the mother had exercised a great influence in the building up of their character. And therefore it is essential that in all normal families .....

SHRI H. P. SAKSENA: And to offer water ablutions to his father when he is dead....

SHRI KISHEN CHAND: It is very seldom that.....

MR. DEPUTY CHAIRMAN: Mr. Kishen Chand, what do the *Upani-shads* say? They say मातदेवो भव,
पितृदेवो भव, आचार्यदेवो भव ।

SHRI B. K. P. SINHA: Mr. Deputy Chairman, and one more thing that the chief deity of the Vedic Hindus is *Adi Shakti, Maya,* the mother, and not the father.

SHRI KISHEN CHAND: I admit, the duty is to the mother, but fca guidance is of the father. The son must pay his respect to the mothei, but he will be guided in the moulding of his character by his father. And, therefore, I think, to make a distinction betv/een a boy and a girl and to say that the girl should be looked after by the mother till she is married, will not be a right thing Both in the case of the boy and the girl, the custody of the person of the child should be, up to the age of five, with the mother, and after that with the father.

SHRI H. C. DASAPPA (Mysore): Mr. Deputy Chairman, clause 5 deals with three aspects of the same subject. The first part is as to who should be the natural guardian; the second is with regard to the custodv of the minor children in certain cases; and the third is with regard to the termination of the guardianship on certain grounds. I have sent in certain amendments in regard to all these.

[Shri H. C. Dasappa.]

As regards the first subject, *viz.* the extension of the list of natural guardians; my amendment reads thus:

> "That at page 3, line 8, after the word 'mother' the words 'and after .nem the following persons in the order named, namely, father's .dwiier, father's mother, father's brother (the elder being preferred to the younger), mother's father, mother's mother and mother's brother (the elder being preferred to the younger)' be inserted."

I have also got another proviso added to this in view of the fact that the right of making testaments or wills is conferred on the father or the mother for the guardianship of the minor children. It is confined to the father and the mother as it stands and I intend that it should not be extended to the other guardians whom I want to be included in the list of natural guardians I have enumerated. My amendment reads like this:

> "That at page 3, at the end of line 10, after the word "mother" the following further proviso be inserted, namely: —
>
> 'provided further that it. shall be open to either of the father or the mother to appoint any one other than those enumerated above after the mother as guardian for the minors by will;'".

It is as much as to say that the father or the mother if he or she so desires can appoint as a testamentary guardian any of the natural guardians sought to be included now after the mother or any one outside the list, and that may be for very good reasons. It is quite likely that the father or the mother may find one even outside in the list as the most desirable to take charge of the person [N]or the property of the minor, and therefore the father or the mother may make a will appointing as guardian anyone in whom he or she has the fullest confidence. This freedom for the father and the mother to appoint whomsoever they may be pleased to appoint as guardian should not re aken away from them. This is all that the proviso seeks to do.

Now in dealing with this first question, in addition to the very sound, able and, what i feel to be, convincing arguments put forward by my friends, I wish just to add a few more reasons. When we take away the recognition that has been given by law to de *facto* guardians to act as guardians in certain circumstances, a certain vacuum is created. We should try to fill up that vacuum and provide for certain contingencies which inevitably arise in the case of minors having neither of the parents. It will be extremely unfair to the minor himself and his estate if we allow such a vacuum to be created and we make no provision whatever for it. Here we leave it in the air more or less and prevent natural love and affection to operate in taking custody of the minor and possibly dealing with his property without injuring it except it be by first being appointed by court as guardian. That is clause 11 of the Bill. To me it would be a wonderful feat for any guardian to take possession of the property of the minor and yet not deal with it. Clause 11, as drafted, effectively prevents any de *facto* guardian from dealing with the minor's property. He can by all means look after the person of the minor, spend out of his pocket as much as he pleases and do everything except safeguarding the interests of the minor so far as his property is concerned. This is an illogicality and we should see that a difficult situation is not created in the circumstances. I do not want to labour this point further because everybody understands this point. Of course, some people have said that the guardian may first spend out of his own funds and then recoup it from out of the property. I am surprised that this argument is seriously put forward by I some of the hon. Members here. The

moment you advance money and then try to recoup it out of the property, you are dealing with the property of the minor. I cannot understand this Kind of self-delusion. The moment you try to recoup it out of the property, you come within the arms of this provision.

MR. DEPUTY CHAIRMAN: Recoup with the permission of the court.

SHRI H. C. DASAPPA: I will come to that. No de *facto* guardian can go to the court for the purpose of recouping until and unless he gets himself appointed as a court guardian. That is the law.

SHRI J. S. BISHT (Uttar Pradesh): "What is the difficulty about that?

SHRI H. C. DASAPPA: I am trying to answer the Chair who says that you can recoup it after obtaining the permission of the court. I say that you cannot recoup it unless you .get yourself appointed by the court as a court guardian. I am referring to the Chair's remark. He cannot deal with the property in any manner prior to the obtaining of the permission of the court. Whatever transaction he has made prior to his appointment as the court guardian will become null and void, and he has got to pay through his nose any expenditure he may have incurred.

DR. W. S. BARLINGAY: Your point is that such a person may not after all be appointed by the court as the guardian.

SHRI H. C. DASAPPA: Exactly. Dr. Barlingay effectively points out that the person who has advanced -money out of his pocket may not be appointed by the court as guardian by reason of the fact that some other relation of the minor has chosen to file an application that he is a better person to be appointed as the guardian. So instead of the X who has advanced the money, Y may be •appointed as the court guardian and X may lose everything.

SHRI BHUPESH GUPTA: The fact that he has advanced money may be a consideration for the court to appoint him as the guardian.

PANDIT S. S. N. TANKHA: Not at all.

SHRI H. C. DASAPPA: Not necessarily. I have also some knowledge of law, even though my knowlege may be a bit old.

SHRI J. S. BISHT: Why should he not get himself appointed by the court? If it is a bona *fide* transaction, then the court will certainly appoint him. If it is a *mala fide* transaction, then the case is different.

SHRI H. C. DASAPPA: My friend was not evidently very attentive to the Chair, who put forward a specific instance. I can go on enumerating any number of instances. For instance, there is a coffee estate. The coffee crop has got to be harvested and if my friend knows anything about the coffee crop, he will know that a week's delay may ruin at least fifty per cent, of the crop. Who is going to attend to it?

SHRI H. V. PATASKAR: I have known of a case when the Collector promptly acts and issues an order even without issuing notice to the others.

SHRI H. C. DASAPPA: I have also seen estates going to ruin because of neglect in such cases .....

DR. R. P. DUBE: Those days when such things used to happen have gone.

SHRI H. C. DASAPPA: It is said that in Bombay if you file an appli cation for guardianship, you will get a decision within a week. But I have conducted cases where it took more than 12 months for getting a guar dian^ appointed. As Mr. Bisht says, if 'X' wants to file an application, sup posing he is the eldar brother and the maternal uncle says that the elder brother has no interest in the minor and that he himself should be appointed as auardian .....

MR. DEPUTY CHAIRMAN: I know of a case which took seven years.

SHRI H. V. PATASKAR: I can point out a case in my experience where the estate was big and the collector took charge of it within 24 hours of his being informed that it would otherwise be wasted.

DR. RADHA KUMUD MOOKERJI: These stray cases should not be the basis of legislation.

SHRI H. C. DASAPPA: These may be stray cases but who is to decide that that is a stray case? Even for stray cases the law should provide. It should not be omitted because by and large the cases that come up to the Court for appointment of a guardian will be few because of the undivided estates. A large number of minors will not come under the operation of this Bill for the obvious ieason that this does not apply tc joint family properties. Anyway thaf is a different thing. What I am say-jng is, here is a case which with out eyes open we don't provide for. Why snouid we ever put the interests ot the minor in such jeopardy as thax when it is quite possible for us to provide for the contingency? That is one aspect of the proposition. But there is a second which I hope will at least go home to the minds of our friends who may still be doubtful about the virtue of our suggestions. Till today the matter was a little unsafe for the minor because it was a question depending upon the interpretation of necessity and the benefit of the minor. If the transactions were because of a legal necessity and were in the interest of the minor the courts would not interfere with those transactions, transfers or mortgages, etc. But now what is it that you have done in the case of natural guardian? It is a very big name for a very little right conferred on the natural guardian. There were very good, reasonable rights for him till now but this Bill takes away the most substantial right of the natural guardian and how? Because ot sub-clat^" (2) of clause 7. It is not possible for the natural guardian to deal with any immovable property in any manner he likes except leasing interminably—I have an amendment on that—unless it be with the permission of the Court. No->" when the natural guardian's natural rights which were recognized under the Hindu Law are to be crippled in this manner,—I don't see why it shouia oe aone—why should we hesitate n« the case of adding a few more to thfc list subject to the same restrictions and safeguards? Where is the damage that is going to be caused to the interest of the minor? I am afraid that we have taken as the background for the enacting of this Bill the existing Hindu Law regarding natural guardianship only but at the same time we have cut off a large slice of their existing guardianship rights and are retaining a few of them and then saddling those few with these restrictions. I have yet to get an answer as to how the interests of the minor will suffer more at the hands of these guardians whom we have enumerated now than they would suffer at the hands of the natural guardians themselves. When there is the condition that the permission of a court is necessary for dealing with the immovable property, how is it that the natural guardian will be able to protect the immovable properties of the minor better than the other guardians whom we have enumerated? It is so simple, so obvious. The time has come now for us whei we are revising the whole law, to-incorporate a few at-least of these close relations who have the interests of the minor children at their heart among the natural guardians. Are we not seeing today in our daily life the interest that the grandparents take in the minor grand-children? In fact, even when the father and mother are living, on whose lap dc> the minor children grow up? Is it on the lap of the grand-mother or on the lap of the mother? Likewise, even on the maternal side, we know it for a fact that all the ties of natural love-

and affection—are there inasmuch of an intensity as we can find in the case of even one's own parents. In fact, it is stated that a house without a granny will not flourish very much.

SHRI S. N. MAZUMDAR: But when the granny does not exist?

SHRI H. C. DASAPPA: That is a common saying in our parts. I take it that some of these old adages have a lot of good meaning in them. Therefore when we have the safeguard against alienation of any kind of the minor's estate or the immovable property, I think we have made out a very good case for adding some more to the list.

Let me deal briefly with the other two questions—one of custody and the other of termination of guardianship. With regard to custody, I thought I had the approval of a large portion of the House to my proposition that so far as the minor boy is concerned, his custody after five y^ars may go over to the father because after all his education, upbringing, his outward life, his sports-manship etc. are things which the father can better look after. But until five years, I quite see that—and there can be no dispute on the fact— it is the mother who should be in charge of the minor boy. Even if the clause remains as it is, no great harm will accrue to the boy. If anything, he will grow up as a tough guy and I think he will be a better citizen. But what I am rather astonished at is that there should be hon. friends here who think that the minor girl should be handed over to the father after five years. I entirely agree with the hon. the Law Minister that this issue or question will never arise so long as the father and the mother are living together and they have a happy home. It is only when there is a certain amount of disturbance of family life— I will put it that way—when the father and mother may be living separately, that the trouble will arise. It is only then that this issue will arise. If there is a thing like divorce, then the court granting the divorce will make provision as regards the custody of the child, whether it be boy or girl. So I do not want to deal now with the case of divorce that goes to a court and gets decided.

SHRI KISHEN CHAND: What will happen if it is judicial separation?

SHRI H. C. DASAPPA: That also is virtually the same thing. What I am envisaging now are the cases where there is a certain amount of disharmony between husband and wife, where the wife does not choose to go to a court of law and get a divorce, and where for some reason or other she chooses to remain in hei parents' housed stay separately from her husband. It is only in such cases that this question of the custody of the minor daughter will arise. A number of amendments are there to the effect that the minor girl as wel? as the boy, should be with the mother till she or he is 12 years old. Some people have suggested amendment to the effect that the girl should be with the mother till she attains puberty. It is just this very thing which I referred to in the beginning in my general remarks, and I said that if there is any time when the care of the mother is necessary for a girl who attains her age, it is after attaining age and not before. That is so obvious to me and I do not know how other friends are finding it difficul' to accept my suggestion. There fc mutual conflict or disharmony betweer. the husband and the wife, between the father and the mother. And here is the girl who attains age and the suggestion of some hon. Members is that she should remain with the mother till she attains age and then be transferred to the father. What kind of a home will that father he having? He may not have got a wife. He is living either alone or it may be he might have taken a second wife—I do not know, or worse still

[Shri H. C. Dasappa.J he may instead of paying attention to his wife, be paying attention to somebody else. Are we to send this giri who is just at that impressionable and adolescent age, when she needs all the care to grow up into an ideal woman, are we to send her to the care of this father who, at best is unable to look after her interests because of his preoccupations?

DR. W. S. BARLING AY: The mother might have remarried.

'SHRI H. C. DASAPPA: I entirely agree, that is also possible. But that is a case for which there is provision. The present law is that if the mother remarries, then she loses the custody of the minor child. So that does not arise here. Of course, some hon. friends were discussing the question as to what will happen if she is of bad character and so on. That is also provided for in clause 13. Whether it is the father or whether it is the mother, when his character or her character is not up to the mark, it is certainly open to any court to terminate the guardianship and then put the minor under the custody of somebody else. In fact, I do not know whether it is Mr. Tankha or Mr. Gupta, who was saying that we must incorporate in this clause 5 itself something about the unfitness of either the father or the mother. I should have no objection to such a course, if that is going to make the tiding doubly cleai'. But I fancy that that is already there provided for in clause 13. But if there is any suspicion lurking or any doubt still remaining in the mind of anybody, we can make It clear. I think such a provision in the Guardians and Wards Act—I forget whether it is section 21 or section 27—where they havs said that unless the husband is unfit, or where the mother is unfit or something like that, he or she could be the guardian of the person of the minor. Anyway, I have no objection to our making some such provision in this measure also. It is perfect iOgal phraseology and it fits in very well. Therefore, let us not allow ourselves to be influenced by this idea that in the character of the mother there may be something wrong and therefore, this girl must be- transferred either on her attaining puberty or the age of twelve, to the custody of the father. Sir, I think these are very sound reasons why the amendment which I have put forward should be accepted.

There is only one small thing that I have to touch upon and it will not take more than a minute. It relates to the definition of a person or rather the description of a person who has completely and finally renounced the world. I have sent in a very simple amendment to the effect that no person shall be entitled to act as the natural guardian cf a minor under the provisions of this section if he has completely and finally renounced the world. Sir, I do not want to import these big expressions—"hermit (Vanaprastha)", "ascetic (yati or Sanyasi)" and "Naishthika Brahmachari" and all that. How a "Brahmachari" can become a father that, of course, has already been discussed.

SHRI H. V. PATASKAR: After first becoming a father, he becomes a "Brahmachari".

SHRI H. C. DASAPPA: A re-converted *Brahmachari,* I suppose, or a re-re-convert. I would leave it si- ply with these words—"if he has completely and finally renounced the world."

SHRI H. V. PATASKAR: What is the number of the amendment?

PANDIT S. S. N. TANKHA: It k amendment No 18, mine !s No. 17.

SHRI H. C. DASAPPA: Thank you. it is my amendment No. 18. Sir, today everyone understands what is meant by renouncing the world and after that, whether the father becomes a

yati or a *sanyasi* or something else, i wfc are not bothered. What does it matter to us? All that we require is the substance of his renunciation. It that is proved, then I think that ought to be enough for the natural guardianship of that person to be terminated.

Sir. this is what I have to say at present and I do hope that these very—if I may call them—logical amendments will be acceptable to the hon. the Law Minister.

SHRI S. N. MAZUMDAR (West Bengal): Mr. Deputy Chairman, I have listened with interest and attention to the speeches of the many hon. Members who have spoken, particularly those of the hon. lawyer Members here who have tried to shed light on this Bill from their respective points of view. But after listening to all their speeches, I find myself in darkness.

SHRI P. S. RAJAGOPAL NAIDU: Quite naturally.

SHRI S. N. MAZUMDAR: Only confusion has come to my mind. I feel, Sir, that our lawyer friends would do a great service to the people if only they put their heads together to simplify the law and the legal procedure, and also give their suggestions to the Government to institute a Law Commission to go into all these things, because the majority of the people in our country do not understand and are unable to understand all these complications.

Now, Sir, as regards the question of enlarging the list of natural guardians, I am strongly opposed to it. Even after listening to the speeches of my learned friend Mr. Dasappa and Mr. Govinda Reddy and Mr. Kishen Chand, I find myself in between cross-fire, fire from Mr. Govinda Reddy and Mr. Dasappa on the one Bide and Mr. Kishen Chand on the other side. (Interruption.) We are holding our line in the cross-fire.

SHRI H. C. DASAPPA: So far as this Bill is concerned we need not be at cross purposes..

SHRI S. N. MAZUMDAR: There is no question of party line in this issue. In this issue there is no question of opposition.

SHRI BHUPESH GUPTA: There sit our partisans in your Benches.

SHRI S. N. MAZUMDAR: As regards the question of the natural guardians, after hearing all the arguments, I remain still unconvinced and I would like to submit my points of view in a very humble way. The majority of our people are in the low income group and they have not got much property. The main question that has been raised is the question of expenses and the difficulty of guardians if they are left out of the list of natural guardians. They will have to go to the courts and face difficulties. The majority of the minors in our country do not have much property and secondly the expenses as regards the minors are generally not of such a character as to involve large sums of money except in cases of complicated illness or other. In the case of education also, the expenses are not likely to be very large.

DR. R. P. DUBE: What about education?

SHRI S. N. MAZUMDAR: Yes, I am coming to it. Even here also the situation does not arise in this way that suddenly the guardian would be confronted with the necessity of expending huge sums of money for which he has no time to go to the court and go through the necessary formalities or obtain the permission of the court. As regards the big property holders, we find that in many cases these big properties have become the cause of the loss of affection, the cause of estrangement between the different I relations, not to speak of the minor. I So, the main question which comes up,) considering the question of natural i guardians, natural affection and all I these things, is that if the list of I natural guardians is confined only to

[Shri S. N. Mazumdar.] the father and the mother no harm is going to be done. If both the father and mother die, the other relations who will take charge of the child will not be considering the question of expenses or the complicated legal procedure of dealing with the property of the minor but will only consider the affection which they have for the child. In real life we find that many people who very rarely can make both ends meet, out of affection, take charge of their minor relations. There, the question of complicated legal formalities does not arise. Instead of complicating matters in this way, it would be far better to leave matters to the love of the natural guardians, the father and the mother.

Doubts were expressed as to what would happen if a minor were left in a vacuum. That may be the case in other cases also. Supposing all the other relations enumerated in the amendments are not living or they have predeceased the father and mother, even then the minor will be left in a vacuum.

SHRI H. C. MATHUR: Much less of a chance.

SHRI S. N. MAZUMDAR: Why? There are many chances. The only way to solve this problem is to look at these questions of social reform not only from the limited point of view of the impact of this law or that law but also in the larger perspective. We hear so much talk about the socialistic pattern of society. It should be the effort of the State which seeks to evolve in that way, more and more to evolve social security measures, to enlarge social security measures and to enact other measures, to take every other step so that such minors are not I ieft in a vacuum. Many minors are left I in a vacuum even today and all of i them do not turn delinquents. In this way, I think, Sir, all these permutations and combinations and all these hypothetical questions can be settled. It is true that we should discuss this question from all points of view and from all angles but my submission is that while considering questions cf social reform we should also consider the larger perspective. The law which is going to be enacted is not going to be enacted for only one year or two* years. It is going to be in the Statute Book as a step forward in the advancement of our society.

I shall now come to the amendments. First is the question of the custody of the children. This has been discussed thread-bare in the general consideration stage but still there are some points raised by some hon. Members which require to be answered. It is true that during the discussion oi this sort of social measures a few *oi* the lady Members have taken a stand as if this is a question of women *versus* men but that has not been the case with all the Members of this House. The majority of the Members of this House, if I may say so, have looked at this question from the point of view of social reform—what we should do in order to advance in that way. The main purpose of all these measures which have come before us is the improvement of conditions of women and only in that context has the question of women come up. I And Mr. Kishen Chand—I hope he will excuse my saying so—in his reaction against the stand taken by a few that this is a question of women *versus* men, has taken up the opposite stand of men *versus* women. That has been my impression and I stand to be corrected. While defending the cause of the father, my hon. friend Mr. Kishen Chand gave us examples and instances from the *shastras* and ancient times. I have submitted on several occasions also and my submission is that in order to appreciate these things of the past, it is necessary to relate those instances or those maxims to the conditions, social and otherwise, existing at that time; otherwise, things can be pushed to an absurd limit. We have the example, Sir, as you yourself pointed out to Mr. Kishen Chand, clarifying the matter. Similarly, Sir we have also the saying:

"जननी जन्मभूमिश्च स्वर्गादपि गरीयसी।"

Similarly, I am giving examples of how these things can be pushed to an absurd extent if we try to follow the examples blindly without relating them to the social conditions.

DR. RADHA KUMUD MOOKERJI: *Upanishads* are full of respect for tioth the mother and the father.

SHRI S. N. MAZUMDAR: My submission to Dr. Mookerji, with due respect, would be that if we want to draw upon our past heritage and past methods, the correct thing would be to relate those maxims or examples to the social conditions of the times; otherwise, as I said, things can be pushed to an absurd extent. Parasu-ram killed his own mother at the behest of his father and still he had to expiate his sins. The axe with which he killed his mother did not come off his hand and the legend goes that he had to run away to a far off corner of India, to take a dip in the river Brahmaputra so that the axe could come off his hand. In this way, things can be pushed to an extreme. Coming to reality, coming to our own times, we look at these measures from the point of view of social reform and social reform in these days means improvement in the position of women. From that point of view, an overwhelming majority of men in this House have championed not the cause of women but the cause of social reform and that is why, Sir, it is my humble suggestion to the exponents of both the extremes that we shall better utilise our energies if we do not approach the question as a question of men *versus* women.

Coming to the question of the custody of the minor child, here also many hypothetical situations have been brought in. To those hon. Members who support the view that the custody of the child should be with the mother up to the age of five years, I would like to offer my humble suggestions. It has been pointed out by many that the question of custody of the child will occur only in that case: where there is a dispute between the father and the mother; but, if the di»-pute is of such a nature that it leads to divorce proceedings or divorce, the court will decide as to who will be in charge of the minor children.

SHRI P. S. RAJAGOPAL NAIDU:: Even otherwise also.

SHRI S. N. MAZUMDAR: I am com ing to that. From my understanding of the thing these are the cases; there may be cases of judicial separation; also, I understand that but, apart from, all these, there may be a case where there has been a temporary separa-- tion or, there is a dispute between the father and the mother and the mother lives apart. But here those who are in support of leaving the custody of the child with the mother only up to five years have said that after five years the question of education of the child will come. Now, is it to be assumed that the mother will not be interested in the education of her children and that only the father will be interested in the education of the children?

4 P.M.

DR. RADHA KUMUD MOOKEKJI: It is the question of ability.

SHRI S. N. MAZUMDAR: The question of funds? The question of funds may come in other cases also.

DR. RADHA KUMUD MOOKERJI: It is the question of the mother's ability to arrange their education.

SHRI S. N. MAZUMDAR: With due respect again I submit to my hon. friend Dr. Mookerji that mother's ability is increasing and it is our aim to see that mothers are more and more enabled to take charge of the child and to develop that child as a true citizen of India. We should not confine ourselves to the old outlook that mothers will be ignorant, that mothers out of affection or out of ignorance will not try to take proper steps regarding the education of the children. I come to the question of funds again. There also this question should not be discussed from the point of view of the woman being placed in a weaker

[Shri S. N. Mazumdar.] position economically which is the case today, and from the point of view of her ability. We should take the conditions of our country. From the question of funds again the question of the economic position and improving the economic status of the woman comes, the question of employment, the question of making education cheap, all these questions come there. Otherwise even where the father and mother live together, how many parents can afford to give their children education worth speaking of? So these considerations should not be counterposed in this manner as if by giving custody of the children to the mother up to the age of five years or • even more than that the education of the children will be spoiled. If we are so concerned about the education of the children, then should we not consider how many minor children are going bereft of education due to the social conditions to-day? Now the main consideration which has led me to move this amendment—I moved this amendment in the Select Committee also—is that for the proper development, psychological and otherwise, all-round development of the child, it is necessary that the child should be with the mother up to a certain age and I have suggested here twelve. Up to that age the children require more the company of the mother. They can live away from the father but it is difficult for them to live without the mother and so if they are left with the mother, then only their all-round development will be possible. Otherwise what do we find in most of the cases of children who have lost their mothers at an early age? Of course their fathers may give them a good education, but their development becomes lopsided. Psychologically they remain somewhat deficient. That is why my suggestion that for the proper development of the child, for the proper development of the mental faculties of the child even at that tender age, for all-round development, care of the mother is absolutely necessary. This is so not only in the case of the male child but also in the case of the female child. But here I find that many hon. Members who do not support the idea of giving the mother the custody of the children, both male and female, up to twelve years, support the idea of leaving the custody with the mother for an unmarried girl up to her attaining puberty or up to the age of marriage. Now the question is, psychologically there are some differences between a male child and a female child, there is no doubt, but it is also true that during the earlier stages of life the soothing care of the mother is necessary for the development of the child. That is the main consideration which should be taken into account in this connection.

Now I come, Sir, lastly to that point which my amendment suggests, namely, that line 16 be deleted. This question also has been discussed at great length. The Bill, as it stands, provides that a natural guardian will cease to be a natural guardian if he has ceased to be a Hindu. My submission is that we should think, in this connection, of the provision which we have made in the Hindu Marriage Bill. There in case of either party to the marriage ceasing to be a Hindu, the option is given to the other party who remains Hindu to sue for divorce. There of course the option has been given, but it is quite open to the parties to live together as husband and wife and that also legally, even after one of the parties to the marriage ceases to be a Hindu. The relation between husband and wife is far more intimate. They are both mature, major persons. But here it is provided that immediately a natural guardian ceases to be a Hindu he will cease to be a natural guardian.

SHRI B. K. P. SINHA: I have just a word to say. There option is given because they are majors and have volition and they are capable of contracting. Minors have no will as such. Therefore no option can be given to them.

SHRI S. N. MAZUMDAR: Sir, my friend Mr. B. K. P. Sinha has pointed out the difference in the cases, but still the case is that we should take realities which actually exist in life into

consideration. Do we find so numer ous conversions that we are to provide tor it in this Bill? First look at this question from one angle, that after ceasing to be a Hindu a father or a mother does not cease to have affec tion for the child, the fountainhead of their affection for the child does not go dry, and even after conversion they remain the best persons to judge what is good for the child. That is from one angle. It may be argued that they may convert the child to their own religion. Now coming to that, do we find so numerous conver sions in real life that those people who are in favour of this amendment should be so much worried about it? Actually if we go into the cases of conversions what shall we find? In a majority of the cases of conversions, under what circumstances have they taken place, conversions from one religion to another, particularly from Hindu religion to other religions? It is because of social oppression in various ways and it is this which led people to embrace another religion. Conver sions may take place from two consi derations. One is to get rid of social oppressions. The best method in that case is to try to remove the causes of the social oppression. And in the other case it may be the question that if a man after studying the scriptures or holy books or other books of particular religion.....

DR. RADHA KUMUD MOOKERJI: May I ask a question? Is communism considered a religion?

SHRI S. N. MAZUMDAR: Commun ism is not considered a religion; it is a philosophy of life. If the Chair per mits me I can submit to Dr. Mookerji what he wants to know.....

MR. DEPUTY CHAIRMAN: You can do it outside.

SHRI S. N. MAZUMDAR: Outside I am always prepared to do. However, Sir, I shall take this opportunity to say a few words only. Whatever the opponents of communism may think, *we* communists believe that the philo-sophy of communism is that it absorbs all that is best in human culture in every country and in every age and we try to carry forward our heritage which really helps us to go forward, and in this way, Sir, I can also tell him if h_e wants an example.....

MR. DEPUTY CHAIRMAN: Not about Communism.

SHRI BHUPESH GUPTA: That will be enlightening to some hon. Members.

SHRI S. N. MAZUMDAR: Now, Sir, I was speaking on the question of conversion. The other case in which conversion can take place is that a man goes through the scriptures of some other religion or holy books and such things and then thinks he should embrace thai religion. These cases are very rare and these cases can occur in people who have a high ideal of their outlook on life which according to them is the rational outlook on life— they may be correct—and those we may take in short as people of the other extreme who consider themselves to be rational. These cases are very rare, so rare that for this reason there should not be any large provision made in this Bill. But even in these cases it may be assumed that these people will not try to convert their minor children to any religion. Being rational it would be quite natural for them to let the minor children grow up till a certain age. These are all hypothetical cases and I am arguing also hypothetically.

DR. W. S. BARLINGAY: May I ask my hon. friend Mr. Mazumdar a question?

SHRI S. N. MAZUMDAR: If I go on. answering questions .....

MR. DEPUTY CHAIRMAN: This-point has been argued at length.

SHRI S. N. MAZUMDAR: Yes, Sir, So the only submission which I want to make at this stage is that if this provision is kept in this Bill, it may lead to various other difficulties also. Without giving away any secret about what happened in the Joint Committee, I can say that we found that this;

[Shri S. N. Mazumdar.] clause will lead to very serious complications. As has also been pointed out here by the hon. the mover, the question of the retention of the clause that a minor should be brought up as a Hindu leads to many complications. Because you will say that 'Hindu' is a wide term, so he should be brought up as a Sikh or a Jain and so on. That does not mean that one should not be brought up as a Sikh or a Jain. That is not the point but in this context it leads to fissiparous tendencies. All these questions which should not arise naturally and which do not arise naturally, come up at once to complicate the issue. That is why I submit that this clause should be deleted.

SHRI B. K. P. SINHA: Sir, I have a very short amendment standing in my name and I shall deal with it first. I have already spoken at length about the deletion of these lines about *naishthika brahmachari.* It appears to me rather anomalous that.....

SHRI H. V. PATASKAR: I may say at this stage that I am inclined to omit this reference about *naishthika brahmacharis* because for my purposes the other two expressions are quite enough.

MR. DEPUTY CHAIRMAN: So the hon. Member can cut short his arguments.

SHRI H. V. PATASKAR: Because even so far as the present Hindu Law is concerned; *naishthika brahmachari* is excluded from inheritance. Suppose a boy from his early boyhood becomes a *naishthika brahmachari* and goes into the Himalayas, he is excluded from inheritance. But if he is father or mother probably he cannot be called a *naishthika brahmachari.* So I would rather leave it out because there is the other law to take care of it.

DR. RADHA KUMUD MOOKERJI: With reference to what the hon. Minister said just now .....

MR. DEPUTY CHAIRMAN: That is -all right. He is dropping it.

DR. RADHA KUMUD MOOKERJI: *Naishthika brahmachari* forms a class by itself. It means a life-long *brahma chari,* whereas the third stage of life after the stage of householder .....

MR. DEPUTY CHAIRMAN: There is no difference of opinion between you and the hon. Minister. And he is dropping it.

SHRI B. K. P. SINHA: Sir, so far as that is concerned.....

MR. DEPUTY CHAIRMAN: Leave alone *naishthika brahTiacharis.* Please come to other things.

SHRI B. K. P. SINHA: Yes, I have finished with that. I am coming to other things.

Now, there is one amendment moved by my hon. friend Pandit Tankha seeking to delete the words "completely and finally" from the proviso. I think those words should be there because there are cases where the 'renunciation is not complete or final. Take the case of *vaishnava byragis* in Bengal. They renounce the world for certain purposes but they do not renounce it for all purposes. And that distinction is recognised in Hindu Law and they are not deprived either of the custody of children or of inheritance. Therefore I feel that those words should not be deleted. They should be there because they serve a useful purpose. I would like in this connection to quote from Sastri's Hindu Law. This is what Sastri says about this question: "But the renunciation must be complete and not nominal only as in the case of persons entering the *Vaishnava* sect in Lower Bengal called *Byragis* by name but who do not mean thereby to renounce worldly affairs and relinquish property. Such a *Byragi* is not excluded from inheritance, and his property passes on his death to his ordinary relations."

Now, I come to a controversial matter that was just now raised by the speaker who preceded me, Mr. Mazumdar, that the father and the

mother should not be deprived of the guardianship of the child simply because he or she changes his or her religion. The contention is sought to be supported on ground of secularism. But the whole approach of this Bill is non-secular. In the general discussion I said that I have never been able to understand the meaning of this word 'secular.' It seems to mean different things to different persons. All the same if you take it in the sense which they attribute to this term, we find that this Bill is an attempt at codification of law relating to Hindus. It defines in great detail the word 'Hindu' and it lays down the law for Hindu minors. The whole tenor of the law being non-secular, I do not see how we can get rid of non-secularism by deleting this clause. I am reminded here of a remark by Abraham Lincoln: "A nation half slave and half free cannot exist." And I would say that a legislation half secular and half non-secular is bound to create endless confusion. And it would be against the. very spirit of this law itself. I have already said during the general discussion that this conception that the son should follow the father in all his religious peregrinations is rather archaic. It reminds me of the patriarchal age, the *pater familias* where the father wielded the power of life and death over his children. Now, it appears to me that if we were to give sanction to this theory on any ground whatsoever, it would be really putting the old patriarchal wine in a new secular bottle. The thing remains the same; only the rationalisation is changed. When I was referring to the patriarchal theory, one of my friends from Andhra interrupted me and probably he meant to convey that the theory of pater *familias* or the *patria potestas* was not part of the Hindu Law. I will refer him to the ceremonies connected with adoption. What happens in adoption is this.

MR. DEPUTY CHAIRMAN: We are now concerned with guardianship. Why go to adoption? Nor need we go into the question of Roman Law.

SHRI B. K. P. SINHA: Sir, I am opposing the deletion of the clause and how am I to do it? Am I simply to say that I oppose it and sit down? Should I not give my arguments and reasons? My only contention is that this conception, this patriarchal con ception—and I am giving my argu ments in support of that; I do not see how I can avoid it or how I am irrele vant .....

MB. DEPUTY CHAIRMAN: You need touch upon only what is just sufficient for the purpose.

SHRI B. K. P. SINHA: In view of the great authority on the other side, I consider that it is not sufficient.

DIWAN CHAMAN LALL: That is an admitted fact. You can say it is an admitted fact and finish with it.

SHRI B. K. P. SINHA: So the theory was always there. Now, I was referring to adoption. In the ceremony connected with adoption, the father gifts away his child just as he would gift away any other piece of property. In that ceremony the child is treated as the property of the father. If my friends will refer to Aitreya Brahmin there is an episode where Sunashepa was sold by his father Ajagrithi for one hundred cows to Harishchandra to be sacrificed to propitiate the God Varuna. In that story, the conception is that the child is the chattel of the father. Then I would refer them to texts because I think that nothing short of texts will satisfy those people who hold a different view. The text is from Manu Smriti and I cannot think of any higher authority and the commentary is by Golapchandra Sarkar Sastri, a great writer on Hindu Law and also a great Sanskrit scholar:

> "In ancient Hindu law, as in Roman law, the father of the family, or pater *familias* was the absolute master of the family property and of the person of its members; the *patria potestas,* or the authority with which the father of the family was armed by ancient law extended *to* the power of inflicting punish-

[Shri B. K. P. Sinha.] ment of death and to absolute dominion even over the acquisition of its members."

This is what Manu says:

"भार्या पुत्रश्च दासश्च त्रय एवाधना स्मृताः। यत् ते समधिगच्छन्ति यस्यैते तस्य तद्-धनम् ॥"

This theory was there in Hindu Law. But of course the reasoning is different. As I have already said, "It is the old patriarchal wine in the new secular bottle."

SHRI P. S. RAJAGOPAL NAIDU: Does the child become a chattel because of this?

SHRI B. K. P. SINHA: That is the thing. I have read out the text and the commentary and I do not know how to convince them. What can I do?

MR. DEPUTY CHAIRMAN: We have travelled two thousand years from the date of the text.

SHRI B. K. P. SINHA: Then, something was read out by the hon. Member from PEPSU from Mulla's Hindu Law yesterday. That text is rather misleading. It does not accurately lay down the law. Sir, he read out paragraphs 525 and 526, but he missed paragraph 524. Paragraph 524 says that according to the original Hindu Law whenever a man lost his caste or a woman lost her caste, or whenever they fell from the communion of the caste, they were deprived of the custody of the guardianship of the children. Here it is: "Under the Hindu law, loss of caste entailed a loss of the right of guardianship of the person and property of minors." Then the reference is given: "Strange's Hindu Law, vol. I, page 160." How is it then that in the ancient Hindu Law, there is no direct provision that when a man changes his religion, he should be deprived of the guardianship of his children? That is not. That is admitted. The provision is regarding loss of caste. Change of religion is a more serious matter. Why was it so? Because the ancient givers of our law, were not faced with a situation in which people changed their religion. In India there was only one religion. A man could fall from his caste and become an outcaste, but all the same he retained his religion. As the Law Minister pointed out, there is nothing like Hindu religion as such. It is a culture; it is a society; it is an organisation. By losing his caste he remained a member of the religion. Therefore, no specific provision was made for a contingency in which a father or a mother lost his or her religion.

MR. DEPUTY CHAIRMAN: If loss of caste within the religion could deprive him of the guardianship of his children, loss of religion is much worse.

SHRI B. K. P. SINHA: Exactly that is my point. Hindu Law specifically laid it down. Then, why has Mulla, in the two misleading paragraphs quoted, said so? The change came in 1850.....

SHRI J. N. KAUSHAL: Do you disagree with Mulla?

SHRI B. K. P. SINHA: Mulla is no doubt an eminent jurist, but he is absolutely wrong in the two paragraphs mentioned. Note-makers, although they are usually useful, sometimes they are very misleading. His two paragraphs are thoroughly misleading. I have looked up all these cases referred to in this connection in Sastri, in Mayne's Hindu Law .....

SHRI J. N. KAUSHAL: Do you agree with Mulla?

SHRI B. K. P. SINHA: I agree that he is an eminent jurist; I am not con testing that .....

SHRI J. N. KAUSHAL: Please say how they are misleading and why the change did come about.

SHRI B. K. P. SINHA: The change came because of one Act—Act No. XXI of 1850, the Caste Disabilities Removal Act. And all these decisions

are based not on Hindu Law. The decisions referred to in paragraphs 525 and 526 are based on the Caste Disabilities Removal Act.

SHRI J. N. KAUSHAL: What is it?

SHRI B. K. P. SINHA: It is an Act passed in 1850; it is an act confined to one section only. It is like this:

> "So much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by.

and so on and so forth. It was because of this secular legislation with a purpose and a motive that the tenor of the law changed. The Hindu Law always looked to change of religion with disfavour—rather it was not known to Hindu Law as such.

SHRI J. N. KAUSHAL: What about the cases?

SHRI B. K. P. SINHA: Sir, the hon. Member wants me to deal with the cases and I shall deal with them. Now, what are those cases? The cases are: One: 1866 case, Muchoo *vs.* Arzoon. I could not get hold of that readily. Two: Another case is Shamsing *vs.* Santabai. That case, as I have already said, is specifically based on Act XXI of 1850. It is not based on any text of Hindu Law. Moreover, what does it say? There, a father became a Muslim. The father's brother remained a Hindu. The child of the father, who had become a Muslim, was given in adoption to another man with the consent of the Muslim father by his uncle. There the question was: after the father had become a Muslim, could he consent to his brother giving his child in adoption? The decision was 'yes', he could give that consent to that uncle. Now, no question of change of religion arose here. No question whether he wanted the guardianship of his son. No decision that in spite of change of religion, he retains the guardianship. No such issue arose in that case.

Then, Sir, there are two other cases that he has cited: Mokoond *vs.* Nobodip, and Joshy Assam. Joshy Assam was the child of a Chinaman. They were not Hindus; they were Christians. I do not know what relevance that case has in a book on Hindu Law. I looked up the whole case this morning and I do not find I can support Mulla. Mokoond *vs.* Nobodip. He changed to Christianity and he began to live in a Methodist Church. Now, he left his child and his wife with his father. The child was left with the grandfather.....

DR. SHRIMATI SEETA PARMANAND: What was his religion before he became a Christian?

SHRI B. K. P. SINHA: He was a Hindu. He changed his religion when he was converted to the Christian faith. He began to live outside his family and the house. The guardianship of the child and the wife was with his father. Now, after some time this gentlemen filed an application for getting the guardianship of his son, and this application was rejected on the ground that he did not carry the child with him. The child was living with his grandfather; the child was happy.

MR. DEPUTY CHAIRMAN: You are going into great detail. We are not concerned with the facts of the case here. What has a bearing on this question is only relevant. Please cut short your speech. On this very clause there are still a large number of speakers.

SHRI B. K. P. SINHA: I have finished. He referred to some case therefore I had to deal with them. So,

[Shri B. K. P. Sinha.] these are the only few cases on which this note is based. And none of these cases lays down that when a father changes his religion, he ceases to be a Hindu, he shall perforce have the guardianship of the child. None of these cases laid down that law. *(Interruption.)* I have already said that it is not the Hindu law in its purity, but it is the Hindu law modified by later legislation. It has been modified so many times. My only contention was that the Hindu law, in its pure form .....

MR. DEPUTY CHAIRMAN: We are concerned with the Hindu law, as it is now.

SHRI B. K. P. SINHA: But I am talking of a different thing altogether. I am talking of Hindu law in its purity. So, even that text is mislead ing. According to the Hindu law, whenever there is a change of religion, it is natural that the guardianship of the father or the mother should terminate. The Hindu law as such never came into play .....

MR. DEPUTY CHAIRMAN: So you appose the clause?

SHRI B. K. P. SINHA: No, no. I am supporting the clause. I am opposing its deletion. Now, Sir, there is nothing more to be said about the points raised by Mr. Dasappa or by Pandit Tankha. With these few words, Sir, I have finished.

SHRI R. C. GUPTA: Sir, I am referring to my amendment No. 20. With your permission, Sir, and with the permission, of the House, I will keep my amendment to this extent:

> "That at page 3, after line 19, the following be inserted, namely: —
>
> '(c) if he is unfit to act as such'."

I am dropping the words "and the Court declares him as unfit in proceedings for the appointment of a Ituardian." I find that the words "if he is unfit to act as such" will serve the purpose.

Now, Sir, I would not repeat the argument which I had advanced at the time of the first reading of the Bill in my speech. I think that I have been supported by a very large number of the speakers in this House that this amendment is quite necessary. This Bill attempts to codify the law with regard to the guardianship of Hindu minors. The Bill seeks to give power to the courts to appoint a guardian. If that was the only object, Sir, then I think this Bill was practically unnecessary, because the Guardians and Wards Act is already there for the appointment of guardians, and the Hindu law is already there which defines the natural guardians. But it seems to me that the scope of this Bill is enlarged on account of two reasons. Firstly, this Bill seeks to restrict the powers of the natural guardians which they enjoyed so far under the Hindu law. That is provided for under subclause (2) of clause 7 of the Bill. And the other reason is that under clause 11 powers of the *de facto* guardians have been done away with. These are the two new things which, according to me, this Bill seeks to» introduce. Now, is it not necessary that when this Bill is an attempt at codification, we should provide for the removal of a natural guardian, if such a person is unfit? Why should we try to have recourse to the Guardians and Wards Act, even if such a remedy is open, which, to my mind, is not open? Why should we not provide something. in this codified law on the guardianship of a Hindu minor to make the point absolutely clear that under suitable conditions the natural guardian can be removed and another person, appointed?

MR. DEPUTY CHAIRMAN: Does not elause 13 cover your point?

SHRI R. C. GUPTA: That clause relates only to the appointment of a guardian. It does not refer to the removal of a guardian. The appointment does not mean removal of a-guardian. That is entirely a different matter.

Some attempt has been made to rectify this defect by some of the amendments. They have divided this clause into two distinct paragraphs. I am not quite sure, but that would be much better, because by dividing this clause, powers seem to be conferred on the courts to act in certain contin gencies. But there is some doubt if the object will be achieved. Why should we leave any scope for doubts? We can lay down expressly some power for the removal of a guardian in a suitable case. When you are going to codify the law, then why leave this loophole? Just now, Sir, my friend, Mr. Mazumdar, was criticising the lawyers that they want to create confusion.....

SHRI S. N. MAZUMDAR: I did not say that they wanted to create confusion. But I said that I was confused.

SHRI R. C. GUPTA: All right. Now, Sir, by a short amendment, we can make things quite clear and place it beyond the pale of controversy. I think the hon. Minister, while replying to the debate, agreed with this view, and it is possible that he might either accept my amendment or some other amendment which will make this point clear. The power of removal should be distinctly and expressly conferred on the courts in suitable cases. There must be some express provision under which they could be disqualified. The two disabilities or disqualifications that I submitted the other day have already been specifically provided for, and let this third disqualification also be provided for.

Now, Sir, with regard to the other two matters, I would like to say a few words. So far as the natural guardians are concerned, the hon. Minister has said that this is not a new power which this Bill seeks to confer. It is not correct. If under the Hindu Law the minor's father and mother are the natural guardians and if this is not a new power, then why this declaration of rights here? If there is a declaration of rights here, let us see if it advances the cause of the minors even to the slighest degree? To my mind, it does not. In fact, by the inclusion of clause 11 in the Bill, you have taken away the protection which the minor has enjoyed so far. It has been suggested that a *de facto* guardian can go to a court of law and get himself appointed as guardian. It is all easy to say but very difficult to get oneself appointed as guardian. Is it not a fact that millions of people are acting as *de facto* guardians, because they are near relations, without going to a court of law either because they feel that their actions are fully justified and that, if somebody goes to a court of law, they cam always prove their *bona fides* and that their actions will be protected by the courts specially when the property concerned is very small, as it will not lustily going to a court of law and spending money and time o.t it? The institution of *de facto* guardians, so far as the near relations are concerned, has served very well. If you want to take away that power altogether, then you must provide some other agency. The answer that the relations can go to a court of law and get themselves appointed as guardians is very easy to say but very difficult in practice.

SHRI J. S. BISHT: A *de facto* guardian is not prevented from acting even now. Only he cannot dispose off the minor's property.

SHRI R. C. GUPTA: He can neither dispose of nor deal with the property. The latter will include even letting out the minor's house on rent. He cannot let out the minor's house for rent even for a month. It has been suggested that because of the near relationship, the relations will continue to bestow the same care on the miner as in the past. This is not correct. The position of the *de facto* guardians will be that of a rank trespasser if this law is passed. They will think twice before they do anything on behalf of the minor, because the liability of a trespasser is much more serious than the liability of i near relation. Th$_e$ near relations will not

[Shri R. C. Gupta.]

act so readily as *de facto* guardians as they have done in the past, because in the past, if they could prove their *bona fides*, they would be protected by the courts of law, but now they will not be protected. Their actions will be unjustified and the courts will not protect them under the proposed law. Surely errors of judgment cannot be ruled out altogether. Near relations can also commit errors of judgment and there may be some loss to the minor. So, in order to avoid millions of people going to a court of law for getting themselves appointed as guardians in the case of small properties and also in order to protect *bona fide* actions of these persons, you have to take either of two courses: Either delete clause 11 altogether or widen the scope of the natural guardians. If you do not, then there will be too many applications for appointment of guardians. Therefore I submit that there is no harm in widening the scope of natural guardians. It was suggested on behalf of the Government that because under the present Hindu Law the father and the mother are natural guardians, they are retaining them. Government is not enamoured of our ancient texts on Hindu Law. In fact this Bill gives the go-by to our ancient Hindu Law Let us examine the provisions in this Bill. Are the natural guardians as defined here the same as the natural guardians as defined in the Hindu Law? The natural guardians of this Bill are artificial natural guardians. They are not natural guardians.

DR. W. S. BARLINGAY: Why retain the words 'natural guardians'?

SHRI R. C. GUPTA: The natural guardians as defined in this Bill are not natural guardians, because natural guardians under the present Hindu Law enjoy very wide powers. Now, you are restricting this power by the inclusion of clause 7, sub-clause (2). Therefore the natural guardians of this Bill are not the natural guardians of the Hindu Law.

You are creating a new class of 'artificial natural' guardians, not natural guardians. If you are creating a'new class, why don't you widen the scope of the natural guardians? You have changed the Hindu'Law practically in so many particulars. Change this also. The Law Minister is aware that in passing, the Hindu Marriage Bill,' we have specified a "given number of persons as guardians of the minors for purposes' of marriage". You hav'e widened the scope there. In this connection,- there was one amendment No. li standing in' ray name which T did not move.' I support airferrdment No. 4 moved by Mr. Qovinda Reddy because it has ohe" advantage' over niine, i.e., that I have left out 'brother'. In this amendment "the ' brother is included. Brother is a very near relation and is a fit person to be included in the list of ' natural guardians. Therefore I support .'amendment No.- 4.

Then, the next point is about the age of the minor's; There *Has* been a lot of controversy with regard to this, whether it Should be five or seven" or twelve or fifteen or urttil puberty -and all that. I have very carefully followed the speeches, '.'delivered in this House. There seems to be unanimity for a change here, 'and' th£ happiest compromise seems to be'the amendment of Mr.Dasappa. I: support that amendment because it is likely to solve the difficulties ithat have" been pointed out by various speakers.

One more thing which I would -like to say is that litigation in the court of law is not a small' luxury", it-should be possible to avoid people from going to the court of law. ' If you practically drive every guardian to go to a court of law and apply for appointment as a guardian and then, get au->-order for guardianship, then guardianship [1] would not be a very happy matter. If you don't widen the- scope, it,will certainly be encouraging endless litigation. Once the litigation starts or an application for guardianship is filed, there will be so many- relations -; with clashing interests and in mast of the cases you will find - that ,.the • -applic*-tions for appointment ,are- - contested. Every contested application takes, a-lRt of time and then the order of the first

court is appealable. Therefore it would be just and proper that the scope of the natural guardians be widened although it may be confined to near and proper relations so that there should be no harm done to the minor and his rights may be protected. There is no harm, as a matter of fact, in widening the scope. What is the danger? There is no danger. The brother is as good as the father or mother. When both of them are not alive, his affection is so deep. If, however, the brother is not acting in minor's interest as I already submitted, there should be a specific clause by which another relation may come forward and apply to the District Judge or a Civil Court for his removal and get himself appointed as a guardian.

SHRI H. C. MATHUH (Rajasthan): Mr. Deputy Chairman, I have tried to appreciate and analyse the obviously weighty arguments that have been advanced against the expansion of the scope to include other relations in the list of natural guardians. I find that there are two sets of arguments that have been advanced. The hon. Minister who is piloting this Bill has taken special care and pains to explain to this House why he is opposed to any enlargement. He has his reasons which are very different from the reasons which have been advanced by my friends sitting over here. In spite of these reasons and arguments that have been advanced, I have not the least hesitation in giving my fullest support to the amendment that has been tabled by my hon. friend Mr. Dasappa in this particular respect. As I analyse these arguments, that have been advanced, I find that my friends on this side are led by certain considerations. They believe in a sort of society which is State-controlled and if we were to go deep into the arguments that have been advanced, while these friends talk about social security and the socialistic pattern, they are just thinking of a society which is possibly in the dreamland, which is far away from the practical state of affairs in which we are living.

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Their conception of Government is a State-controlled society, a State-controlled family and all that, while my conception of the administration is entirely different. I would call that Government to be a very good Government, that administration to be a very good administration which interferes the least in our social and domestic life. That is the fundamental basis on which this opposition is based while the other argument which has been advanced by the hon. Minister for Law is, to my mind, only based on a very fossilised idea regarding certain legalistic positions. He has certain conceptions of the natural guardians in the Hindu law. He says that it is only the father and the mother who are at present considered to be the natural guardians and it is absolutely from that legalistic fossilised idea that he finds himself tied down to this sort of opposition to this very healthy amendment which has been voiced very strongly by a vast majority of the Members of this House. I consider this amendment to be nothing but sound practical common-sense, to say the least. We cannot do without it and if we try to cut down all these people, it is definitely going to have a very detrimental effect on the social life to which we are used and to which we attach very great values. Now I have not been able to see any argument which has been advanced by both the sections as to the effect which the expansion of the list is likely to have. I tried to follow the arguments on both sides but I am not aware of any argument which has been advanced to show that if the list is expanded, this sort of result which would be detrimental to the interests of the minor, is going to flow. The most important consideration with us at the present moment should be the interest of the minor and nothing else. We should not permit ourselves to be tied down to any past ideas. I don't wish to go into the hoary past. I am not one who believes in quoting only old scriptures. Let us examine the present structure of our society, the present conditions in which we are living and whether in the present set up and in the present conditions this amendment is to

[Shri H C. Mathur.] be most essential or not. Anybody who has led a good Hindu life and who believes in the values which are attached to that sort of life wll find this to be anything but extremely repulsive. To my mind, at least the way of relationship which I have enjoyed,, jthe kind of life to which I am accustomed, I And this sort of exclusion i(s nothing less than repulsive.

Now going to the practical aspect of it, apart from the sentimental aspect, apart from the values of life to which we are accustomed, I find that we are landing the minor into a great trouble. It has been pointed out by the hon. Minister that we have the Collector there to come to the rescue. He will immediately take the necessary steps to safeguard the interest of the minor.....

MR. DEPUTY CHAIRMAN: You are speaking on Clause 5?

SHRI H. C. MATHUR: Yes. I am talking with particular reference to the amendment of Mr. Dasappa—No. 53. I am giving my full support to that amendment. I will take only a few more minutes—about 10 minutes.

MR. DEPUTY CHAIRMAN: Please try to finish it today. Sufficient has been said on this.

SHRI H. C. MATHUR: I will take 10 minutes on the next day.

MR. DEPUTY CHAIRMAN: You continue now till five.

SHRI H. C. MATHUR: I will try to finish now.

SHRI H. N. KUNZRU: It is five, Sir.

MR. DEPUTY CHAIRMAN: The House does not seem to be inclined to sit. You will continue tomorrow, Mr. Mathur. The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Wednesday, the 6th April 1955.