THE DEPUTY MINISTER FOR RAILWAYS AND TRANSPORT (SHRI O. V. ALAGESAN): (a) Thirty-eight.

(b) A statement giving the required information is attached. *[See* Appendix IX, Annexure No. 110.]

12 NOON.

LEAVE OF ABSENCE TO SHRI P. C. BHANJ DEO

MR. CHAIRMAN: I have to inform the hon. Members that the following jetter has been received from Shri P. C. Bhan: Deo:

> "I have been unable to attend the present session of the Rajya Sabha becausg. of very painful boils * * * This condition has been made worse by intermittent fever * * * I, there fore, numbly request you, Sir, * * * to grant me leave of absence for this session * * *"

Is it the pleasure of the House that permission be granted to Shri P. C. Bhanj Deo for remaining absent from the meetings of the House for the whole of the current session?

(No hon. Member dissented.)

MR. CHAIRMAN: Permission to remain absent is granted.

PAPERS LAID ON THE TABLE

(i) REPORT OF THE TRIPARTITE COMMITTEE ON GORAKHPUR LABOUR

(ii) RATIFICATION OF I.L.O. CONVENTION REGARDING FORCED LABOUR

THE DEPUTY MINISTER FOR LABOUR (SHRI ABID ALI) : Sir, I beg to lay on the Table a copy of each of the following papers:

(i) Report of the Tripartite Committee on Gorakhpur Labour. [Placed in Library. *See* No. S-533/54.]

(ii) Statement on the ratification of I.L.O. Convention (No. 29) concerning Forced Labour. [Placed in Library. *See* No. S-112/55.]

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

MR. CHAIRMAN: Mr. Mathur, you were speaking yesterday.

SHRI H. C. MATHUR (Rajasthan): Mr. Chairman, we were discussing amendments to clause 5 and I was giving my reasons why the list of natural guardians should be expanded. At present it includes only the father and mother. Amendments have been tabled asking for the inclusion of grandfather, grandmother. brothers and such other relations and so far as I could see, this amendment has received the. overwhelming support from almost all the sections of the House. I think it was only from two of our Communist friends that the opposition to this amendment came. ,My friend Mr. Mazumdar in opposing this amendment gave his reasons and he talked of the socialistic pattern of society and of the social security. I have great respect for my hon. friend and whether I agree with him or not in this matter, I certainly can understand a socialistic pattern or a social security where the State takes any responsibility in the matter. But we must appreciate that in the present scheme of things, the State is taking absolutely no responsibility in the matter. There is no question of socialistic pattern being affected this way or that way at the present moment. The Government is taking no responsibility. All that is being done is that the Government wants to interfere and it ends at that. The Government interference is there without Government taking any responsibility whatsoever.

The present scheme of things is that in the absence of the father and mother, even the grandfather and grandmother or brothers, who are *de facto* guardians of the minor, will have to go to a court or to the District Magistrate and ask for his permission and get himself appointed as a guardian. Without

that they are not permitted even to iook after the property of the minor or to look after the minor. They cannot do anything of the sort. The alienation of the property or the encumbrance of the property is another matter but unless and until they get themselves appointed through a court of law, they are prohibited even from acting as *de facto* guardians for looking after the property of the minor. I venture to submit that this scheme of things is repugnant to the very spirit of the Hindu society and is designed to disintegrate and disrupt the Hindu society and break the family-ties. It will work against the interest of the minor himself, it will work against the interest of the society and I go further to say that it is absolutely impracticable in the present state of affairs. It is this point which I wish very much to emphasise. Because anybody who has any experience of the working of th$_e$ courts in the districts will find that people will have to travel a long distance and then they will have to go and ask for this sort of appointment as guardians. Knowing the conditions obtaining in the villages, knowing the conditions obtaining even in towns, I feel that there will be very few people who would like to go and do that. What would be the result? Not that those people will cease to have any affection for their minor brothers but in the present state of affairs, it would be impossible for them to go and seek such permission. A big vacuum will be created and the result would be that those people who are not on friendly terms with that family will possibly take advantage of it and file all sorts of complaints. So this will create many difficulties and will create all sorts of inconvenience and embarrassment for the de facto guardian.

Maybe there are good reasons for not including all these *de* facto guardians in the list of natural guardians but the amendment is that this list should be enlarged. I personally feel that it would be very correct to enlarge this list and to include all these persons enumerated in the amendment but if for any good reasons it is found that this list of natural guardians should not be expanded, then I believe we might make some separate provision i$_n$ this Bill for the *de facto* guardians and permit these de *facto* guardians to take charge of the minor and his property. We may, of course, make certain provisions to restrict and control the supervision of the property by the de *facto* guardians regarding encumbrance of the property or alienation of the property. We have, as a matter of fact, even whittled down the authority of the father and mother also so far as property of the minor is concerned. I think that is absolutely uncalled for but ewn if we find that it is not possible to include all these persons in the list of natural guardians, we might have a separate provision—a provision which automatically permits, without anybody going to court and seeking a letter of appointment—for these *de facto* guardians to act as guardians, to take charge of the minor and his property and to make the best use of it in the interest of the minor. We may certainly restrict their power to dispose of the property and to alienate the property or to encumber the property. If we don't do that, we will find that this law, which is being enacted, will be followed more in the breach than in observance because it is absolutely impracticable and, knowing as we do our own people, we can be pretty sure in our minds that a vast majority of them will never find it practicable. Apart from the cost and inconvenience which one has to undergo in going to these courts, anybody who has any experience will tell you of the inordinate delays and sometimes even the humiliation which one has to suffer in going and obtaining permission and most of the people who are ignorant will always have to find somebody to help them to approach the proper authorities. A poor country as we are, it is absolutely not suited to our condition of life. I, therefore, strongly urge on the Government that they should either accept this amendment and enlarge this list of natural

[Shri H. C. Mathur.] guardians or, failing that, they should make certain provisions for the *de facto* guardians looking after the property of the minors.

Sir, I have another word to add and that is in respect of the age up to which the minor should be in the custody of the mother. I am afraid the debate has unnecessarily been carried on this matter as if in a spirit of rights of the father against those of the mother. I am very glad to be in agreement with my hon. friend Mr. Mazumdar who pointed out that this is a matter where the question of the father or the mother does not arise. The question of their respective authorities does not arise. The hon. the Law Minister also had said that we should not examine this clause of the Bill in that spirit. We are perfectly justified in asking for a change in this matter. I see absolutely no reason why the girl right up to the age of her marriage should not be in the custody and guardianship of the mother. Knowing as we do family life in this respect, we will agree that the father is not in a position to look after the girl as well as the mother can. Also in the case of boys, it would be perfectly justified to raise the age from five to ten or twelve. The care and affection which the children are bound to get from the mother are absolutely necessary for their proper upbringing and development. So I strongly urge that this clause should also be amended in this respect and the girl should be under the guardianship and custody of the mother till the age of marriage and the boy till the age of ten or twelve.

Thank you, Sir.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Chairman, I stand to oppose all the amendments that have been moved in respect of this clause 5 of the Bill. T think all the hon. friends who have been pressing Government to extend the list of guardians so as to include them within that term "natural guardian" have misunderstood the meaning of this very Bill. The whole attempt from the time of the Rau Committee up to this time is not only to codify the Hindu Law, but also to reform it, and we have been finding difficulties at every stage. At every step there is always resistance and opposition, either by a frontal attack or, as we have it now, insidiously by a flank attack. What the amendments really mean is this. Have this codification, but bring down all those things from the Hindu Law back into this Bill. But this will defeat the very object of the codification. Since the time of the Rau Committee, the whole object of this codification of this particular branch of the law is this: minority and guardianship will be governed by the Guardians and Wards Act of 1890 and every provision with respect to the security and safety of the person and property of the minor is laid down there meticulously. That means that they need have put in only one line in this clause, that with regard to Hindu minors, with regard to the person and property of the minor, the provisions of the Guardians and Wards Act will apply. But then they were faced with one difficulty and that was that under the Hindu Law there was this peculiar institution called the^ natural guardian, which means ony father and mother and nobody else. Nobody else is recognised as natural guardian at all. They might as well have called this Bill "The Hindu Natural Guardians Bill", instead of calling it "The Hindu Minority and Guardianship Bill," and all this discussion might have been eliminated. The Bill itself says that it is meant to "codify certain parts of the law relating to minority and guardianship among Hindus." It is only with regard to the natural guardians. If anyone would see the whole Bill, he would find that it relates only to the natural guardian—and they die only two. the father and the mother—what will be their powers, how these powers are restricted from what they were previously under the Hindu law, the powers of appointing guardians by will, by the father first and, in his absence, by the mother.

Now if you enlarge this term by bringing in the grandfather and the grandmother and the paternal uncle and the maternal uncle and so on, then that would defeat the very purpose or object of this Bill. That would mean that the Guardians and Wards Act need not come in at all and the provisions 0/ this Bill would constitute a complete Guardians and Wards Act, so far as Hindu minors are concerned. That, Sir, is the first point.

The second point relates to the argument advanced by hon. friends on this side and also by Shri Mathur, and others that there will be difficulties in going to the court that the uncles, the brothers and others will find difficulty in dealing with the property. But when this argument is advanced, they seem to forget that the main object of the Hindu Minority and Guardianship Bill as also that of the Guardians and Wards Act is the welfare of the minor. That is the most Important point, but we are missing the Prince of Denmark in this whole drama of Hamlet. That is the whole trouble. So far as those minors are concerned who have no property, there will be no trouble. Let them have de *facto* guardians. Nobody prevents anyone from looking after the orphan children. People do run orphanages. The Arya Samajists do it and everybody welcomes such efforts. This law does not prevent anybody from becoming de facto guardians. Then it says that under the Hindu law, the de *facto* guardian can deal with the property just as a natural guardian can, he can mortgage and sell the property, all ostensibly for the benefit of the minor. But this law prevents the *de facto* guardian from dealing with the property of the minor as his own; he should go to the court and get himself appointed as guardian. Then he can deal with the property and there is no difficulty.

Instances were quoted yesterday to the effect that there were cases where it took a long time for the guardian to be appointed by the court. These very exceptions prove the rule, for those are cases where the bona *fides* of the so-called *de facto* guardian are challenged by the near and dear ones who say they do not want that particular man to deal with the property of the minor. So they come to the court and fight against it. That is where the fight begins. Where it is a *bona fide* case, there, in 99 cases out of a 100, as we have seen, as soon as the application is made, the matter is decided in the course of a few days. They go to the court, usually it is the court of the District Judge, the Judge calls the party to his chamber and sees if there is opposition *to* the application and then the guardianship certificate is issued. And then the guardian has only to keep accounts, pay the fees for the minor's education, spend money on his health, education, medical relief and all that. Nobody is going to prevent him from doing that. Therefore, I submit that it is essential that where property of a minor child is concerned, every step should be taken to see that that property is not misused by anybody. Sir, it is the common experience of all who have practised at the bar, how ostensibly for the benefit of the child all these things are done and by the time the child becomes a major, all the property gets evaporated. Even in the case of the natural guardian, that is to say, the father, it sometimes happens, for when his wife dies, he marries again, there are other children bom, all the property is mixed up, accounts are not kept and by the time the boy grows up, there is no property. Of course, in many cases, they do not go to court, they do not challenge these things, merely because of considerations of filial love or paternal love or whatever you may call it. That, however, does not mean that they do not suffer. I would say that in the vast majority of cases, they do suffer.

All those conveniences, about whick my hon. friends Mr. Mathur and Mr.

[Shri J. S. Bisht.] Gupta spoke, are conveniences for the benefit of those elders at the cost of the property of the minor. I think we should stick to the main and central consideration of this Bill and say that only the natural guardians, that is to say, the father and the mother, will have this right and even in their case, the right to dispose of the property, to mortgage it, sell it and so on, is sought to be limited. They will have to go to the court and get the sanction of the court.

With these few words, I recommend that all these amendments be rejected.

SHRI B. K. P. SINHA (Bihar): I hope the hon. Member does not oppose my amendment.

श्रीमती चन्द्रवती लखनपाल (उत्तर प्रदेश): सभापति महोदय, नाबालिग बच्चों की अभिभावकता किस को दी जाए, इस प्रश्न पर बहुत अधिक वादविवाद हो चुका है। इस विषय पर काफी चर्चा और काफी विचार विनिमय हुआ। यह शायद अच्छा ही हुआ कि ऐसे महत्वपूर्ण विषय पर हम लोगों ने गम्भीरता के साथ विचार किया। श्रीमन्, बहुत अधिक मंथन करने के बाद समुद्र में से अमृत निकला था इसलिए हमें आशा करनी चाहिए कि इस प्रश्न पर बहुत ज्यादा विचार करने का परिणाम अच्छा ही होगा। सेलेक्ट कमेटी में इस प्रश्न पर विचार हुआ तो उसका परिणाम अच्छा हुआ और नाबालिग की उम्र ३ साल से बढ़ा कर ५ साल कर दी गई। अब इस सदन के अन्दर काफी गम्भीरता के साथ विचार हो रहा है, इसका परिणाम भी अच्छा ही निकलेगा, ऐसी मेरी आशा है।

श्रीमन्, इस सदन के अन्दर जो वादविवाद हो रहा है और जो विचार विमर्श हुआ है उसकी सब से बड़ी खूबी और विशेषता यह रही है कि सभी ने दिल खोल कर इस विषय पर चिंतन किया है। यहां तक कि सदस्यों ने अपनी पोलिटिकल पार्टीज की विचारधारा को भुला कर इस पर विचार किया है। हमने सेक्स और पोलिटिकल आर्गेनाइजेशन सब की सीमाओं के ऊपर उठकर इस प्रश्न पर विचार किया है। इसलिए परिणाम अच्छा ही निकलने वाला है।

मुझे इस बात का आश्चर्य है कि हमारे सदन के अन्दर कुछ माननीय सदस्यों ने ऐसे आक्षेप लगाए हैं कि उनको सुन कर वास्तव में हैरानी होती है। यह कहा गया कि इस प्रश्न पर स्त्री और पुरुष की दृष्टि से विचार किया जा रहा है और स्त्रियां इसे अपने ही अधिकारों का एक प्रश्न बना रही हैं। कल इस सदन में माननीय किशन चन्द ने इस प्रकार का आक्षेप किया। मुझे उनसे यह सुन कर वास्तव में बहुत ही ज्यादा आश्चर्य हुआ क्योंकि जैसा कि मैंने अभी कहा कि इस प्रश्न पर सभी ने बहुत दिल खोल कर विचार किया है और एक रियलिस्टिक दृष्टिकोण से इस पर विचार किया गया है। यदि केवल स्त्रियों की ओर से कहा जाता कि एक खास उम्र तक बच्चे की अभिभावकता माता को दी जाए, तो वह आक्षेप की बात हो सकती थी। किन्तु यह हमारा ही नहीं, जितने भी विचारशील व्यक्ति हैं उनका कहना है, उनकी यह मांग है, कि बच्चे को कम से कम १२ साल तक माता की संरक्षकता में रहना चाहिए। यह विचार इस सदन में केवल स्त्रियों के द्वारा ही नहीं प्रकट किया गया है, बल्कि यदि मैं ठीक हूं तो मैं यह समझती हूं कि इस सदन के ७५ फीसदी या बहुमत में सदस्यों का झुकाव इसी ओर है कि बालक को १२ वर्ष तक माता की संरक्षकता में रहना चाहिए। अभी आपके सम्मुख माननीय सदस्य श्री माथुर ने भी ऐसा ही विचार प्रकट किया। मैं यह कहूंगी कि ऐसे मामलों में वे हमेशा जरा बड़े सोच विचार से और गम्भीरतापूर्वक विचार करने वाले हैं। परन्तु उनका भी यह विचार है कि माता की कस्टडी में बच्चे का भला हो सकता है और बच्चे को कम से कम १२ साल की उम्र तक मां के पास रहना चाहिए। तो मैं माननीय बन्धु श्री किशन चन्द जी से कहूंगी कि इस प्रश्न पर स्त्रियों के संकुचित दृष्टिकोण से विचार नहीं किया जा रहा है और न केवल स्त्रियां ही ऐसा करना चाहती हैं।

श्रीमन्, एक और ऐसा ही आक्षेप सुनने को मिला जो और भी अधिक भयंकर था। माननीय कैलाश बिहारी लाल जी ने कहा कि स्त्रियां अधिकारों के पीछे भाग रही हैं, वे सारे अधिकारों को हड़प लेना चाहती हैं, उनको अधिकार ही अधिकार चाहिएं, अधिकारों के अलावा वे कुछ और लेना नहीं चाहतीं। यह आक्षेप बिलकुल निराधार है। यदि स्त्रियों की अधिकार सम्बन्धी व्यवस्था का पूरा चित्र उनके सामने होता तो वे कभी ऐसा न कहते।

[MR. DEPUTY CHAIRMAN *in the Chair.]*

मैं यह कहना चाहती हूं कि देश के अन्दर स्त्रियां हमेशा ही स्वेच्छा से अपने अधिकारों का त्याग करती रही हैं। इतिहास इस बात का साक्षी है कि किस प्रकार स्त्रियों ने अपनी इच्छा से अपने अधिकारों का त्याग किया है। इतिहास के अन्दर एक ऐसा भी समय आया जब सारे अधिकार एक जगह संचित हो गए और स्त्रियों के पास कोई भी अधिकार नहीं रहा। होना तो यह चाहिए था कि इस सेल्फ डिनायल, इस आत्मसमर्पण, अपने को मिटा देने का परिणाम यह होता कि स्त्री को पूजा जाता, उसकी कद्र होती, उसकी प्रतिष्ठा होती लेकिन हुआ यह कि समाज के अन्दर स्त्री को मनुष्य की कोटि से ही निकाल दिया गया, स्त्री की गिनती पशु में होने लगी। महाकवि तुलसीदास की वह पंक्तियां कौन भूल सकता है जिनमें कहा गया है कि:

"ढोल गंवार शूद्र पशु नारी, ये सब ताड़न के अधिकारी" उन्होंने स्त्री की गिनती पशुओं के साथ की है। तो मैं यह कहना चाहती हूं.....

श्री एच० पी० सक्सेना (उत्तर प्रदेश): आप शायद तुलसीदास जी की उस चौपाई का अर्थ ठीक समझी नहीं हैं।

श्रीमती चन्द्रवती लखनपाल: सीखने के लिए अब आप से शिक्षा लेनी होगी।

श्री एच० पी० सक्सेना: मैं आप को अभी पढ़ा सकता हूं, माफ कीजिएगा।

श्रीमती चन्द्रवती लखनपाल: मैं यह कहना चाहती थी कि जिस समाज के अन्दर ऐसी अव्यवस्था आ जाए कि उसकी आधी जन संख्या पशुओं में गिनी जाने लगे, तो उस समाज का जो परिणाम होना था वही हुआ। समाज रसातल की ओर जाने लगा, देश गिरावट के गड्ढे में गिरने लगा। यह सब परिणाम क्यों हुआ? यह इसीलिए हुआ कि अधिकार एक जगह जमा हो गए थे और कर्तव्य दूसरी जगह जमा हो गए थे।

आज स्त्रियों के अन्दर जो अपने अधिकारों के प्रति एक जागृति की भावना दिखलाई दे रही है वह एक शुभ लक्षण है, न केवल स्त्रियों के लिए बल्कि समाज और देश के लिए भी क्योंकि स्त्रियों की चेतना के मानी यह होंगे कि सारे समाज के अन्दर एक चेतनता आएगी और आज समाज के अन्दर जो एक विषमता आ गई है और जो एक इमबैलेंस और डिसइक्विलिब्रियम की अवस्था आ गई है वह दूर होगी। जब ऐसा होगा तब ही जिस समाज का हम स्वप्न देख रहे हैं वह हम स्थापित कर सकेंगे। इस लिए मैं इस सदन के माननीय बन्धुओं से यह प्रार्थना करूंगी कि उन्हें स्त्रियों की जागृति के सम्बन्ध में किसी प्रकार की आशंका नहीं करनी चाहिए। उन्हें इस जागृति का जो मंगलमय रूप है उसको ही देखना चाहिए और इस सम्बन्ध में अपने विचारों को बड़ी जिम्मेदारी के साथ प्रकट करना चाहिए क्योंकि उनको कर्तव्य और उनका दायित्व यह भी है कि वे इस देश का पथ प्रदर्शन करें। यह उन्हें कभी नहीं भूलना चाहिए। असल में इस प्रश्न पर निर्णय देने का जो यथार्थवादी दृष्टिकोण है वह तो यह है कि हम इस पर जो भी निर्णय करें वह अल्पवयस्क के हित साधन के लिए हो, जैसा कि माननीय विधि मंत्री जी ने कहा था कि हमारा मुख्य उद्देश्य यह होना चाहिए कि बालक का भला हो, बालक को ऐसे वातावरण में रखा जाना चाहिए जहां उसका विकास ठीक ढंग से हो सके, जहां पर उसके हित की रक्षा हो, जहां पर उसका पालन पोषण, उस की देखरेख ठीक ढंग से हो सके। इस सदन में

[श्रीमती चन्द्रवती लखनपाल]

इतनी ज्यादा जो बहस हुई हैं उसको सुनने के बाद इसमें संदेह नहीं रहा हैं कि ऐसा वातावरण बच्चे को उसकी माता की गोद में ही मिल सकता हैं।

अभिभावकत्व के प्रश्न का निर्णय करते समय हमें एक बात यह भी देखनी चाहिए कि जो अभिभावक हो, जो गार्जियन हो, उसके अन्दर बच्चे को रखने की, बच्चे का पालन पोषण करने की, बच्चे की देख रेख करने की कॅपिसिटी होनी चाहिए, योग्यता होनी चाहिए और सामर्थ्य होनी चाहिए। मैं बड़े विनम्र शब्दों में यह कहना चाहती हूं कि छोटे बच्चे की देख रेख करने के लिए या उसका पालन पोषण करने के लिए एक पिता स्वभाव से बिल्कुल अयोग्य हैं। हम व्यवहार में देखते हैं कि यदि चार दिन के लिए भी बच्चों को पिता के पास छोड़ दिया जाए तो चार दिन के अन्दर ही वे इतना ज्यादा इमपेशेंट हो जाते हैं, इतना बेसबर हो जाते हैं कि वे बच्चों से किसी न किसी तरह से छुटकारा लेना चाहते हैं।

अब रही प्रेम की बात। मैं यह कहने का साहस नहीं कर सकती कि पिता अपने बच्चे से प्रेम करते ही नहीं। वे प्रेम अवश्य करते हैं। यह एक स्वाभाविक प्रवृत्ति हैं। इस पर कौन शंका कर सकता हैं ? लेकिन मैं अनुभव के आधार पर इतना जरूर कहूंगी कि पिताओं का जो प्रेम होता हैं वह बहुत ही क्षणिक होता हैं, वह तब तक ही रहता हैं जब तक कि माता बच्चे के साथ रहती हैं। श्रीमन्, देखने में यह आया हैं कि जहां मां मरी और पिता ने दूसरी शादी की, तो पिता का प्रेम बिल्कुल काफूर की तरह उड़ जाता हैं।

श्रीमन्, अपनी भाषा में हमारे यहां एक लोकोक्ति हैं कि अगर मां दूसरी हो तो पिता तीसरा हो जाता हैं। इसके मानी यह हैं कि मां के जीवित रहते तक ही बच्चे के प्रति पिता का प्रेम रहता हैं। ऐसी अवस्था में जो यह कहा गया हैं कि पांच साल की उम्र के बाद बच्चे को पिता के सुपुर्द कर दिया जाए उसके बारे में बहुत अधिक विचार न करके हमें यही निर्णय करना चाहिए कि बच्चे के संरक्षण का भार माता के ही हाथों में रहे। श्रीमन्, यदि ऐसा नहीं किया गया तो यह बच्चे के हक में बिल्कुल अव्यावहारिक, अनुपयोगी और घातक साबित होगा। इसलिए मैं माननीय विधि मंत्री जी से कहूंगी कि आज इस सदन के ८० प्रतिशत लोगों की तरफ से दलगत सीमाओं को लांघ कर जो सुझाव इस सम्बन्ध में रखा गया हैं उसको वे मान लें या उसमें उचित परिवर्तन कर के स्वीकार कर लें।

श्रीमन्, माननीय विधि मंत्री जी ने, जब वे अपना भाषण दे रहे थे, एक यह कठिनाई सामने रखी थी कि रुपया तो माता के पास होगा नहीं, तो फिर ऐसी हालत में वह बच्चे का पालन पोषण कैसे करेगी। हां, यह बात जरूर सोचने की हैं कि बच्चे की शिक्षा के लिए, बच्चे के पालन पोषण करने के लिए रुपए की आवश्यकता होगी। लेकिन, श्रीमन्, एक ओर रुपया हैं और दूसरी ओर वह प्रेम हैं जिसमें बच्चे को समझने के लिए नैचुरल मनोवृत्ति हैं। तो इसलिए हमें आज दोनों में से एक बात को सिलेक्ट करनी होगी। मैं तो यह कहना चाहती हूं कि हमको समन्वय की नीति अपनानी चाहिए कि जब तक माता के पास बच्चा रहे तब तक पिता का रुपया माता को मिलना चाहिए। रुपए को हम ट्रांसफर कर सकते हैं, लेकिन प्रेम और एफेक्शन जो माता के अंदर होता हैं उसको ट्रांसफर नहीं किया जा सकता। इसलिए रुपया — जिस चीज को ट्रांसफर किया जा सकता हैं उसको जब तक माता की कस्टडी में बच्चा रहे पिता के द्वारा माता को दिया जाना चाहिए जिससे वह बच्चे का खर्च बर्दाश्त कर सके।

इसके अलावा, श्रीमन्, मैं एक और विषय पर सुझाव रखना चाहती हूं। वह यह हैं कि नैचुरल गार्जियंस की जो सूची दी गई हैं वह बहुत संकुचित हैं। उसका थोड़ा सा विस्तार होना चाहिए और उसके अन्दर कम से कम दादा, दादी, नाना, नानी, ग्रैंड पेरेंट्स — पैटर्नल और

मैटर्नल दोनों -- को स्थान मिलना चाहिए। इस का कारण यह है कि व्यावहारिक दृष्टि से भी और अपनी जो प्राचीन परम्परा है -- धार्मिक और सांस्कृतिक -- दोनों ही के वह अनुकूल है। श्रीमन्, यदि सच पूछा जाए तो मुझे तो यह आइडिया ही, यह विचार ही, कि माता पिता के मरने के बाद कोर्ट फैसला करे कि कौन बच्चे का संरक्षक होगा, बिलकुल अस्वाभाविक लगता है जब कि दादा-दादी, या नाना-नानी बच्चे के संरक्षण का भार अपने ऊपर लेना चाहते हैं। यह कितनी कृत्रिम और असाधारण सी अवस्था है कि यदि नाना-नानी या दादा-दादी कोर्ट से अपने को संरक्षक नियुक्त कराएं तभी उन्हें संरक्षक माना जा सके। इससे तो बच्चे के संरक्षण का प्रश्न बिलकुल अनिश्चित सा हो जाएगा। क्या हम व्यवहार में नहीं देखते हैं कि जब किसी बच्चे के मां-बाप मर जाते हैं तो दादा और दादी दोनों ही बच्चे को कितना प्यार करते हैं? दोनों बच्चों को उतना ही प्यार करते हैं, दोनों ही बच्चे के लिए उतना ही त्याग कर सकते हैं जितना कि स्वयं मां-बाप। इसी तरह, बच्चा भी अपनी दादी को मां से ज्यादा प्यार करता है, अपने दादा को पिता से ज्यादा प्यार करता है। इसलिए, श्रीमन्, यदि हमें गार्जियनशिप के प्रश्न का निर्णय करना है तो इसके लिए सबसे पहले हमें यह देखना होगा कि बच्चे के साथ गार्जियन के स्वाभाविक बंधन कितने गाढ़े हैं। कहना नहीं होगा कि जो पैटर्नल पेरेंट्स हैं उनका बच्चे के साथ रुधिर का सम्बन्ध भी है, प्रेम का भी है, नैचुरल और व्यावहारिक सम्बन्ध भी है। इसलिए सब प्रकार से यह युक्तियुक्त ही लगता है कि उनको भी सूची के अन्दर बढ़ा दिया जाए।

श्रीमन्, इस प्रश्न पर बोलते हुए श्री भूपेश गुप्ता ने कहा अगर इनको कोर्ट के द्वारा गार्जियन न भी नियुक्त किया जाए तब भी तो वे बच्चे की देखरेख करेंगे ही। लेकिन मेरा कहना है कि जो कानून बनता है उसका जरूर असर पड़ता है, हमारे अन्दर जो सामाजिक और नैतिक भावनाएं होती हैं उन पर कानूनों का जरूर असर पड़ता है। मैं यह भी कहना चाहती हूं कि जब हम कानून बनाते हैं तो हमें यह देखना चाहिए कि हमारे समाज के अन्दर जो शुभ भावनाएं मंगलकारी भावनाएं हैं और सामाजिक, सांस्कृतिक और धार्मिक दृष्टि से भी जो ऊंची भावनाएं हैं, उनको कानून के द्वारा बल मिलना चाहिए, उत्साह मिलना चाहिए। लेकिन इस कानून को बना कर हमारे जो मॉरल ऑब्लिगेशन्स हैं, नैतिक भावनाएं हैं और हमारे समाज के जो ऊंचे आदर्श हैं, उनको हम एक प्रकार से निर्बल बनाते हैं। इसलिए, श्रीमन्, मेरा यह कहना है कि यह धारा जिसके द्वारा गार्ड पेरेंट्स को और बड़े भाई तक को भी कोर्ट में जा कर अपने को गार्जियन नियुक्त कराना पड़े, मुझे बिलकुल अनावश्यक, अन्काल्ड फार और अनुपयोगी मालूम देती है। माननीय विधि मंत्री जी ने इस सम्बन्ध में यह कहा था कि सम्पत्ति की रक्षा के लिए हम ऐसा कर रहे हैं। परन्तु सम्पत्ति के सम्बन्ध में नैचुरल गार्जियन के जो अधिकार हैं वे पहले ही बहुत ही सीमित कर दिए गए हैं इसलिए यह शंका तो यहां उठ ही नहीं सकती कि दादा-दादी या नाना-नानी या बड़ा भाई माइनर की सम्पत्ति का दुरुपयोग करेंगे। इन सब युक्तियों के आधार पर मैं यह निवेदन करूंगी कि मेरे ये दोनों सुझाव, एक तो बच्चे की कस्टडी के बारे में कि वह माता के संरक्षण में १२ साल तक रहे, और दूसरे यह कि नैचुरल गार्जियंस की सूची में दादा-दादी और नाना-नानी और बालक का जो बड़ा भाई है उसको भी उसमें शामिल कर लिया जाए, इन पर विधि मंत्री जी विचार करें और अवश्य मान लें।

DR. RADHA KUMUD MOOKERJI (Nominated): Sir, I rise to support the amendments which propose that the natural guardianship of the minor should not be limited only to the child's father and mother but should be extended to the other relations mentioned in the amendments, namely, the paternal grand-father, the paternal grand-mother, the maternal grandfather, the maternal grand-mother and maternal grand-uncle as listed in Shri Kishen Chand's amendment besides tbe» trotter as included by Shri Govinda

[Dr. Radha Kumud Mookerji.] Reddy with whom I agree that the brother should have a suitable place in the list, perhaps even prior to the maternal or paternal uncle. I venture to think that this extended list of guardians is a more scientific and complete list than that proposed in the Bill before us. It is more scientific because according to the latest eugenic theories the child takes more after his grand-father whose genius and tradition he imbibes in a greater degree than his father.

SHRI S. N. MAZUMDAR (West Bengal): Scientists sharply differ.

DR. RADHA KUMUD MOOKERJI: However, I refer to one school of science; you may refer to another school. History records many instances of the father's genius coming to fuller fruition in the grand-son than his sons, and if affection is a qualification for such guardianship, the grand-father has more of it than the father, and this qualification is possessed even in a greater degree by the grand-mother of the child. I, therefore, do not see why the Bill before us should not recognise the grand-father or the grandmother as the more competent natural guardian of the child from every point of view than its parents who are liable to mutual quarrels which are not very edifying, elevating or educative for the innocent child standing between them in confusion and depression as the mute and helpless spectator of such unseemly scenes. The child's agony may be relieved only by the intervention of its grandparents. The sense of this guardianship of the grandparents who form such a strong and steady prop upon whom the child relies in complete confidence will be very much weakened if they are not legally recognised as natural guardians with powers to utilise the minor's properties in his interests which could be best understood and looked after by his grandparents. Some of the lawyer Members, especially my esteemed friend, Mr. Ramchandra Gupta, have explained how the grandparents will not be able to discharge their duties, their natural obligations and responsibilities towards their grandchild under a haunting apprehension that at any time their assumed guardianship may be cancelled by the court with all the undesirable consequences which follow, which such cancellation will involve, unless they can arm themselves beforehand against such contingencies as the legally constituted guardians of the minor. I need not argue the point that the proverbial law's delay in getting the necessary permission of the court will have a seriously deterrent effect upon the disposal of properties by one whose guardianship is not formally recognised and legalised. The delay will act as an effective disincentive to the best utilisation of the minor's property by his most disinterested relations.

I have also some observations to make, Sir, on the period of guardianship fixed for the mother. I support the provision of the five-year period fixed for it in the Bill. I approve the lower limit on several grounds. Our own indigenous system contemplates the sixth year as a proper age for the beginning of the child's education in the three R's, reading, writing and arithmetic *(Samkhya, Lipi,* and so forth in Sanskrit). There are, at present, in the country, extensive facilities for the child's scientific education under the kindergarten and Montessori systems and perhaps the child should be gradually weaned away from the mother's care and nursing for achieving its fuller development in children's schools. As a humble student of our national traditions and culture, I yield to none in my appreciation of the universal dictum that "the hand that rocks the cradle rules the world." But feminine guardianship, however effective in the beginning, should not be extended beyond the limit in accordance with the principles of pedagogics. The *gurukula* is a natural successor of the parental homestead or school. I need not argue the obvious

advantages that come from the collective life of a residential school.

MR. DEPUTY CHAIRMAN: We are not concerned with education here, Dr. Mookerji.

DR. RADHA KUMUD MOOKERJI: I am just saying that the child should be taken out of the hands of the mother for its education.

MR. DEPUTY CHAIRMAN: We are only concerned with minority and guardianship.

DR.- RADHA KUMUD MOOKERJI: Sir. I am arguing that the mother's guardianship should be for a period of five years only, because the time for the education of the child comes aftar the fifth year.....

SHRI H. C. DASAPPA (Mysore): Is the hon. Member thinking of *gurukula* for the girls also?

DR. RADHA KUMUD MOOKERJI: Yes. To cite a most conspicuous example of a child's education, I may refer to the case of the great English thinker, John Stuart Mill, who under the scientific direction of his learned father, James Mill, was able to achieve the rare literary accomplishment, the capacity to address public meetings in Greek and Latin at the age of nine, as narrated in his "Autobiography". I. therefore, think that the provision of five years as the limit of the mother's guardianship and custody of the child is a very wholesome provision, conducive to the child's education and all-round development.

So, the long and short of my arguments is this: I wish that the Bill be liberalised in the direction of extending the list of natural guardians o: whom I consider that the grandfather and the grandmother are the most competent guardians for the purposes: of the child, because the father of the child may be too busy in worldly pursuits, in settling down in life: while the grandparents have more leisure and they can pay more attention to the needs of the child. It also strikes me that in the case of illness of the child where doctors differ, I think the mother is not a competent person to adjudge between the different diagnoses as regards the treatment necessary for the child's illness. So, I say, there is no harm if the Law Minister is pleased to liberalise his outlook a little more and if he is more realistic, so that he can at once find out how the father's father is a far more competent guardian in view of his longer experience in life to bring up the child.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): May I say for the information of the hon. Member that neither the *Smritis* nor similar texts recognize all these as natural guardians?

DR. RADHA KUMUD MOOKERJI: My point is that there is no scientific reason why the grandfather should suffer under any kind of legal dis ability or inequality. Where is the harm in extending the list of natural guardians to include the grandfather and the grandmother, so that those who have natural love for the child will come in to assume the responsi bility for which they are so fit? And from the scientific point of view the grandfather is far more competent .....

SHRI B. K. P. SINHA: Let the'grandfather plead his own cause.

DR. RADHA KUMUD MOOKERJI: I shall plead my own cause.

And so I say the father has no time to give to the rearing up of his son. Therefore, the grandfather has to intervene. So, I put it to the Law Minister that there is absolutely no legal or moral harm in allowing the father's father to utilise his leisure and experience in life to bring up the child on right lines. And then I also referred to the case where in all progressive countries the child's education begins in school much earlier at five

[Dr. Radha Kumud Mookerji.] or six, so that they had boys of the genius of John Stuart Mill, who was so proficient in Greek and Latin that he was addressing public meetings at the age of nine in Greek and Latin. This is the success which has been achieved for this kind of education in the kindergarten and Montessori methods.

Now, my other point is that the feminine guardianship limited to a period of five years should not be extended beyond that.

SHRI P. S. RAJAGOPAL NAIDU (Madras): Sir, I would like to be very brief.

Mr. Deputy Chairman, I rise to support some of the amendments tabled for enlarging the scope of the natural guardians. One should not forget to see that under the provisions of this Bill we are dealing only with minor's own property. When that is the case, I would like to know what is the harm in enlarging the scope and the list of the natural guardians. If the powers of a natural guardian remain as they were in the Hindu law before, then, of course, there should be some fear in enlarging the list of the natural guardians. But when some restrictions have been placed on the natural guardians in this Bill, as we find in clause 7, which says that "The natural guardian shall not, without the previous permission of the Court, mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor", then where is the harm in enlarging the scope of the natural guardians? If we do not enlarge the scope of the natural guardians, the difficulty will be that when the minor loses both the father and the mother, then there will be a scramble for persons to get themselves appointed as guardians through court.

Very many speakers, Sir, have spoken about the interest which a grandfather or a grandmother would evince in the case of minor grandchildren. I do not see eye to eye with two or three hon. Members, both on this side as well as on that side, in the arguments advanced by them for not enlarging the list of the natural guardians.

I do not want to say much with regard to the increase of the age of minors, so far as their custody with the mother is concerned. Much has been said on this side with regard to that, and I would like to say that we must increase the age from 5 years to 7 years. At least in the case of girls, I feel that we should increase their age to 7 years or 12 years.

Then, Sir, the other important point which I would like to urge is this. If a natural guardian loses his religion, then he ceases to be the guardian of his minor. I am dealing with the proviso to clause 5, which says that "Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section, if he has ceased to be a Hindu." Sir, in this connection, there are two things to be considered, namely, the guardianship of the person of the minor, and the custody of the minor. It has been stated in the text of the Hindu law—I wish to quote Mayne on this point—that after the Caste Disabilities Removal Act, the natural guardian does not forfeit his right of guardianship by loss of caste. Then again, Sir, at page 290 of Mayne's "Treatise on Hindu Law and Usage", it has been staffed as follows:

> "The fact that a father has changed his religion, whether the change be one to Christianity or from Christianity, is of itself no reason for depriving him of the custody of his children. The case of a change of religion by the mother would, however, be different. The religion of the father settles the law which governs himself, his family, and his property. 'A child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and

social *status.'* Therefore, where a change of religion on the part of the mother would probably result in her seeking to change the religion and therefore the legal status of the infant, the Court would remove her from her position as guardian. The question as to the extent and limitation of a father's right to determine in what religion his child shall be brought up has been discussed in many English cases."

Then, Sir, I would like to know the reason as to why the father should cease to have the custody of the minor, if he changes his religion. There is some point in saying that the father may cease to be the guardian of the minor, if he changes his religion. But why should we deprive the minor of the natural love and affection which the father should have in the matter of bringing up his children? Why should he lose the custody of the child also? If this clause 5 is enacted, then, the moment the father changes his religion, he loses the custody of his child. Sir, I quite agree with one sentence in this book which runs as follows:

"A child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social status."

And, as Mr. Kaushal had said the other day, my suggestion may be very revolutionary. But I would still hold that opinion, *i.e.,* the son should have the religion of the father. When the son attains majority, let him adopt any religion, or let him adopt the religion he had at the time of his birth. I do not mind that. But to suggest that the father should lose, if he changes his religion, even the custody of the minor, or to suggest that the minor should not adopt the religion of the father, after the father has changed his religion, would be something that would be going against nature. After the child attains majority, let him change his religion. I have no objection to that at all. But if that is not accepted, Sir, I would only urge once again that at least the father should be allowed to retain the custody of the minor, even when he has changed his religion.

Sir, with these few suggestions, I would support some of the amendments tabled by the hon. Members that the list of the natural guardians should be enlarged

SHRI H. V. PATASKAR: Sir, about 23 amendments have been moved to this clause. Out of them, five relate to the question of extending the scope of the natural guardians and three relate to the question as to what should be the age up to which the custody of the minor should ordinarily remain with the mother. Then there is only one amendment with regard to the natural guardian ceasing to be the natural guardian on his changing the religion. Then there are several other amendments dealing with different matters, •/> which I will make a reference.

But there is only one amendment, amendment No. 19, which, as I said yesterday. I would like to accept, because that amendment says "That at page 3, lin_e 19 be deleted." It is a very simple proposition, because what is stated in clause 5 is that no person shall be entitled to act as the natural guardian of a minor, if he has ceased to be a Hindu, or 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 brahmachari).* After a good deal of consideration, I thought that generally speaking the *naishthika brahvnucharis* are the boys who, from their boyhood, take the vow of remaining bachelors for life. There may be some justification in this amendment. I think that at the time when the original proposals were formulated by Sir B. N. Rau and others, they thought that they should be excluded from succession. Of course, that Is a matter which can be considered at a later stage. But, whatever justification there may be

[Shri H. V. Pataskar.] for the exclusion of such people from succession, they are not expected to be fathers, if that word is to be used in the real sense of the term. It was probably out of some misunderstanding that this thing was put in. Therefore, I have no hesitation in accepting the amendment moved by my friend, Mr. B. K. P. Sinha.

Then, with regard to the other amendments .....

MR. DEPUTY CHAIRMAN: I think, regarding the other amendments, you may reply after lunch.

The House stands adjourned till 2-30 P.M.

The House 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.

SHRI H. V. PATASKAR: Sir, as I was saying, there are about 23 amendments to this clause which have been moved. Five of them relate to the question of extending the scope of natural guardians. Much of the arguments advanced is on the basis that the grand-father, of whom Dr. Mookerji said so much, the grandmother and the other near relations are as good as the father and the mother. All of them, to my mind, may be as good as the natural guardians themselves, but the point here is this: Even according to the basis of these natural guardians being the father and mother, this is peculiar to Hindu Law as it came to be administered during the last two hundred years or so, and the whole thing has arisen in this way. As I said in the beginning when making my motion, the present Hindu Law is neither the Smriti law nor the Vedic law. Historically, it has emanated out of certain exigencies. When in the first part of the 18th century for the first time in our country the western type of jurisprudence or system of law came to be introduced here, they had for historical reasons to leave out making laws which would affect anything in the nature of succession or guardianship so far as the Hindus and the Muslims were concerned, because that foreign Government thought that they must keep out of exciting among these two main sections of the people any sense that they were trying to interfere with what was their religion. I will not go into this further. I do not know whether this term 'natural guardian' is found anywhere else, because I find in Mayne the following passage:

> "The Hindu Law vests the guardianship of the minor in the sovereign as *parens patriae."*

That was the original idea:

> "Necessarily this duty is delegated to the child's relations."

The State was not in a position to take care of the minors; so they invented this method that, while the authority may vest in the sovereign to be the guardian of the minor, they delegated this power to the minor's relations. And who could they be except the father and the mother of whom the child was born? Hence came this provision that the natural guardians were the father and the mother, and the other rulings, etc., have subsequently followed.

Then there is the question of de *facto* guardians and all that. That, as I said, is the law which has been made by judicial decisions, because nobody wanted to legislate in those days for these matters, but we are now concerned with clause 5, *i.e.,* natural guardians. They came to be the father and the mother, as I explained, and therefore we thought at the time when we were framing a measure like this which is part of the Hindu Code that we should continue to recognise them as natural guardians with certain limitations put on their powers consistent with modern times. I am unable to see why we should now extend this list. The general position is that it

is the State who is the guardian of the minor in all societies and the State acts through its courts, and that is why the Guardians and Wards Act is there. I have made it perfectly clear that there is no intention whatsoever to abrogate in any way the provisions of tlie Guardians and Wards Act. I can assure my friend, Mr. Tankha, also that I am prepared to accept any amendment which would make it clear that the Guardians and Wards Act is not affected and the provisions of this law are only supplementary to, and in no way overriding, the general provisions which are there in the other law. That is the normal law.

So far as this particular provision is concerned, we are only recognising what has been recognised all along by the courts for the last two hundred years or so. Now, to extend the scope of the natural guardians and to include some other relations in it—I do not know what is the justification for that. There is no question here of the grand-father being good or the grand-mother being bad. There may be other near relations and they may take charge of the children also, but to extend the scope of this to other people may not even serve the interests of the minor himself, because the whole idea is that we want, as far as possible, to see that the property which belongs to the minor is normally kept available to him when he becomes a major. It was argued: What will happen to the child after the death of the father and the mother? Nothing will happen to him. Somebody said that millions of people will be affected. I fail to understand how they will be affected. . In the first place, it has been said that millions of our people have not got any property. If so, there will be no trouble for them. It is only in cases where the minor has unfortunately or fortunately some property left to him that this question will arise.

Then, it was said: Let us suppose [that there is some minor who has lost both the father and the mother but has got some uncle. Here again it has to be remembered that so far as the family property is concerned, it has been excluded. Nobody comes in the way. What will be the case? When a property belongs to the minor and he has no father or mother, then somebody who is not in common enjoyment of the property comes on the scene. He may be a very good man. I don't know what is the difficulty in the way.

It was pointed out that litigation is very costly. These are general things. Has there been any complaint? At least I have not come across it that the proceedings under the Guardians and Wards Act are not properly administered. Of course, I can understand in cases where two sides fight for guardianship, they might spend their own money but generally speaking my own experience is, and so far as I could get information I don't believe that there is delay. Of course, I know of one case—there was some property and there were some *jagirdars* and some dispute was going on. In such cases it may drag on but normally what is the procedure? Supposing there is a boy whose parents have died, and they have left some property and there is some near relation. What is there to prevent him from applying for guardianship? There is no trouble. There is nothing to show that there will be any difficulty. So far as even taking charge of the property is concerned what is stated is that he has only to make an application to the court and unless somebody else makes it a point to fight in the name of the minor—that I can understand—normally there should be no difficulty. We are thinking of normal cases and in normal cases the grandfather is there and he makes an application that he should be appointed as a guardian of that property. The only liability he may have is that he may have to render an account. It would be safer for any man who has really the love of the minor. What is there to prevent him? Why should he feel that it is an insult to him? There are Christians in our country and there are other people,

[Shri H. V. Pataskar.] even Buddhists.

How are they managing?

SHRI H. C. DASAPPA: They must keep an accountant.

SHRI H. V. PATASKAR: I will reply in the end. We are talking as if it is a big property. When we are raising objections, we are thinking oi millions. They are not going to have that property for which accountants will have to be engaged. There may be only small properties. The only thing is, he will have to say T got Rs. 2,000 and so much has been spent.' It will be filed in the district court and no lawyer is necessary for that purpose. As regards the delay, there is Section 12 of the Guardians and Wards Act. It is a normal feature which obtains in other countries in respect of all other people and which applies to Christians and others where there are no natural guardians. Nobody has found that the Christian minors are terribly suffering because there has been delay and the minors have been neglected. Nothing of the kind. This is because we have been accustomed to thinking of certain things. We have been accustomed to these natural guardians and de facto guardians, who have come to be recognized by courts during the last 200 years. Naturally we think that something is going to happen which is unusual. But when we think of the consequences that it will lead to, we have to think of what is happening in other places: and therefore we do not try to perpetuate or extend something which is itself rather an abnormal thing, and therefore what is the difficulty? There is Section 12 of the Guardians and Wards Act. There will be a *vacuum,* I was told. How could there be? Suppose there is some property and there is a good grand-father or there is an uncle. He sees that the boy has lost his parents. If he is a really loving person, it is his duty to see what he has to do with that minor. He can make an application under Section 12 and get himself appointed as a custodian so far as property is concerned. For the rest there is no difficulty. People also will not fight because if there are only two bighas, I don't think anybody will be interested in carrying on this fight in the court at the time of the guardianship proceedings. So the fears to my mind, are not justified. Of course, we are accustomed to this and we think that something will happen. As a matter of fact it is said that even the natural guardians who are the father and mother are now turned into *de facto* guardians. We will come to that later on. Therefore, I am firmly of the opinion '.hat what has been found normal in other things need not be found to be abnormal here. Suppose I happen to have a nephew. Unfortunately, his mother and father die. What should be my normal feeling if I am a good uncle. Will it be that I will consider it beneath my dignity to go to a court of law and get appointed as a guardian? If really I feel that I would rather see that his property is wasted than go to a court and get the proper authority, if there are such relations who think more of their dignity rather than apply to the court and get the position cleared so that no trouble may arise in the future, if they feel like that, then such persons should be taken by us with a little bit of suspicion and great caution as to whether they are really guided by the interest of the minor or by some other consideration. Therefore, I am prepared to accept that to make it absolutely clear that so far as the Guardians and Wards Act is concerned, in spite of all these provisions of natural guardians, etc., that the minor's interest should be guarded, if it is thought that anything will come into conflict with that, I am prepared to make provision for that but in no case can we go on extending the scope of the natural guardians.

Then the question arises where to stop. There may be grand-father, grand-uncle, etc. How to decide who will be better or who will be worse? After having very carefully listened — I know that some of my friends really feel

very strongly on this—I, therefore, tried to think over the matter as dispassionately as I possibly could but if at all this Bill is to serve any useful purpose after having recognized the natural guardians and having put certain limitation—to which I shall come later on—I don't think I can say that the extension of the scope of the natural guardians will lead in any way to benefit the cause for which this Bill has been introduced in this House.

I really am in sympathy, there might be very good relations and even good neighbours, not to say relations. Even relations may have some axe to grind but I have known of neighbours who proved to be good guardians of the minors. In the case of natural guardians, naturally we think that because the boy is born of them, so they are natural guardians but to extend this is not proper. As I said, the basis of it is that even according to our own Shastras and Smritis it was the sovereign in whom the power was vested. By delegation they thought it goes to the father and the mother and they were regarded as natural guardians and in cases where there is trouble, we have introduced the court. That is the basis of the Guardians and Wards Act. In view of that it would be desirable from every point of view to bring ourselves more and more near to the normal feature of the present jurisprudence and the law on the subject rather than go away from it by extending the scope of natural guardians. I don't know where we will go. Therefore, I am really sorry for this. Of course, there are many Members who have given thought to it and I have tried to consider the matter very carefully but I think to extend the principle would not improve matters but would do something which will be a retrograde step so far as the question of having a common law at any time is concerned. Therefore, so far as these amendments are concerned, a mere reading of them shows that some people think the father is a better person, some others think that some other relation will be a better person. I do not blame anybody for that. It shows there is no unanimity. Of course, there cannot be unanimity on this subject. Only in the case of the father and mother can there be unanimity, because they have given birth to the child, and there is some force in that. But these amendments, so far as I have been able to see, if they are accepted, will take away the very basis of this legislation and, though I am sorry, I am not in a position to accept any of them.

Next I come to the clauses relating to the custody of the children. There was a lot of discussion on this and a lady Member—I do not remember her name—really argued very sentimentally and asked why it should not be more than 5 years. Now, what does clause 5(a) say? If says: the natural guardian of a Hindu minor is-

> "In the case of a boy or *an* unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of *five* years shall ordinarily be with the mother."

That is the law even now, as it is administered. So far as the law of natural guardianship is concerned, as my lawyer friends know, that is recognised by judicial decisions; that is to say, first the father and after the father, the mother is the natural guardian. There is no objection to that. Subsequently, the proviso says;

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

We do not say that it shall necessarily be the mother, that the daughter should necessarily be with the mother. As I made clear, the other day, it is a sort of an indication to the courts before whom the matter may go as to what we desire, not that the mother

[Shri H. V. Pataskar.] shall always be in custody of the child. That is not the idea. The mother may be bad and the father may be good. The father may be bad and the mother may be good. That is a matter for the court to decide when the case comes before the court. In that particular case, the court will have to decide the question from the point of view of the interest of the minor child. Here we have merely indicated that the custody will be with the mother. That is an indication because of the sentiments expressed. Formerly it was 3 years and now it is 5 years. Beyond that I do not see any purpose. What is the purpose of all this discussion that it should be up to the age of 12 or the age of puberty and all that? Moreover, when is the question likely to arise? Of course, if the father and the mother are there together, then naturally no such question will arise. It is only in case the mother deserts the father or the father has deserted the mother and when they both fight about the custody of the child, only then will this question arise. In such a case, we have indicated that it should ordinarily be the mother; and for good reason. No child up to the age of 5 should ordinarily be removed from the mother. Beyond that it should not necessarily mean that as soon as 5 years are over, somebody will snatch the child away from the hands of the mother and take it to the father. If there is some dispute, the decision must be left to some authority and that authority is here the court. The court will decide each case.

I listened to the various arguments advanced and they were very instructive. It was said that till she attains the age of puberty or marriage, the girl should be with the mother, that she should have the care and guardianship of the mother. Nobody disputes that. It is not the normal case that is envisaged here. It is a case arising only when the mother and the father are at variance which we do not expect to be universal, for in a normal society, the husband and the wife will be together. That state of society where all the husbands and all the wives are fighting is not a civilized society. In normal conditions and in a civilised society, the father and the mother get on together. And we find that, whether it be in the rural areas or in the cities, that is the normal life.

AN HON. MEMBER: Then the question of custody does not arise.

SHRI H. V. PATASKAR: Suppose there is some divorce or something like that which is a misfortune to the family and to the minor. For such cases, this is only an indication and nothing more. Beyond that it is not safe to go, and say that it should be this age and that. So many circum stances are there. The mother may be a good woman, but she may get re-married. There are other laws, too, and customs and usages. The mother may divorce the husband. Then there is the young child. She re-marries and goes to the other man's house and .....

SHRI S. N. MAZUMDAR: Then the court will decide the matter. and provide the custodian. But here you have provided something definite.

SHRI H. V. PATASKAR: We have only indicated the normal position. If the court finds that in the interest of the minor the child should be with the mother, it will decide so. In each case it will decide what to do. In all cases of dispute, as I said, some third party will have to decide and in this case who else can it be but the court? Can we find some other machinery? I do not think we can find one in modern society except the court.

There is the question of how to minimise the cost, what should be the procedure and all that.

SHHI S. N. MAZUMDAR: Reconciliation can be there.

SHRI H. V. PATASKAR: So far as the question of custody is concerned, some hon. Members seem to think as if we are embodying something here which must be adhered to. We only say that it shall ordinarily be with the mother for five years. I don't think we should extend this period heyond five years. It may be that the another, on account of financial circumstances, re-marries and is in another man's house. Then, in that case the father will have to take charge of the child. Otherwise the child is likely to be neglected in the mother's house, though it is in the custody of | the mother.

SHRI H. C. DASAPPA: Then she becomes unfit. That is the general law—clause 13.

SHRI H. V. PATASKAR: There is no general law. so far as I can understand. How does it arise here? The custody normally is for 5 years. That is enough for the purpose. I do not know why there should have been so nrach discussion on this question, whether it should be 3 years, or 5 years or 12 years or the age of puberty and all that. In those unfortunate rare cases, the court will have to decide. I do not think any purpose will be served by extending the period. Nor •will it be desirable. It is sufficient indication and beyond that there is nothing in it.

Then, there is the important point about the religion. About that there is an amendment. The clause says: "Provided that no person shall be entitled to act as the natural guardian «f a minor under the provisions of this section—

"(a) if he has ceased to be a Hindu."

Here, as I said, I am prepared to make it clear that by becoming Christian or changing his religion, by that

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alone, the man will not be disqualified, if he is otherwise qualified to be the guardian of the minor. I am accepting some such thing, that this Act is going to be the supplement of. the Guardians and Wards Act and not an Act which supersedes the Guardians and Wards Act for this purpose. This is a simple provision here and it has nothing to do with a secular State or religions and all those considerations. The father is the natural guardian and he is a Hindu. There is no natural guardian except among Hindus and in that capacity he gets the rights of a natural guardian. If he chooses to become a Christian or a Muslim, then what we say is, he shall not continue to be the natural guardian and continue to get the rights that he obtained because he was a Hindu. What is the logic behind it? How can you say that in spite of the fact that he has passed on to be a Christian or a Muslim he should continue to ex^ercise what has been conceded to him simply because of the fact or existence of the institution of natural guardianship among Hindus?

SHRI S. N. MAZUMDAR: Only because she or he happens to be the mother or father.

SHRI H. V. PATASKAR: Maybe, but they get the right not because they are the father and mother, but because they are Hindus. If a Christian was the father and he changed his religion, then no question would arise. Here he gets the natural guardian's right because of the simple fact that he is a Hindu. We do not come in the way of anybody, who is an adult, changing his religion at ail- But the right he got as a Hindu he should not continue to enjoy over the minor's property, not the common property, not the property in which he has an interest, but something which belongs to his son or daughter. Why should he continue to be the natural guardian? If he is a responsible father, he will not change his religion.

' It is his choice and we do not put a ban upon him. It is not as

[Shri H. V. Pataskar.j if that merely because he becomes a Christian he will have no powers. It is nothing of that kind. The only thing is that he cannot be a natural guardian; he will have to go to a court and get himself declared as a guardian. In fact, no court will deprive him of the guardianship unless it is that he is an unfit person. I think there should be no difficulty. Therefore, this is a provision which logically follows what we have laid down earlier. We have recognised the natural guardians among the Hindus and a man who is no longer a Hindu should not get some advantage which was given to him as a Hindu. I do not, therefore, think that any of the objections raised on the ground of secularism or religious feeling is correct. The whole thing is based on a secular point of view and nobody need think that we are discriminating between one religion and another or that religious feelings are paramount. Having conceded the idea of natural guardians amongst Hindus, we say that if a man ceases to be a Hindu, he shall not be entitled to that right if he has changed his religion. There is no question of disturbing him in his family relations merely because of this fact. This is only an additional liability cast on him; he has already taken upon himself the liability by changing his religion and he will have to undertake a small liability for going to a court and getting himself declared as a guardian. I think that all these objections that have been raised so far as this matter is concerned are probably on some misconception.

I now come to amendment No. 13 which says: "That at page 3, line 13, *for* the word 'husband' the words 'father, after him the mother and after her, the husband' be substituted". I think the general principle is that in the case of a married girl, the husband should be the guardian.

MR. DEPUTY CHAIRMAN: Mr. j Govinda Reddy is not pressing it.

j

SHRI H. V. PATASKAR: Then I shall come to the other amendment. As regards abnormal eases, what I say is that there is no law that can contemplate all abnormal cases and provide for them.

Then we have amendment No. 15 which says, "That at page 3, line 14, after the words "no person shall" the word "ordinarily" be inserted,". It means, "no person shall ordinarily be entitled to act as the natural guardian of a minor under the provisions of this section.....". I do not think it is necessary at all and I have not been able to follow the idea. I think it is not desirable that we should dilute what is evolved in (a) and (b>-Therefore, I do not think that this will be pressed also.

Then there is amendment number 17 which seeks to delete the words "completely and Anally" occurring in line 17 of page 3. This is necessary be cause these words might cover the case of those who may have become a *sanyasl* temporarily. Unless some such words are there, this provision) will not be clear and I hope the hoiu Member will not press it.

Then there is amendment number 18 which wants the deletion of the following: "by becoming a hermit *(vanaprastha)* or an ascetic *(yati* or *sanyasi)* or a perpeftual religious stu dent *(naisthika brahmachari)".* Sup pose a man renounces the world com pletely and finally and he is not *to* be traced at all. What is to happen to the minor? We do not want that the natural guardianship, which that man possessed, should all along be held in suspense. It is on that ground that we have provided this as other wise there might be complications. Suppose the father or the mother—or, whoever may be living—renounces the world completely and goes to the Himalayas. Some other arrangements should naturally be made so that the right of natural guardianship is main tained. I do not think he or she will

come back to claim that right. It is with this object that this provision has been made. I have already accepted amendment number 19.

PANDIT S. S. N. TANKHA (Uttar Pradesh): In this regard, I have a difficulty, Sir, and that is that if a father becomes a hermit and the mo-* ther or any other relation has to ap-. ply to the court for appointment of a guardian in the place of the father, that person will have to prove that the father has, completely and finally renounced the world by becoming a hermit. The proof of this fact is my main difficulty. If these words are retained, unless the party is able to prove that the father has finally and completely renounced the world, no other person can be appointed in his place even on application m a court of law.

SHRI H. V. PATASKAR: I will clarify that point. The idea beh.nd this clause is that no person who has completely renounced the world can claim his right of being a natural guardian. That is all that is sought to be done. We cannot envisage now as to what the courts should do or whether he has completely renounced or partly renounced the world. If the court finds that the man is not the fit person to take care of the minor, another man can be appointed. Suppose a man has temporarily put en robes of saffron colour, goes somewhere and comes back after some time. We do not want to disturb the' arrangements in such a contingency. Beyond that, I think there is no other point and there will be no difficulty so far as the courts are concerned. Once the matter comes up before the court, as the law stands at present, even if that party wants to take back that application, the court is seized of the matter of seeing that the minor's interests are properly safeguarded. In that case, all other points are immaterial; even if the man says that he had gone only for a short while, | the court has to decide whether the man is a fit man to safeguard the interests of the minor. Therefore, there should not be any difficulty on that score. As I said earlier, if anything is not#aid specifically it is possible to argue it otherwise; so, I am asking the draftsman to draft a clause which will say that nothing that we say here will be regarded as being in any way contrary to the general law as enunciated in the Guardians and Wards Act.

Then comes amendment number 54.

, SHRI H. C. DASAPPA: This is contingent on 53.

SHRI H. V. PATASKAR: Then I need not separately answer this.

I might say at this stage that though it has not been possible for me to accept any of the amendments suggested, except No. 19, I really must commend the way in which this matter was being looked at by all those Members who took the trouble to consider it from every detailed point of view. I really would have been glad if I could have found my way to accept any of these, but I, as a matter of fact, feel that in all these matters to extend the scope of this in any way will not be fulfilling it in a proper way and it is from that point of view that I am really unable to accept any of these amendments except amendment No. 19 moved by the hon. Mr. Sinha.

fAmendments Nos. 3, 4, 6, 7, 12, 13, 15, 17. 18, 20, 53, and 54 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

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,

tFor texts of amendments, *see* cols. 4023-26 *supra,* respectively.

"Mr. Deputy Chairman.] the maternal grandmother, and the maternal uncle in this sequence'."

The motion was negatived.^

MR. DEPUTY CHAIRMAN: The question is.

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question i»:

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

The motion was negatived.

MR. DEPUTY CHAIRMAN: No. 19 J is accepted by the hon. Minister. It is Shri B. K. P. Sinha's amendment. ,

The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: Now the question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 6 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now we can come to clause 7.

There are 17 amendments to this. Those who want to move their amendments will please do so.

SHRI P. S. RAJAGOPAL NAIDU: I ' move:

21. "That at pages 3-4, for the existing clause 7, the following B« substituted, namely: —

'7. *Powers of* natural *guardian.—(1)* The natural guardian of a Hindu minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benetlt^ of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1), is voidable at the instance of the minor or any person claiming under him'."

34. "That at page 3, line 40 for the words 'an evident advantage' the words 'the benefit' be substi tuted."

SHRI M. GOVINDA REDDY (My-sore): Sir, I move:

22. "That at page 3, lines 28-29, for the words 'but the guardian can in no case bind the minor by a personal covenant' the words 'pro vided that no personal covenant shall be binding on the minor, be substituted."

25. "That at page 3, for lines 30 to 33, the following be substitut-ed namely:

'(2) The natural guardian shall not—

Ca) mortgage or charge any part of the immovable property *ot* the minor save for its improvement,

(b) transfer without the previous permission of the Court, by sale, gift, exchange or otherwise, any part of the immovable property of the minor'."

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

23. "That at page 3, lines 30-31, the words 'without the previous permission of the Court' be dele ted."

30. "That at page 3, at the end of line 33, the following be added, namely: —

'except for legal necessity or for the benefit of the minor'."

33. "That at page 3, lines 38 to 40 be deleted."

35. "That at page 4, lines 1 to 23 be deleted."

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

24. "That at page 3, for lines 30 to 33 the following be substituted, namely:

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

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

(b) 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'."

31. "That at page 3, line 35, after the words 'Any disposal of the words 'movable or' be inserted."

SHRI KISHEN CHAND (Hyderabad) : Sir, I move:

26. "That at page 3, for lines 30 to 37, the following be substituted, namely:

'(2) The natural guardian, and not any other guardian, shall have power to mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor if it is done in the interest of the minor'."

32. "That at page 3, line 38 for the words 'natural guardian' the words 'any guardian other than the natural guardian' be substituted."

SHRI B. K. P. SINHA: Sir, I move:

28. "That at page 3, line 32, after the words 'any part of the' the words 'movable or' be inserted.

29. "That at page 3, at the end of line 33, after the word 'minor' the following be inserted, namely: —

'except in a case. of need, or for the benefit of the estate of the minor'."

I also move:

37. "That at page 4, line 22, for the words 'the greater' the word 'any' be substituted."

MR. DEPUTY CHAIRMAN: Mr. Leuva has tabled an amendment just now, too late. It is not necessary. It is barred also.

Clause 7 and the amendments are open for discussion.

SHRI P. S. RAJAGOPAL NAIDU: Sir, I do not want to repeat the arguments which I advanced when I spoke on the last occasion, during the general discussion of the Bill when I was dealing with clause 7. My amendment, if accepted, would mean that the natural guardian will have power to alienate the minor's property i» case it be for the benefit and necessity of the minor. That will also be in accordance with the present law on the subject. I fail to see the reason why such a restriction should be placed on the natural guardian. It may be said now that we are dealing in this Bill only with the minor's own property, and as such, such restrictions ought to be placed so that it is advantageous to the minor. It was stated by the hon. Minister that it is advantageous to the minor for the simple reason that when property of the minor is alienated by the natural guardian with the previous permis-

[Shri P. S. Rajagopal Naidu.] sion of the court there will be no necessity for the minors in future to go to a court of law to set aside the alienations so made by the natural guardian. It was also stated by the hon. Minister that the property will fetch good value if the court's per mission is taken by the natural guard ian before he alienates the property. But my only grievance about the whole thing is the enormous delay that will be caused by the law courts in granting a certificate to the natural guardian to alienate the minor's pro perty for the benefit of the minor and for the necessity of the minor. Those of us who have some experience with the law courts know, when an ap plication for the appointment of a guardian is made or even as a matter of fact when an application is filed to seek the permission of the court to alienate the minor's property, how much time is taken by the law courts in this matter. Sir, some of us at least know the procedure that is adopted by the law courts in these matters. When an application is filed, what happens is we have to implead in the petition as respondents the nearer relatives of the minor .....

PANDIT S. S. N. TANKHA: Next of kin.

SHRI P. S. RAJAGOPAL NAIDU: Yes, and notices will have to go to next of kin. Notices will have to go to the next of kin and some courts insist on the matter being published in the newspapers by way of an advertisement. Then, the service of summons takes such a long time and if any ene of the respondents to the petition takes it into his head to come before the court and file a vexatious defence, it drags on for such a long time that ultimately by the time he gets himself appointed, it takes nearly one year. We had also known how in some cases courts have insisted on the guardians to furnish security before they get themselves appointed as guardians for the minor. It is only for this purpose that I had suggested that the natural guardians at least should not be restricted in the matter of going to a court to get the permission of the court to alienate the minor's property.

Sir, dealing with the other amendment which I have suggested, which is a very simple one, I only want these words "evident advantage" to be deleted and in their place the words "the benefit" to be inserted. I tried to find out whether there is any case law on the point with regard to the two words "evident advantage" and I did not find that there is any case law at all on the point. The words "evident advantage" would be even construed by several courts to mean that the natural guardian can sell away the property for an advantage which will be evident on the face of it, namely, if the property of the minor were to fetch double the value of it or three times the value of it. If these words are retained as they are in the Bill, it would mean that the courts will have to grant permission for the natural guardian to sell away the minor's property, simply because it would be fetching double the rate. So, this positive advantage would necessarily be detrimental to the minor's estate, if these words are retained. And as I have already stated, this word "benefit" has been defined by several courts right from Hunooman Persaud's case which had been often repeated by several hon. Members on the floor of this House. There is a settled case law on the point and all of us know how the law courts have interpreted that word. It is only for that reason that I want this word "benefit" to be introduced in this clause and the words "evident advantage" to be deleted. And I am also fortified in my arguments by this fact. The words "necessity" and "benefit" have been used in this Bill. For instance, in sub-clause (1), of clause 7, we find:

> "..... to do all acts which are necessary or reasonable and proper for the *benefit* of the minor or for the realization, protection or *benefit* of the minor's estate;".

So. we find the word "benefit" mentioned in sub-clause (1) of clause 7. It may be said that in section 31 of the Guardians and Wards Act the words "evident advantage" are used, but we do not come across several cases under section 31 of the Guardians and Wards Act. We do not find that any matter has been taken to the law courts under section 31 of the Guardians and Wards Act. But when this Bill goes on the Statute Book, we will (find that there will be a number of applications filed before the law courts seeking permission from the law courts to alienate' the minor's property for "evident advantage", or "benefit" or "necessity" or whatever it might be, and it is only then that difficulty will arise in construing the words "'evident advantage". I have looked up the law lexicon to see how these two words have been used—whether these two words are used in a legal sense or whether they are used in any other sense. I am not able to see anything in the lexicon. What I want to say is this. Let us try to understand what these two words mean; and let us now try to introduce this word "benefit" whose meaning is well settled by the law courts, so that we might avoid any further decisions of the law courts in this matter.

Sir, I do not know whether it is proper on my part at this stage to deal with certain amendments tabled by my hon. friend, Mr. Dasappa and other friends. In case my amend ment is not accepted .....

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

SHRI P. S. RAJAGOPAL NAIDU: My amendments are Nos. 21 and 34.

Sir, I have finished with my amendments. In case my amendment No. 21 is not accepted, then the position would be that there will be restriction placed on the natural guardian, restricting him from dealing with the minor's property for the benefit and necessity of the minor, in which ease we must have the whole clause made clear, namely that the natural guardian cannot lease the property for any length of time. No doubt, restriction will be placed on the natural guardian to mortgage or otherwise alienate the minor's property in case of necessity. But nothing is mentioned about the powers of the natural guardian to lease the property for any length of time. It has been argued by the hon. the Law Minister that each State has its own laws with regard to lease and if any such thing finds a place here that would lead to several difficulties and complications. I do not think that it will lead to difficulties or complications. On the other hand, I feel that the omission of this particular provision with regard to leases would lead to complications, because a natural guardian, if he takes it into his head, will naturally lease the minor's property for any length of time, say, for 999 years, as my learned friend, Mr. Sinha, has put it. So, I personally feel that there should be this provision restricting the powers of the natural guardian from leasing the property of the minor for a long period. It has also been stated that there are several State laws on leases and these State laws will come into conflict, but as I understand law, leases are dealt with under the Transfer of Property Act, as you, Sir, have rightly pointed out during the debate. Naturally, leases are governed by the Transfer of Property Act, though it is stated by certain law courts that agricultural leases are not governed by the Transfer of Property Act. Some courts have said in certain cases that agricultural leases also are governed by the Transfer of Property Act. Whatever it n»ay be, leases in general are governed by the Transfer of Property Act and I personally feel that the Central Government has power to enact any law with regard to leases in general. So, it will not come into conflict, in my opinion, with any State laws on the matter if we make a provision for leases in this particular classe 7 of this Bill. And to avoid any complications subsequently, i earnestly request the hon. Minister to

[Shri P. S. Rajagopal Naidu.] see that if restrictions are to be placed, let them be placed on . the natural guardian in such a manner that difficulties may not arise in future in this matter of leases. Sir, I have finished what all I had to say about this and the rest of it I leave to the hon. Minister.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, my amendment No. 23 desires that in clause 7, subclause (2), the words "without the previous permission of the Court" should be deleted. And in my amendment No. 30, I have suggested that at the end of this sub-clause, the words "except for legal necessity or for the benefit of the minor" should be added.

Now, Sir, with these changes, subclause (2) will read thus:

> "The natural guardian shall not mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor except for legal necessity or for the benefit of the minor."

If these latter words, namely, "except for legal necessity or for the benefit of the minor" are substituted for the words "without the previous permission of the Court", then.I submit the intention of the sub-clause will not in any way be materially affected. The words of my amendment can also be put in an earlier part of the sub-clause to read thus:

> "The natural guardian shall not, except for legal necessity or for the benefit of the minor, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor."

Now, Sir, virtually, the only difference which will be brought about by this change will be that the natural guardian will not be compelled to go to a court of law for effecting any transfer of immovable property, but at the same time the restriction existing under the present Hindu law, namely, that no natural guardian can mortgage or charge, or alienate, the minor's property, except for necessity or for the benefit of the minor, will continue to exist so that even after effecting the desired change, the powers of the natural guardian will. be limited and will continue to remain under restriction as at present-It is not that by the deletion of the words "without the previous permission of the Court" it will be open to the guardians to do whatever they like with the property of their wards. As I submitted, Sir, in my opening remarks at the time of the first reading of the Bill, there have been very few cases, if at all, where the natural guardians have acted against the interests of the minors, or have disposed of the property in a manner prejudicial to their interests. And, therefore, according to me, as I stated then, there is no need to make any change to limit further the powers of the natural guardian. And, therefore, I have tried to maintain the present law on the subject by suitable amendment of sub-clause (2), so as to make the position quite clear that the natural guardian will have the right to alienate the property or transfer, or charge, the property only under certain specified circumstances. And: that, I think, will be sufficiently protective of the interests of the minors,, and there will be no necessity to compel the guardians under the Bill to go to the court of law for effecting any transfers of the minor's properties by the natural guardians. As you are well aware, Sir, it is very easy to say-that the appointment of a guardian can be had on an application to the court with the stamp of a few annas, but people forget that when a litigant has to go to a court of law, he has to incur many other expenses which are heavier than the expense of the court fee. Therefore, when the minor's guardian is compelled to go to a court of law, he has not only to pay the other sundry charges of the law courts, but he will also have

to engage a lawyer, which will east:

him a good deal. He will have *to.*

send out summons to the nearer relatives, and that will cost him another bit. So it is not a question of a few annas only, but it is a question of putting the parties unnecessarily to expense and botheration, which can be avoided by allowing the present existing law to remain and making the position of the guardians quite clear by the wordings of the Bill itself.

Then, Sir, as my friend, Mr. Ra.ia-gopal Naidu has just now stated, when the guardian goes to the court of law and asks for permission to be appointed as a guardian, he has to furnish security. And as far as I am aware, it is not the security of a small amount which is usually asked for but it is usually for double the amount of the value of the property, which the court asks for. And if this is so, as I am well nigh sure it Is, it will be very difficult in most of the cases for the natural guardians to furnish the required security. Supposing a minor's property is worth Rs. 1,000 and the guardian is asked to furnish a security of Rs. 2,000, where is he, then, to get that amount from, and who is going to star.d surety for him to that extent? Even if he owns a house of his own, I arn afraid that house will not be enough for a security of Rs. 2,000. So, he will be placed in a position where, in spite of his intention to manage the property of the minor in his best Jnterest, the applicant will be forced to surrender his right to become a guardian because of these obstacles ky the courts of law. Therefore, Sir, it is my submission that the Law Minister may be pleased to consider this aspect of the matter carefully and not unduly restrict the powers of the natural guardians. The hon. Minister may restrict the powers of the *de facto* guardian or the *ad hoc* guardian. That is another matter altogether. But as far as the natural guardian is concerned, the hon. the Law Minister may be pleased to consider this point and may be pleased to withdraw the restrictions suggested by him in the Bill

Then, Sir, my amendment No. 33 .....

MR. DEPUTY CHAIRMAN: That is consequential.

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

Then, Sir, as I have submitted earlier, I agree with the remarks of my friend, Mr. Ra.jagopal Naidu, that the words "an evident advantage" occurring in sub-clause (4) should be changed to the words which are now employed under the existing Hindu law, namely, "for the benefit of the minor or for his necessity", because these words have been interpreted by the courts of law for very many years, and they have assumed a definite significance; and as such, it is desirable that those words should be allowed to continue on the subject of limitation of the powers of the guardians.

And, as for the words occurring in. the Guardians and Wards Act, I do not think there has been much litigation in respect of that clause, and there is not sufficient guide available in the commentaries on the Guardians and Wards Act. And we do not know how those words have been interpreted by the various courts of law. It is, therefore, desirable that the words which have assumed a definite significance and which have acquired a definite meaning, may be inserted herein instead of the use of new words. With these few remarks, Sir, I have done on this point.

SHRI KISHEN CHAND: Mr. Deputy Chairman. I have moved two amendments which have, more or less, been explained by the two preceding speakers, as to why these amendments have been introduced. I submit that there should be some sort of distinction between the natural guardian and the *de facto* guardian or some other guardian, especially when the list of natural guardians is restricted only to

[Shri Kishen Chand.] the father and the mother of the minor. If there was no idea of having a distinction in any subsequent clause between the natural guardian and the guardian appointed by the law court, I submit, Sir, that even the father and the mother need not have been appointed as natural guardians. Unless and until some sort of distinction is made between the privileges, rights and duties of the natural guardians and the *de facto* guardians, where is the reason or the need for having natural guardians? The difficulty is that in certain cases the hon. Minister takes up a general viewpoint, but when he is confronted with a general viewpoint, he immediately comes out with particular examples and tries to prove his case by those particular examples. The lion. Minister has been in the legal practice for a number of years and he must have gather-

• ed some statistics. So let him say "whether in a large number of cases •when the natural guardian or any other guardian applied to the court for permission to mortgage or sell the property of the minor, the expendi ture involved was inordinately heavy . as compared to the assets or whether it was otherwise. If from his mature experience he says that there won't be any long delay or large expense in getting the permission of the court, we will accept his statement, but •other lawyers have come forward to . say that their experience is the other way about. If this other experience is correct, we should make some distinction between the natural guardians and *de* facto and other guardians.

Then, Sir, in a large number of cases the property will not be very large. It will be only very small property. In the case of small pro-oerties, especially in the rural areas, there is a sort of jealousy among the neighbours. There is good deal of land hunger. The land involved may b« Very small but even then a neighbour, out of sheer jealousy or out •of cussednes*, will probably put obstacles in the way of the transfer of that land if he wants to purchase it himself. He will go to court and put all sorts of obstacles in the way. That is the reality of life. Only in very exceptional cases the property of a minor, not inherited from the father will be large, in the majority of cases it will be very small. It may happen that after the death of the grandfather or the grand-mother, *one or* two acres may be transferred to the minor grand-son. In that case, if those one or two acres happen to be in a separate village, because naturally marriages take place in a neighbouring village and not in the same village and if the father of the minor wants to dispose of those one or two acres in the neighbouring village inherited by the minor from his grand-mother or grand-father on the mother's side, the neighbours will certainly put all sorts of obstacles in the way of the minor's father. That is the normal life, the reality of life, and the hon. Minister should actively consider the cases of the large number of minors who will be inheriting only very small areas of land or other property from their grand-father or grandmother or some other relations on the mother's side. I submit that if he circumscribes the power of the natural guardian in this way the guardian would not be able to transfer the property of the minor. In the case of the *de facto* guardians or the guardians appointed by the court or the testamentary guardians, if the hon. Minister wants to put some restrictions on their power, it will be only reasonable.

Unfortunately, Sir, the previous amendments have not been accepted by the hon. Minister and have been rejected. Sir, I support and commend my amendments and I do hope that the hon. Minister will, with an open mind, not put party pressure on Members in regard to their decisions on such matters. Because of party pressure, many hon. Members have withdrawn their amendments.

MR. DEPUTY CHAIRMAN: He is only trying to convert you to his point of view.

SHRI KISHEN CHAND: If he tries to convince us by his arguments, it is all right, but instead of convincing hon. Members by arguments, he brings party pressure on them.

SOME HON, MEMBERS: No, no,

SHRI J. S. BISHT: No party pressure at all.

SHRI KISHEN CHAND; That is my, reading.

MR DEPUTY CHAIRMAN: It is an incorrect reading.

SHRI KISHEN CHAND: I may be wrong, but I cannot believe that with complete conviction hon. Members had sent in so many amendments and then suddenly by just one speech of the hon. Minister they were so completely converted to the viewpoint of the hon. Minister that they withdrew their amendments. I have the highest respect for their intelligence and wisdom, and therefore I cannot believe that by just one peroration of the hon. Minister they were suddenly converted to his viewpoint. At least in matters of social legislation for the proper development of our society, Members should be allowed to express their opinions independently, and if the majority of this House, cannot express its opinions independently, then this is a farce of democracy.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Even in his own party, the hon. Member cannot express his opinions with regard to social legislation.

SHRI KISHEN CHAND: I do not think so. In matters of general economic policy or any social objective, certainly there is a party outlook, but I in connection with such questions as who should be the guardian, what should be the age for the custody of the minor, whether the custody of the minor should be with the father or the mother, etc., there should not be any party direction. I don't think that in such matters a party should express its opinion as a solid party. However, I am expressing my opinion before the House and trying to convince Members. I commend my amendments for the consideration of the House.

SHRI H. C. DASAPPA: Mr. Deputy Chairman, let me first of all deal with the amendments I have given notice of, *i.e.,* No. 24, and No. 31, and thereafter I would like to say a few words on the amendment of my friend, Mr. Rajagopal Naidu.

Sir, I spoke at some length on amendment No. 24 even when I made my general remarks, and that is that the clause which related to the limitation of the right of the natural guardians to lease the property of the minor beyond a certain period which found a place in the Bill as it was originally introduced in the House and which has now been deleted by the Joint Committee, should be there, and I cannot subscribe to the view that it should be omitted from the Bill.

SHRI \ S. RA rAGOPAL NAIDU: It i's there in the Guardians and Wards Act also.

SHRI H. C. DASAPPA: Of course, it is there. I don't think I should labour this point at any great length now, because, as has already been pointed out by so many speakers—there was hardly a single one who differed from that point of view—even to the two natural guardians it should not be open to saddle the minor's property with long leases or what are known as perpetual leases. Far from helping the minor to enjoy his property, that would certainly prevent him from doing so. It is. easy to understand how these long leases

will prevent the minor from taking possession of his land, how a long lease like this will effectively prevent him from managing and utilising his own property, and so on. So, I think it would be very wrong for us to permit the natural guardians to make a long lease for an indefinite period. The original clause as it stood is the same as is in the Guardians and Wards Act. The hon. Minister was dealing with the Bombay Act and said that there can be no lease for less than 10 years and so on, and today if we have a clause like this which will prevent a natural guardian for leasing out beyond 5 years or for leasing out for a period of one year beyond the minor attaining majority, that will conflict with the law of the land or of the particular State and it would be unwise for us to have one year which would be inconsistent with the local legislation. Granting that there is some substance in this, my point is that so long as there is that provision in the Guardians and Wards Act, will that section in the Guardians and Wards Act limiting the right of J the guardians to lease for a longer period not militate against that very law of Bombay or any other place? So if there is any force in that contention, then there should have been an amendment brought to the guardians and Wards Act provision also. Quite apart from that contingency— and there were so many hon. Members who said that in a number of States we have no such legislation as that, that the lease, if at all, should always be for a period of over 10 years and so on— here it is very desirable that the natural guardians should not be permitted to saddle the minor's

property with a long lease like that and therefore I have split up this clause 7(2) into two and given the same shape as it had at the time of its introduction here. I have not even taken out a single comma. This is how it would read:

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

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the im movable property of the minor, or

(b) lease any part of such pro perty 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 hope that the hon. the Law Minister is convinced of the justification of the stand that we have taken in regard to this and will kindly see his way to accept the amendment.

Amendment No. 31 reads like this:

"That at page 3, line 35, after the words "Any disposal of" the words "movable or" be inserted."

So that if the amendment is accepted the clause will read something like this:

"Any disposal of movable or immovable property by a natural guardian, in contravention of subsection (1) or subsection (2), is voidable at the instance of the minor or any person claiming under him."

I want the hon. Members to envisage a position like this. It is quite likely that the movable property of a minor will be infinitely more valuable than the immovable property. It is not always that the immovable property will be a larger portion of a man's assets or properties.

MR. DEPUTY CHAIRMAN: Can you follow the movable property after he attains majority?

SHRI H. C. DASAPPA: Why should it not be possible because .....

MR. DEPUTY CHAIRMAN: Immovable property is a tangible thing which he cannot destroy but if you.

insert this clause for movable property, is it possible to follow the movable property?

SHRI H. C. DASAPPA: Supposing the father has loaned Rs. 20 lakhs to Mr. Naidu—it may be even a hand loan, it need not be a registered document and may be by merely a negotiable instrument—what happens if the poor father dies having trusted Mr. Naidu and the possible guardian that may come thereafter? What happens between this natural guardian—it may be the mother or it may be the husband of the married girl—• if she or he chooses to get into league with Mr. Naidu? They can go half ?md half and leave nothing for the minor. Now I ask, is it not impossible for the minor, when he attains majority, to prove that there was an asset of that nature—a movable asset?

MR. DEPUTY CHAIRMAN: The guardian will have to account for it.

SHRI H. C. DASAPPA: Where is the question of accounting? He is the natural guardian. There is no question of accounting at all. To whom does he account? The minor on his attaining majority can sue the person or take such suitable action to recover the amount where there has been this mishandling of funds but more than that he cannot do. Therefore what I say is, any such transaction should be equally made voidable. Supposing there is a negotiation between the two and there is a composition of that amount and Rs. 20 lakhs is compounded for Rs. 5 lakhs, is it fair on their part to have reduced that claim of Rs. 20 lakhs to Rs. 5 lakhs and only shown Rs. 5 lakhs for the minor? It is not fair. Therefore what I say is that since it is a kind of disposal, I am not introducing that with regard to what will be sub-clause (2) (a) but I am only introducing 'or movable' in the case of sub-clause (3) of clause 7.

SHRI P. S. RAJAGOPAL NAIDU: Doss not clause 7(1) cover your point also, because, certain safeguard is given for the entire 'estate' of the minor? Secondly, when no such provision is made under the Guardians and Wards Act, even in the case of court guardians, *i.e.,* with regard to movable property, why should you place such a restriction in this Bill?

SHRI H. C. DASAPPA: In the case of court guardians, the movable property is accountable. There shall be made an immediate inventory—and it has to be filed in the court—of whatever is there like stocks, shares, bonds, jewellery, vessels, etc. of all these aii inventory has got to be made and must be filed in the court and therefore there is no question of any difficulty in the case of court guardian or testamentary guardian so far as movables are concerned.

SHRI P. S. RAJAGOPAL NAIDU: Section 29 of the Guardians and Wards Act is silent about movable property.

SHRI H. C. DASAPPA: In the Guardians and Wards Act there is no need to mention it for the simple reason that all that is accounted for from the beginning and an inventory is prepared. They sometimes not merely appoint a guardian but also a receiver to prepare and submit an inventory. There is that protection. Once there is that protection, there is no question of the guardian running away with the movable property. Here for the natural guardian we have no such safeguard for the minor. I am now adopting the very argument which my hon. friend the Law Minister advanced a few minutes earlier that it is all in the interests of the minor that we are enacting this Bill. Here is a large loop-hole and I think it is a matter which has got to be met. I can draw some additional [4 P]' support from the wording of clause 11. What does this clause say? It says that the *de facto* guardian is not entitled to dispose of or deal with the

[Shri H. C. Dasappa.] property of the Hindu minor. There is no question there of movable and immovable property. Whether it is immovable property or movable property the *de* facto guardian cannot meddle with that property. So property there obviously includes moveable property. That being the case, why should the natural guardian, merely by reason of the fact that he is the natural guardian put the movable property of the minor in jeopardy? That I fall to understand, because in all cases we are for safeguarding the minor's interests.

SHRI P. S. RAJAGOPAL NAIDU: There should be distinction between the natural guardian and the *de facto* guardian.

SHRI H. C. DASAPPA: This, as I said, is something which I cannot understand, for property is property whether it is mpvable or immovable. While we are trying to save the immovable property of the minor from being disposed of, we have not thought of the movable property at all. It is not there, unless, as Mr. Rajagopal Naidu says, it comes under the general clause. Of course, everything comes in the general clause, that is to say, that every transaction should be for the welfare of the minor and for legal necessity. I would say that if anything, there is greater necessity for us to have an eye on the movable property than on the immovable property, because nobody can run away with the immovable property, while it is the movable property which can be abused, misappropriated or otherwise dealt with. So, to have such a clause like that, would be extremely helpful.

SHRI J. S. BISHT: May I request m_y hon. friend to clarify one point? Suppose he has Rs. 5,000 and he comes in possession of it and he spends it in some way. And then in ten years the minor attains majority. How is he going to avoid that particular transaction? How is h_e going to get back that money? What is the procedure?

SHRI H. C. DASAPPA: He can certainly repudiate that transaction and file a suit against the guardian and then get it back.

SHRI J. S. BISHT: You want *such* a transaction to go unchecked?

SHRI H. C. DASAPPA: When a son can sue his own father for mismanaging the joint family property and even against coparceners, why can't he file a suit in this case?

SHRI J. S. BISHT: How do you get the property if a third party is involved?

SHRI H. C. DASAPPA: There is no third party here. The person is either the father or the mother. So his claim will only be against the person who was his guardian and who had taken advantage of it. His claim is not on anybody else.

MR. DEPUTY CHAIRMAN: It will be a suit for damages, it will not be voidability of contract. There is no voidability here.

SHRI H. C. DASAPPA: That is repudiation of transactions—voidability. That is all. If you don't do that, if the transaction is not chosen to be avoided, how can you maintain a suit for damages?

MR. DEPUTY CHAIRMAN: According to law whether he is the natural guardian or the court guardian— he is in a fiduciary relation. If he mismanages the property that has fallen into his hands, the minor can sue the ex-guardian for damages.

SHRI H. C. DASAPPA: Wrong transactions should be avoided, but they cannot be avoided here. The com-

" mding of a property worth Rs. 20 lakhs to Rs. 5 lakhs.....

MR. DEPUTY CHAIRMAN: Your amendment, if accepted, will render even transactions which have been entered into *bona fide* by a third party, voidable and probably the minor may not be able to follow the property.

SHRI H. C. DASAPPA: The minor can only pursue it to the extent of the assets of the guardian or any person deriving an advantage from that. That is all. It cannot be from anybody. What is the relief from a *de facto* guardian who enjoys the movable property? Under clause 11, you say the *de facto* guardian cannot dispose of or deal with the property—no mention of either movable or immovable property.

MR. DEPUTY CHAIRMAN: It means any property—movable or immovable.

SHRI H. C. DASAPPA: If under clause 11, the *de facto* guardian disposed of the movable property, what is the relief for the minor?

SHRI J. S. BISHT: Immediate relief.

SHRI H. C. DASAPPA: Give the natural guardian the same right as you accord to the *de facto* guardian under clause 11 where movable property is disposed of by the *de facto* guardian. I ask for no more and no less.

MR. DEPUTY CHAIRMAN: Virtually, the natural guardian, as envisaged under this Act, will be reduced to the position of the *de facto* guardian.

SHRI H. C. DASAPPA: He has been reduced to something worse under this law. According to the present Hindu law, the de *facto* guardian could have dealt with the propery and it is only on the minor's showing that it was not for the benefit of the estate or for real necessity that the *de facto* guardian could be proceeded against. Here then the natural guardian is not getting the right whicn the *de facto* guardian had in so far as we insist that for every such transaction, with regard to immovable property he must go to the court.

SHRI H. V. PATASKAR: And you want to make it more tight?

SHRI' H. C. DASAPPA: This natu ral guardian—a big title— is a terri ble misnomer, as I have already said. He has got to reduce himself to a court guardian under clause 7(2). The hon. the Law Minister, has already reduced him to the position of a court guardian except to the extent that he is not appointed or declared as such. Minus that kind of a formali ty.....

MR. DEPUTY CHAIRMAN: He has got certain liberty to deal with movable property. And you want to deprive him of that?

SHRI H. C. DASAPPA: It is a terrible discrimination between guardian and guardian. That is why I said that there should be one guardianship law for everyone in India.

SHRI J. S. BISHT: That is good.

SHRI H. C. DASAPPA: And this was a capital occasion to have enact ed such a guardianship law for all, irrespective of community. Now by comparison, the de *facto* guardian is given certain rights which the na tural guardian .....

MR. DEPUTY CHAIRMAN: Section 37 of the original Guardians and Wards Act applies here.

SHRI H. C. DASAPPA: That is for natural guardians.

MR. DEPUTY CHAIRMAN: No, it applies here also. I may read it out for your information. It says:

"Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee."

SHRI H. C. DASAPPA: That is exactly what I want and no more.

MR. DEPUTY CHAIRMAN: It is there and it applies to this law, because nothing has been provided in this law contrary to section 37.

SHRI H. C. DASAPPA: But there is this clause put in here, this express clause, preventing the natural guardian from disposing of the immovable property and there is no reference whatever to movable property. Are we.to take it that the natural guardian comes under the purview of that particular section?

MR. DEPUTY CHAIRMAN: Yes, if it is not in the interest of the minor and if not to his benefit, and if he squanders away the property, the minor can take action.

SHRI B. K. P. SINHA: Sir, how can the minor take action? The natural guardian owes his position because of the relationship under this particular law. That exception made in section 37 speaks of provision under that Act. It is only when a guardian is appointed by the court under the Guardians and Wards Act that this will become operative. Otherwise it cannot be operative. Not in the case of other guardians.

MR. DEPUTY CHAIRMAN: Under the Guardians and Wards Act, "Guardian" means any guardian, whether natural or appointed by the court.

SHRI H. C. DASAPPA: So far as that is concerned, I only want to bring this law in conformity with the wholesome principle laid down in section 37.

SHRI H. V. PATASKAR: At this stage, I might say that I am prepared to accept something like this: "The provisions of this Act shall be in addition to and not in abrogation of the provisions of the Guardians and Wards Act." I think that should set at rest all these.

SHRI H. C. DASAPPA: Perfectly.

SHRI P. S. RAJAGOPAL NAIDU: That will settle all controversies.

SHRI B. K. P. SINHA: Sir, I find that the definition of guardian in this Act does *not* mean any guardian. That is number one; number two is that sections 35 and 36 begin like this: "Where a guardian appointed or declared by the Court***". Section 37 says, "Nothing in either of the two last foregoing sections ....." Section 37 is exception to sections 35 and 36 and sections 35 and 36 speak of guardians appointed or declared by the court.

MR. DEPUTY CHAIRMAN: Please look at section 4, sub-section (2), "Guardian means a person having the care of the person of a minor or of his property, or of both his person and property"

SHRI B. K. P. SINHA: I am doubtful, Sir.

MR. DEPUTY CHAIRMAN: It does not say "a Guardian appointed by the Court". Your interpretation would have been correct if it. had said that Have you finished, Mr. Dasappa?

SUM H. C. DASAPPA: A few more 1 words, Sir. If only the Law Minister can assure me that any such dealing with the movable property would attract the provisions of section 37 of the Guardians and Wards Act, I will not have much to say. It is because he refers to immovaole property and omits movable property that I am doubtful. Section 37 of the Guardians and Wards Act refers not only to movable property but to immovable property also. And wrong dealing with .....

MR. DEPUTY CHAIRMAN: Any property.

SHRI H. C. DASAPPA: .....any property. Why then should there be a reference only to the immovable property? That is my question.

I would only like to deal with one other aspect, the general question with regard to the legal necessity. My hon. friends, Shri Rajagopal Naidu and Shri Tankha, want to bring this law, by their amendments, into conformity with the law as it stands today. That is a certain aspect which I think is well worth our consideration. Since, in any case, any such wrongful act on the part of the guardian is made voidable, I see no reason why we should insist upon obtaining previous permission of the court. It then becomes real differntiation between the natural guardian and the de facto guardian and the other guardians. It means that we are not conferring .....

MR. DEPUTY CHAIRMAN: Voidability is a post *facto* examination.

SHRI H. C. DASAPPA: Merely because he has been given a dignified title of a natural guardian, the natural guardian does not get any more powers than' any other guardian because, for any disposal of property he has got to adopt the same procedure as any other guardian would have to, testamentary or de *facto.*

Then, Sir, what is the great status that a natural guardian enjoys? It is a big name which sounds big but really it gives precious little freedom or right.

SHRI H. V. PATASKAR: Freedom not to do what he likes.

SHRI H. C. DASAPPA: Therefore, in view of the fact that there are the conditions of natural love and affection, in view of the fact that he is trusted with the movable property, in view of the fact that any wrong handling of the immovable property attracts the provisions of the law and can be made voidable, I see no reason why we should, at this moment, again introduce an additional impediment in the way of his dealing with the property. I entirely agree that after all it may seem very innocent but it will be very difficult for a natural guardian to go to a court and obtain the permission of the court. It is not so easy; he has got to go through the usual process of law . courts. Probably, there may have to be tomtom in the village, and so on. Somebody will be appointed to go and examine the necessity for such a mortgage or transfer. By the mere reason of an application, how can the court come to a judicial decision? It cannot be a judicial decision; it must be an arbitrary one if the court has to pass an order on the mere application. The court has to take some necessary steps in order to find out whether the transaction is a worthwhile one or not. We need not have this clause "without the previous permission of the court". Even if it is done, it becomes voidable and it will be better if this were left out.

SHRI M. GOVINDA REDDY: Sir, my amendment number 22 is a non-controversial one. There is only a verbal change *.i there is no change in the meanir.?. For the words in the last senter.ce of sub-clause *(I),* namely "but the guardian can in no case *>j'nd the minor by a oersonaJ

[Shri M. Govinda Reddy.] covenant", I want the following words to be substituted: "Provided that no personal covenant shall be binding o$_n$ the minor". I have suggested this substitution because the substituted words sound better than the words used. That is all, Sir.

The other amendment, number 25, is a substantial one. I will explain what I seek to insert through this amendment. I have divided subclause (2) of clause 7 into two parts. I have provided that no natural guardian shall transfer without the previous permission of the Court, by sale, gift, exchange or otherwise, any part of the immovable property of the minor.

As regards mortgage and charging, I have said that the natural guard-Ian shall have the power to mortgage or charge the property but it is not an absolute power. He cannot mortgage or charge under any circumstances but only for the improvement of the property.

SHRI J. S. BISHT: Why not for his education?

SHRI M. GOVINDA REDDY: It may be done.

SHRI J. S. BISHT: But you have not provided.

SHRI M. GOVINDA REDDY: Then the question will arise, why not for his maintenance? It comes to the same thing. We do not say that the guardian should alienate or encumber the property, the movable property, for the sake of the maintenance or for anything of the minor. In fact, we wish to protect the minor from such, things. It should be only for improving the property of the minor. The natural guardian should have scope and 'reedom to improve the property of the minor. Well, it may be argued that he ;ould easily get a permission from the court and then he can try to think of improving the property, I listened with gr«at respect to the argument of the hon. the Law Minister when he said that the natural guardian can get the previous permission of the court and that there will be no delay. He is a lawyer who has got much more experience than myself. I do admit, but he cannot say that the previous permission of the court can be had as if we get a post card from the post office. Everybody knows that the courts take some time to consider. We also want the courts to be convinced of the necessity and of the evident advantage to the minor before such a certificate is given. Naturally, in these circumstances, the courts are bound to take time. What should happen to the property within that interim period? Why should the minor lose the benefit?

SHRI R. C. GUPTA (Uttar Pradesh) : Enquiries are generally made through the Collector and it takes a long time.

SHRI M. GOVINDA REDDY: Well, it is the same thing. I ask why the natural guardian should lose the benefit of Government's loans, land improvement loans or *taccavi* loans or credit on easy terms for the minor. Why should he wait for his land to be improved until the court thinks it fit to give him permission? Well, there can be seen a number of such cases where, during the interim period, before the natural guardian gets permission of the court, there will be necessity in the interests of the property itself, in the interests of the minor himself, that the guardian should deal with the property, should mortgage or charge the property. Suppose we insist upon this clause. I with very great emphasis wish to appeal to the hon. Minister and ask whether we are not driving every natural guardian to a court of law, whoever it may be, Sir. who wishes to deal, by way of change or mortgages with the immovable property of the minor and he as a matter of necessity should go to a court of law. Are we all living by law? It is not so. It is only exceptional cases that

go to courts of law. Hardly there may be a case and.in fact the majority ol cases will not be cases of guardians going to a court of law. The majority of cases are cases where the natural guardians of minors go on maintaining the minors, go on managing the property of the minors for their benefit without feeling the necessity for going to a court of law. Now what are we doing? By providing this we are ipso *facto* saying that you have to go to a court of law if you have to charge or mortgage the property. Can anybody conceive of a circumstance when a natural guardian can deal with th<? immovable property of the minor in this way under this law without going to a court of law and getting their permission? It is impossible. It is Inevitable that every natural guardian will have to go to a court of law. This provision seems innocuous, this seems a good provision on the face of it, but if we examine it closely we will be driving every natural guardian to a court of law, whether the property be big or whether the property be small. Is it in the interests of the people? Is it in the interests of the minor or for his welfare? This is a serious fact which we should consider.

I will explain what is the effect of this clause upon the villager's mind. Sir, only last week I went to a village along with some hon. colleagues of mine here in connection with a case of acquisition where some injustice had been done. Well, those villagers followed me to my flat and we were sitting there. They wanted to know how this Parliament works. Although they are just seven miles from Delhi they did not know how Parliament works.

They wanted to know how we pass a law. So I was explaining. This Bill was on my table and I took it and I explained the provisions. They heard me completely and in the end they said, "tfjTJp- itf Sripr l" I asked them: "What did you understand?"

They said, हम समझ गये साहब, सब समझ गये साहब। यह लायर लोग का बनावट है न। साहब, क्या हमारे बाल बच्चों के देखने के लिए हमको कोर्ट को जाना है ? क्या है साहब ? क्या साहब कैसे कानून बना रहे हो ?

Their fears and apprehensions are perfectly justified. It would be quite unnatural to drive the mother or the father of a minor to a court of law for his benefit to manage the property. It is quite unnatural. There it is not natural relationship that we are think ing of.....

MR. DEPUTY CHAIRMAN: For disposal of the property.

SHRI M. GOVINDA REDDY: J am speaking of mortgage or charge.

MR. DEPUTY CHAIRMAN: It amounts to disposal of property.

SHRI H. C. DASAPPA: In his amendment No. 25 he makes a distinction. He is dealing with (a) now.

SHRI M. GOVINDA REDDY: In mj amendment I am making a clear dis tinction between alienating immovable property and mortgaging or charging the immovable property and I say .....

MR. DEPUTY CHAIRMAN: Mortgage is also a transfer as sale.

SHRI M. GOVINDA REDDY: Charge is not an alienation. Sir, with all respect I should say. It is not a sale. It may not be a conveyance but still there can be .....

MR. DEPUTY CHAIRMAN: Not a sale but it is a transfer of property.

SHRI H. C. DASAPPA: It comes under the Transfer of Property Act.

SHRI M. GOVINDA REDDY: If it is made a charge, Sir, it will not be an alienation; it will be encumbering the property.....

SHRI H. C. DASAPPA: .....under the Transfer of Property Act.

MR. DEPUTY CHAIRMAN:. It is under the Transfer of Property Act.

SHRI M. GOVINDA REDDY: Trans fer of the right no doubt. But what I wish to say is—this Is no doubt conceived in the interests of the minor's property but does it act in the interests of the minor's property? That is the thing which we have to examine. As I have argued, it is not £ provision wmch acts necessarily in tne Interests of the minor and on ac count of the insistence of this provi sion there will be many cases where the minor will be put to hardship and where the minor will curse this pro vision. The natural guardian at least will not like this provision, not that he does not want to appropriate the property of the minor to himself but that where he wants to improve the property himself he cannot do so with out going to court or he is left with no option but to carry on as long as the minor does not attain majority without encumbering it in any manner whatever, so much so without having any chance of improving the property, or, to force himself to go to court and get th© previous permission of the court. Well, in my opinion, Sir, U would be better.....

MR. DEPUTY CHAIRMAN: Actually that is the position today.

SHRI M. GOVINDA REDDY: The position today is that the guardian is free to deal with the property to encumber it but only the minor can avoid it. That is all. There is a lot of difference between that position and this. Here, as Mr. Dasappa was observing, we are putting the natural guardian in a position worse than the present position of a de facto guardian.

MR. DEPUTY CHAIRMAN: But the minor will be put in a better posi-tipn.

SHRI M. GOVINDA REDDY: Well, Sir, that is a point of which I should be convinced. I have advanced the reasons for instance, in the matter of availing of Government's loans; help, assistance, etc., how the minor can be benefited, and I think he will have to lose these chances until he gets the previous permission of the court,

SHRI H. V. PATASKAR: Considerations of the honour and prestige of those who may not like to go to court I can understand.

SHRI M. GOVINDA REDDY: So I would like to submit that as I understand it, insistence on this provision means asking every man, who has to charge or mortgage the immovable property of the minor, to go to a court. Don't make the people, the teeming illiterate people, people who do not know anything of law and people who cannot afford the costly means of going to court, to go to a court of law.

SHRI S. N. MAZUMDAR: The courts also should be reformed.

SHRI B. K. P. SINHA: Sir, I have three amendments to this clause. I refer first to the amendment of the hon. Member from Mysore who wanted to equate movable property with immovable property. I also do not see why movable property should at this stage be excluded from the operation of this Bill. Sir, the only substantial argument advanced is that it is difficult to follow up the movable property. It is difficult and it is easy also.

SHRI H. V. PATASKAR: May I ask one question? Supposing there is a movable property worth Rs. 5,000 or some ornaments, which you are trying to include here and supposing he disposes it of, how can we follow it? In the case of immovable property the point is, if it is alienated without permission of the court then that transaction is void and the minor, after attaining majority, can get it back. In the case of this Rs. 5,000 which may have changed hands by way of gift or transfer or something else, the only remedy will be that after jlhe

attains majority he can sue lor damages. More than that what can he do? I do not know.

SHRI B. K. P. SINHA: If it is a case of immovable property the law is there mat when the minor attains majority he can go to the court to make the transaction voidable.

SHRI H. V. PATASKAR: How can he pursue this Rs. 5,000?

SHRI B. K. P. SINHA: Please allow me to explain.

SHRI H. V. PATASKAR: There is that difficulty.

SHRI B. K. P. SINHA: That difficulty was very clear to me, but the whole difficulty appears to me to be based on some misconception. We have one conception only of movable property as if movable property consists only of cash or only a lump of gold or a lump of silver. Movable property is not that alone. Movable property differs in character and differs in quality. Shares and stocks, I think, are movable property and it is not diffi cult to follow them up. Suppose a minor owns property in the shape of shares for Rs. 10 lakhs and the guardian disposes of them. Would it not be possible for the minor after he attains majority to follow those stocks or shares? It can be easily done. Take another example.....

SHRI H. V. PATASKAR: If the shares have been widely transferred by the company and the articles of association of the company permit it, the minor will not be able to.....

SHRI M. GOVINDA REDDY: A succession certificate has to be produced for it.

SHRI B. K..P. SINHA: Why not?

PANDIT S. S. N. TANKHA: The difficulty will arise when *bona fide* purchasers come in. You cannot follow such property there.

SHRI B. K. P. SINHA: Who is a bono *fide* purchaser? That is the whole thing. What is *bona fide"!*

PANDIT S. S. N. TANKHA: Purchaser for value.

SHRI B. K. P. SINHA: Every purchaser for value is not a bona *fide* purchaser. There are purchasers and purchasers. A man may purchase it for more than its value yet he may not be a bona *fide* purchaser.

MR. DEPUTY CHAIRMAN: That is a well-known legal term, I think.

SHRI B. K. P. SINHA: It is well-known but there is confusion about it-I never disputed it. I cited the case of shares and stocks and I do not think it is difficult to'follow them.

Now take another case, Sir, A minor owns a shop and the building in which this shop is housed. The guardian, according to this Bill, can do nothing to the building. The building may be worth a thousand rupees or two thousand rupees; the price of the goods may be ten thousand rupees or twenty thousand rupees. Now, the guardian can do nothing to the immovable property. The guardian is free to dispose of at a very nominal price the merchandise contained therein. I agree it cannot be followed up. But apart from this, in every business there is goodwill. Take, for example, Army and Navy Stores or one of th$_e$ other famous firms. Their goodwill is worth lakhs of rupees. Now, a minor owns shops, premises and goodwill. I do not think goodwill Is immovable property. Goodwill is movable property. Is it difficult to follow up 'goodwill'? It is not difficult to follow up. Sir, we are treating 'movable' as if it has one quality, one characteristic; as if it is one entity. It is not. There is distinction between 'movable' and 'movable'. If it cannot be followed up, there is an end of the matter. But movables can be followed up and now the movables are of a type which can be followed up. In the

[Shri B. K. P. Sinha.] circumstances, I do not And any justification for excluding movables altogether from the purview 01 this Bill simply because we are sticking to a conception of 'movable' which is [a] hundred years old, that is, 'movable' means cash, gold or bullion only.

SHRI H. V. PATASKAR: I have not yet heard from the hon. Member one instance of shares. I would like to draw his attention to the fact that he was a member of th[e] Company Law Committee and he can just And out for himself whether it is capable of being pursued as immovable property. That is the only thing that I can suggest to him.

SHRI B. K. P. SINHA: Well, it may be that the hon. the Law Minister is right, but this is an example I have given. So many other types of movable property are conceivable and I do not think that.....

MR. DEPUTY CHAIRMAN: The Transfer of Property Act defines what is 'immovable property'. Whatever is not immovable property is movable property.

SHRI B. K. P. SINHA: That is my point, Sir. You are saying nothing new.

MR. DEPUTY CHAIRMAN: And I do not think the Law Minister denies that.

SHRI H. V. PATASKAR: I am trying to find out whether he has any suggestions to offer.

SHRI B. K. P. SINHA: Take another rase, the Nizam. He owns jewel lery .....

SHRI J. S. BISHT: This Bill applies to Hindus only.

SHRI B. K. P. SINHA: Don't be per turbed. Take the case of the Maha raja of Kashmir, if you like. I hope your point is met.

MR. DEPUTY CHAIRMAN: We are not legislating for him.

SHRI B. K. P. SINHA: All right. Take the case of the Maharaja at Jaipur, one of the richest jewellery holders.

MR. DEPUTY CHAIRMAN: You seem to be very fond of Maharajas.

SHRI B. K. P. SINHA; Or, take the case of the Maharaja of Burdwan, about whom there was a news item in the newspapers .....

SHRI H. P. SAKSENA: Take the instance of Darbhanga ruler.

SHRI B. K. P. SINHA: Take any example. Now, the market for jewellery is limited. It is confined to good jewellery shop. Diamonds whenever they are sold are not difficult to trace. They are easily traceable. Many diamonds have names attached to them and whenever they change hands records are maintained. So, in the case of important jewellery also, it is not difficult to follow up in some cases. My contention is that it is possible to follow up movables though; movables differ in character and kind. We can follow up some; we cannot follow up some. That which We cannot follow up, there is an end of it. No provision in this Bill will give that back to the minor. Here the minor can be reimbursed by the guardian. What can be followed up, I do not see why it should not be followed up.

My second amendment relates to the permission of court. I think the restrictions that are already there on the powers of the natural guardians are sufficient—sufficient unto the day is the evil thereof. One argument is that it will avoid litigation. It will to some extent; but it will not absolutely prohibit litigation, because even if the [permission of the court is there, it is open to the minor, when he attains majority, to challenge that transaction. The permission of the court is only a presumption that the transaction is proper. But that presumption is a rebuttable presumption. A similar provision you will find in the Guardians and Wards Act. You will find that in

spite of those provisions, there is reference to so many cases in the notes where the transactions have been challenged by the minors. So, litigation is not avoided simply because you put this restriction regarding the previous permission of the court.

SHRI P. T. LEUVA (Bombay): If permission is given, there cannot be any challenge by the minor later. Sub clause (3) of clause 7 says: "Any dis posal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2)....."

SHRI B. K. P. SINHA : That section is in *pari materia* with the one in the Guardians and Wards Act. There have been so many challenges, so many cases referred to in the annotations. You can refer to them.

My third amendment is not very important. If the first two amendments are accepted, then I need not move the third because it goes off automatically. I am referring to my amendment No. 37. For the words "the greater", th$_e$ word "any" be substituted, if my first two amendments are not accepted. Because the word "greater" is rather indefinite and uncertain. It has no fixed connotation. It may mean so many things. I need not dilate upon it because I feel that the hon. the Law Minister will see the reasonableness of this amendment and accept it. If he is not inclined to, then I may get the permission to argue this point at length at a later stage. Sir, this is all I have to say about my amendments and I have finished.

MR. DEPUTY CHAIRMAN: Please be brief, Mr. Bisht.

SHRI J. S. BISHT: Sir, I rise merely to support this amendment. No. 24, moved by Mr. Dasappa. Now. this amendment that has been moved by Mr. Dasappa is merely a repetition of sub-clause (2) of clause 7 of the Bill as it was introduced by the hon. Minister himself. I believe that this has been part of the draft of this law since the time of the Rau Committee's Report and it seems that the hon. Minister was influenced to drop sub-clause (b) only on account of a certain provision in a certain State law. I might invite his attention to article 246 of the Constitution, along with item No. 18 of List II of the Seventh Schedule and item No. 6 of List No. Ill, also of Seventh Schedule. From this It is clear that so far as "land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans" are concerned, these are in List II. That is to say, they are in the State List. Under article 246 of the Constitution, only the State Legislature is competent to pass a law on those points. But in the Concurrent List, that is, List No. Ill, item No. 6 is "transfer of property other than agricultural land; registration of deeds and documents." So, that covers everything. Now. what the hon. Minister has done is that in clause 7. sub-clause (2), he says:

> "The natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor."

So, there should be no misapprehension on this point. It is immovable property of the minor, not only agricultural land, but any immovable property. It may be waste land; it may be vacant land; it may be house property; it may be any other type of immovable property. And urban house property especially in these days is very valuable property. Now, if you drop this thing, then he can defeat sub-clause (2) and sub-clause (3)—in fact, the whole of clause 7, by leasing out the property for 999 years. There is nothing in this to prevent that.

PANDIT S. S. N. TANKHA: I do not think that th$_e$ Law Minister has said

[Pandit S. S. N. Tankha.] that this Parliament is unable to pass a law regarding leases.

SHRI J. S. BISHT: What I under stood was that there was some diffi culty, because there were certain State laws. I understood that there was going to be some sort of a conflict between the three Lists in this matter. That is why I want to point out that there is no such conflict. So far as the agricultural land is concerned, under the new land reform legislation, they have already provided .....

MR. DEPUTY CHAIRMAN: I do not think that he dealt with the matter from the constitutional point of view. He dealt with the matter from the practical aspects, because there are so many land reforms, tenancy Acts, and other things.

SHRI H. V. PATASKAR: There is no question of competency of this House. What I wanted to say was that there were so many land legislations, in different States.

SHRI J. S. BISHT: What I want to submit is that this whole property is not merely confined to land. It covers all immovable property of any type. It may be a house, a vacant land, a waste land, or any other type of property. Therefore I think, Sir, it would be advisable to refer to the original proposal and sub-divide the clause into two parts and bring leases also within its purview. And in that manner, I support this proposal of Mr. Dasappa contained in his amendment No. £4, which may be accepted.

With regard to the other proposals, I am sorry that I cannot support them. I oppose them. As I said last time. the hon, Members who have brought in these proposals are just blowing hot and cold in the same breath. On the one hand, they want to say that the natural guardians, *i.e.,* the father *and* the mother, should have the same powers that they have today under the ordinary Hindu law, that is to say. they may dispose of any property movable or immovable, in any manner they like.....

SHRI H. C. DASAPPA: It is misreading our case when the hon. Member says "in any manner they like".

SHRI J. S. BISHT: ..... for legal necessity, as it is said. How can you have powers with regard to the mov-ab'e as well as the immovable property? How can you have it both ways? On the one hand, you want to enlarge their powers, and on the other hand, where the powers are already enlarged, you want to reduce them, you want to curtail them. That does not seem to be quite consistent with any logic.

SHRI H. C. DASAPPA: That is a terrible misreading of our case. Im pediments which will necessarily mean .....

SHRI J. S. BISHT: In the case of movable property, there is no impediment. He is quite free to deal with it.

Now, Sir, with regard to the point made by Mr. Dasappa and some other hon. Members that movable property should be brought into it, I think that is practically impossible. Movable property may be in the form of cash, coins, clothes, furniture, and so on and so forth. There are a thousand and one things. And these things may have been sold at the time when he was only ten years old. And when he becomes a major at 18 years, then eight years later, how are you going to fight out in the court of law? That is what I do not understand. How are you going to void it in the court of law? The word 'voidable' implies that the third party is also affected. The whole transaction becomes void from the time it is declared invalid. And you cannot get it back. That is utterly impossible in a court of law. And moreover. Sir, there is some objection on the ground that the natural guardian is being forced to go to a court of law. There is no difficulty shout that. Up till now, they were

enjoying all those powers at the cost of the minor and at the cost of his property. They had that advantage. But the minor's property was not properly looked after. It was only when the minor attained the age of majority when he went to the court and fought out his case. And sometimes, he gave it up because of his regard for elders or for certain other considerations. What will happen now is .....

MR. DEPUTY CHAIRMAN: Mr. Bisht, I want all the clauses to be finished today, if possible.

SOME HON. MEMBERS: That is not possible; that is not possible.

SHRI J. S. BISHT: Only one point, Sir. If he goes to a court of law and gets the sanction of the court, then the chances are that he will get a very good price; he will get a full market price. Today, people are afraid lest the property may be chal lenged. Whether it is for legal neces sity or for some other reason, they want to cover that risk ..... (Interrup tion) ..... If the court gives a certificate, then, of course, it has a clear title .....

SHRI H. C. DASAPPA: Sir, he says that it.....

MR. DEPUTY CHAIRMAN: No, no. Mr. Dasappa, you had your say. Let him finish.

SHRI H. C. DASAPPA: Sir, he says that it has a clear title. But in sub clause (3), it has been provided that it can be voidable .....

SHRI H. V. PATASKAR: But there are the words "in contravention of ....." (Interruptions)

MR. DEPUTY CHAIRMAN: Two hon. Members cannot stand at one and the same time In this House.

SHRI J. S. BISHT: Thank you, Sir. If the sale is without taking any permission of the court, then it is voidable But if the permission of the court has been obtained, then it is quite valid and is a clear title. And h_e gets the full price.

For these reasons, Sir, I only support Mr. Dasappa's amendment and request the hon. Minister to include leases, which was his own proposal originally.

SHRI H. V. PATASKAR: Sir, before I reply in detail to the amendments that have been moved, I think there has been a certain amount of misconception on account of the fact that this clause as a whole with its implications has not probably been properly appreciated. What do we propose to d° by this clause 7? The powers of the natural guardians are going to be defined here. And, Sir, much of the argument has been due to the fact that by restricting these powers of the natural guardian, we are practically trying to make him a helpless person. Unless he goes to a court of law, he will not be able to deal with the minor's property or to take care of the minor. This will only lead to litigation; this will only lead to the ruining of the interests of the minor; and this is a piece of legislation which is likely to lead to the harassment of the guardian, and to loss to the minor. Well, Sir. what was the present position with respect to the natural guardian? The present law was that the natural guardian naturally was doing all sorts 01 things. And subsequently, this litigation arose and there were innumerable cases filed. The whole idea underlying the provision in clause 7 is that so far as the immovable property is concerned, as far as possible, it should be preserved till the minor attains the age of majority. That property certainly is not the common property of the father and the mother. That property entirely belongs to the minor. Is it not then right, Sir, that in respect of the immovable property, we should make such a provision that, as far as possible, that property should be preserved for him till he attains majority? Now let us look at the provision from that point of view, and then we will find that what it provides in sub-clause (2)

[Shri H. V. PataskarJ is that "The natural guardian shall not,. without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor." The only condition is that he should get the previous permission of the court, and what is th$_e$ consequence? Sub-clause (3) says: "Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person claiming under him." Does this operate to such a way that the hands of the natural guardian are so tied that he cannot move an inch?

SHRI P. S. RAJAGOPAL NAIDU: What about the purchasers?

SHRI H. V. PATASKAR: Even under the existing law, if anybody wants to purchase a minor's property, he does it taking some risks that the sale may not be for the benefit of the minor or for necessity. If the guardians act in contravention of the provision in sub-clause (2), what will be the effect if he does not take the previous permission of the court? The sale would be voidable at the instance of the minor. What is there in this to object? I do not understand. Of course, there has been a good deal of heat about this. Even now, it can be set aside, but at least here there is a safety valve in that, if the guardian wants to dispose of the property of the minor, he can take the permission of the court. No doubt some time is involved. There has been a good deal of arguments from the lawyer class here that it takes a very long time to get the permission of the court. I know that it does take some time, but I would like to know what is the other remedy. Therefore I would like my hon. friends to look at this provision only from this standpoint whether this is an improvement or not from the minor's point of view. What we are saying is that the natural guardian should not do I such and such a thing but we don't ! say that if he does this he will be < punished. We only say that what he does will be voidable at the option of the minor. That is so even in the present law, I fail to understand how this sort of provision will ever operate against the interests of the minors. Of course, I understand that the amendments are moved with the best of intentions, but what is the other remedy? Do we want the other alternative that the guardian can go on mortgaging or charging the property in the name of improvement? We have to balance between the two extremes. No doubt the present system of jurisprudence may involve delay and it is for this Parliament, if it so chooses, to simplify the p'rocedure and make it easier and make it less costly, but that is another question altogether. But so far as this question is concerned, with all the sympathy I have for the points that have been raised, I am unable to find out any other way by which the minor's interests may be safeguarded except by this simple provision that the immovable property of the minor cannot be transferred except with the previous permission of the court. We don't say that, if the guardian does something without the previous permission of the court, he shall be penalised or shall be doing some thing penal. The only result in such a case is that the transaction will be voidable at the option of the minor. I think this is a very simple provision and I don't see how anything else could have been done. Naturally there is no Zaissez *faire* action for the natural guardian.

Then with regard to amendment No. 24, about the restoration of (b) of sub-clause (2) as it was there originally in the Bill before it went to the Select Committee. I realise that this provision is there also in the Guardians and Wards Act, and naturally it is not desirable that anybody should be enabled to lease the property of the minor for 999 years or something like that. The only argument in the Select

Committee was that this might conflict with the State laws and therefore the working of it would be difficult. However, it is opei* to the House to restore the original clause. No doubt the Select Committee decided to delete this by a majority vote. If it is the wish of the House that it should be restored, they have got every right to restore it, and I would not stand in the way, though I may be the Chairman of the Select Committee which considered this. Only don't attribute anything to me which I had no intention of doing. I was there, but the majority took this decision and I accepted it. It is only a question of balance between the two. If it is the wish of the House that the clause should be restored, I would not object to re-introducing it in the form in j which it originally stood. I find now that there is cogent reasoning behind its restoration which did not occur to them. There is a similar provision in the Guardians and Wards Act. If that has been workable, I don't see why this provision should be incapable of being worked properly. If later on we find that both these provisions are incapable of being worked properly except by an amendment, let us see then, but that will be a subsequent thing.

SHRI R. C. GUPTA: If the hon. Minister is going to accept Mr. Dasappa's amendment for the incorporation of (2) (b), then. I think the words "whichever is less" or "whichever is more" should be added at the end, because there are two periods stated— "lease any part of such property for a term exceeding five years" and "or for a term extending more than one year beyond the date on which the minor will attain majority". There may be conflict between these two, and therefore the words "whichever is less" should be there.

SHRI H. C. DASAPPA: It is the same clause as stands in the other Act.

MR. DEPUTY CHAIRMAN: It is all right as it is, I think

SHRI H. C. DASAPPA: The lessar one will prevail.

MR. DEPUTY CHAIRMAN: Then you accept No. 24?

SHRI H. V. PATASKAR: Yes, 1 accept it.

Then, another point was raised. On the one hand, there was the suggestion that by putting restrictions on the powers of the natural guardian with respect to leases, etc., we are trying to make it impossible for any good natural guardian effectively to work in the interests of the minor, and on tha other hand there was the suggestion from those very Members that we should also try to include movable pro perty along with immovable property in this. I have listened to the speeches of the hon. Members on this. I find that there is also a pro-
5 P.M. vision in the present Guard ians and Wards Act. There is a similar provision .in the Guardians and Wards Act which also refers as follows.....

SHRI H. C. DASAPPA: Sir, it is five o'clock.

MR. DEPUTY CHAIRMAN: Will you take more time?

SHR7H. V. PATASKAR: Yes, I will take some time.

MR. DEPUTY CHAIRMAN: Then you will continue tomorrow. The Bill will be continued tomorrow. After we finish this Bill, the Press Commission Report will be taken up.

The House stands adjourned till eleven tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Thursday, the 7th April 1955.