11·04 hrs.

RE. CALCUTTA HIGH COURT JUDGMENT ON PAYMENT OF BONUS TO LIC EMPLOYEES

SHRI S. M. BANERJEE (Kanpur) : I have already written to you.

MR. SPEAKER : I have not accepted it. Nothing will go on record.

SHRI S. M. BANERJEE : The other day when this question was raised, the Chairman, Shri Ishaque Sambhali, was there in the chair. I got a message from Calcutta from my hon. friend, Shri Somnath Chatterjee that the Calcutta High Court has held that non-payment of bonus to the LIC employees is *mala fide* and illegal and has stated that the LIC employees are entitled to bonus. When I raised the matter in the House, the hon. Minister of State for Law and Justice, Dr. Seyid Muhammad was there—he is also here now—and the Chairman directed him whether he had any information to that effect. He said that he had no information but he would inform the House. On the basis of this I tabled a Call attention motion and I have also sent a notice under Rules 377 but I have not received any reply whether you have rejected it or not. Because the other House has not adopted the Bill, the mischief that was done in this House is likely to be repeated in the other House. There cannot be any contempt of Court. This is a continuing case and the law of *sub judice* does not apply. The Calcutta High Court has definitely given a verdict in favour of the employees, that this is *mala fide* and illegal. That is why I want you to direct the Law Minister to apprise the House about the matter. Either the Finance Minister or the Law Minister should make a statement.

MR. SPEAKER : I have not accepted it. But, if the Minister is willing to make a statement, he can do so.

SHRI S. M. BANERJEE : If the Chairman has directed, it has no validity ?

MR. SPEAKER : If any judgment is given on any matter in the High Court, that matter cannot be a point of calling Attention in the House. As a Call Attention, I have not accepted it. But nothing prevents the Minister if he wants to make a statement on his own.

SHRI S. M. BANERJEE : He has to make a statement.

MR. SPEAKER : That is a different matter.

SHRI DINEN BHATTACHARYYA (Serampore) : You can draw his attention.

MR. SPEAKER : I will consider that.

11·11 hrs.

MARRIAGE LAWS (AMENDMENT) BILL—*Contd.*

MR. SPEAKER : The house will now take up further consideration of the Marriage Laws (Amendment) Bill.

श्री चन्द्र शेखरानी (हाथरस) : अध्यक्ष महोदय, उस दिन मैं अपनी बात कहनी शुरू कर ही पाया था कि समय समाप्त हो गया और मैं आगे कुछ न कह सका। आज आपने मुझे जो इस पर अपने विचार प्रकट करने का आदेश दिया है, इसके लिए मैं आपका हृदय से धन्यवाद देता हूं।

हमारे देश में विवाह, जैसा कि हमारी संस्कृति और सभ्यता बताती है, एक महान पवित्र और अटूट बंधन माना जाता है। हम देखते हैं कि हमारे देश में विवाह की रस्म विभिन्न प्रकार से अदा की जाती है। चाहे विवाह जात और बिरादरी के आधार पर हो या धर्म के आधार पर हो या प्रान्तीयता के आधार पर हो, मैं कहना यह चाहता हूं कि जब लड़का और लड़की विवाह के बंधन में बंध जाते हैं तो

वह संबंध उन का अटूट सम्बन्ध माना जाता है । हमारे देश में कहीं कहीं पर ऐसा होता है कि लड़का लड़की बिना एक दूसरे को देखे शादी के बंधन में बंध जाते है, कहीं पर धन और दहेज के लालच में शादियां हो जाती है, कहीं पर लड़के-लड़की में प्रेम हो जाता हैं और दोनों की शादी हो जाती है, कहीं पर लड़का बारात लेकर लड़की के यहां जाता है और शादी होती है और कहीं पर लड़के के यहां लड़की आती है और शादी होती है । आदिवासियों में तथा विभिन्न प्रान्तों में विभिन्न प्रकार की रस्में हैं जिन के अनुसार शादियां होती हैं। आज तो यह भी होने लग गया है कि कोर्ट में जा कर शादियां हो जाती हैं । दिन में और रात में भी हो जाती हैं। जब विवाह हो जाता है तो वे यह संकल्प लेते हैं कि हम जीवन भर एक दूसरे का साथ निभायेंगे । लेकिन कभी-कभी ऐसा भी हो जाता है कि जीवन में कुछ इस प्रकार की कटुता पैदा हो जाती है चाहे वह किसी भी कारण से हो और किसी की भी वजह से हो और उस कटुता के कारण उन दोनों का जीवन दुश्वार हो जाता है और वे एक दूसरे से जुदा होना चाहते हैं । अब तक की परम्परा यह रही हैं, तब रिवाज यह रहा है कि वे आसानी से जुदा नहीं हो सकते थे। मैं विधि मंत्री जी को इस बिल को लाने के लिए धन्यवाद देता हूं और इस बिल का हृदय से स्वागत करता हूं जिस में उन्होंने एक प्रगतिशील व्यवस्था को स्थान दिया है और बहुत सी युवतियों और युवक एक जो घुटन का अनुभव कर रहे थे, उस से उन को छुटकारा पाने का रास्ता बताया है और उस के लिए व्यवस्था कर दी है । उन को स्वतंत्र रूप से ऐसा कर के उन्होंने जीने का अधिकार दिया है ।

हमारे देश में शादियां चाहे जातीयता के आधार पर होती हों या रेस के आधार पर होती हैं, मैं विशेष रूप से जोर इस बात पर देना चाहता हूं कि हमारे देश में सरकार उन युवकों और युवतियों को प्रोत्साहन दे जो जातीयता तथा धर्म के बंधन को तोड़ कर, प्रान्तीयता की दीवारों को तोड़ कर के, उन की सीमा को लांघ कर के शादियां करें । जब तक इस प्रकार का विशेष प्रावधान इस कानून में नहीं किया जायेगा तब तक हमारे देश में अन्तर्जातीय विवाह नहीं होंगे, अन्तप्रान्तीय विवाह नहीं होंगे तब तक मैं समझता हूं कि राष्ट्रीयता की भावना, अखंडता की भावना सुदृढ़ नहीं हो सकेगी। हमारे देश में साम्प्रदायिकता के नाम पर, जातीयता के नाम पर, धर्म के नाम पर दंगे होते हैं, झगड़े होते हैं। अगर एक प्रान्त का लड़का हो और दूसरे प्रान्त की लड़की, लड़का एक जाति का हो और लड़की दूसरी जाति की, लड़का एक सम्प्रदाय का हो और लड़की दूसरे साम्प्रदाय की और उन में शादियां होंगी तो उस से मैं समझता हूं कि देश प्रेम की भावना और राष्ट्रीयता की भावना जागृत होगी और इस से देश की अखंडता और देश की एकता को मजबूत बनाने में मदद मिलेगी, उस को बल मिलेगा । जो बिल आपने लाया हैं और इस में तलाक का प्रावधान किया है इस से मैं समझता हूं कि बहुत से कुंठित दम्पत्तियों को राहत मिलेगी इस सदन के बहुत से माननीय सदस्यों ने अपने विचार इस बिल पर प्रकट कर ही दिए हैं और विस्तार के साथ विभिन्न पहलुओं पर प्रकट कर दिए हैं और उन में मैं जाना नहीं चाहता हूं । मैं विशेष रूप से इस बात को माननीय मंत्री महोदय की सेवा में रखना चाहता हूं कि वह इस बात का भी इस में प्रावधान रखें। ताकि अन्तर्जातीय और अन्तप्रान्तीय विवाहों को प्रोत्साहन मिले। मैं समझता हूं कि इस बिल के माध्यम से लोगों को एक नया मार्ग मिला है और इसके ऊपर चल कर वे अपने जीवन को कल्याणकारी बना सकेंगे ।

[श्रीचन्द्र शैरावत]

मैं आपका अधिक समय लेना नहीं चाहता हूं । मैं केवल यही विनती करूंगा कि आप इस में थोड़ा सा और संशोधन कर के जिस प्रकार के विवाहों की मैंने चर्चा की है, उन को प्रोत्साहित करने का मार्ग दिखाएं । मैं समझता हूं कि इस बिल से नवयुवकों और नवयुवतियों का जीवन कल्याणकारी बनेगा ।

इन शब्दों के साथ मैं इस बिल का हार्दिक समर्थन करता हूं और आपको धन्यवाद देता हूं ।

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR V A SEYID MUHAMMAD) Mr Speaker Sir I am grateful to the large number of hon Members who participated in the discussion and made very valuable contributions to the discussion

In bringing this amendment the main consideration which was before the Government was to work out a balance between the necessity of liberalisation of the provisions and also to see that the new provisions do not degenerate into licence In this attempt we have weighed the human factors and the rights and liabilities of the parties with a view to bringing the recommendations made by the Law Commission and the Committee on the Status of Women and other representations made from the public into the statute book Some of the criticisms made are very relevant and valuable. After examining the recommendations made we came to certain conclusions which we thought will remedy the evils and bring in a situation where liberalisation will take place. Everyone of the amendment suggested and every proposal made in the House will be considered and in fact are being considered with the greatest concern. If in the working of this new amendment certain provisions are found to be inadequate certainly Government will not hesitate to adopt the amendments which are found to be necessary and relevant at that time.

There has been, during the debate, a universal support generally, to the provisions of the Bill I will not take the valuable time of the House to deal in detail with every suggestion made and amendment moved It is not that we consider any of these amendments suggested to be less important But I thought that in order to save the time of the House I could deal with some of the salient points or amendments suggested by a number of Hon Members

There has been a suggestion made, I think, by Mrs Parvathi Krishnan, among others, that registration under Sec 8 must be made compulsory What has been done is that that question is left to the concerned State Governments to weight the circumstances and compulsions there We have enabled the State Governments to frame rules Some State Governments have made rules but they have made it optional and not compulsory (*Interruptions*) we shall certainly watch operation of this provision and, if it is found that the optional rights given to the parties do not work, we may resort to introducing the provision which makes registration compulsory

SHRIMATI PARVATHI KRISHNAN (Coimbatore) If you will read the statement of objects and reasons, you will fined that the amendments that are being suggested are based on the recommendations of the Law Commission and the Committee of the Status of Women It is in that context that I raised it This has been hanging fire for so long and it is very necessary to introduce compulsory registration and not to have the option.

DR V M SEYID MUHAMMAD Well, I appreciate the weight of the argument. the very fact that the power was given to State Governments to make the rules and the very fact that none of the

State Governments has thought it necessary to make it compulsory supports our view that there is no justification for it. (*Interruptions*). That is why we thought that this was a matter which the State Government could deal with better. The fact that they have not made it compulsory rather supports our legislation.

Regarding the question of minimum age of marriage, suggestions have been made that it should be raised to 21 in one case and actually, in a general amendment by Shri Naik, he has said that it must be the same as the voting age under the Representation of the People Act. Generally, the idea may be all right. But, for the time being, we find it only necessary to have the age at 15 for girls and 18 for men.

The reason is that under the Child Marriage (Restraint) Act, it is the same provision. So, we do not think it necessary at this stage to amend both the Child Marriage (Restraint) Act as well as this. Adultery has been . . . .(*Interruptions*).

SHRI M. C. DAGA (Pali) : She has a right to repudiate her husband. But, how can a girl, without attaining the age of majority, repudiate her husband

DR. V. M. SEYID MUHAMMAD : I will reply to this when the time comes.

Now, regarding the question of adultery, formerly, the provision was that the ground should be proved. If somebody seeks 'adultery' as a ground for divorce, the ground should be proved that the offending concerned party was living in adultery. But experience has shown that it is a very difficult thing to prove that he or she is living in adultery. There were cases in courts and consequent representations made by various individuals and associations. We have made it that even one act of adultery is sufficient for being a good ground for a divorce. We do not propose like the English Dog that one must exhibit the vicious propensity by biting more than once. If the dog bites once, that is sufficient and we do not believe in the principle that the propensity must be exhibited by continuously repeating the offence.

Now, regarding the other points, there is some misunderstanding about the provision when a person is not heard of for seven years. I think Shrimati Deshpande brought that amendment saying that it must be reduced to one year. My feeling is that there has been a slight confusion about the question. Under Sec. 108 of the Evidence Act, the presumption is that, when a person is not heard of for seven years, he is dead. We have incorporated the presumption into this Bill. It is not really desertion for a long time. It is not a ground of desertion. We have incorporated this in order to mitigate the hardship which the party may have to undergo. That is why this provision is there. Suppose the husband is living or the wife is living but not heard of for seven or more years. That is why we have incorporated the substance of the present Sec. 108 of the Evidence Act that if a person is not heard of, about whom, normally, the other spouse should have heard of for seven years or more, then, there will be a presumption that he is dead or he cannot be traced.

For that matter, if we adopt the principle of Sec. 108 of the Evidence Act, there may not be any confusion. It is not really a ground for desertion.

SHRIMATI PARVATHI KRISHNAN: Sir, the point is, sometimes there have been cases where someone has disappeared when he went to swimming. Recently, there was a case in Madras where the person is presumed to have been drowned. When nothing is heard about a person like that does it mean his wife has to wait for seven years? You are explaining the difference between a missing person and desertion. I accept that. Our point is why one has to wait for seven years in the case of some one who is missing? Reduce this period. Seven years is much too long a period. For desertion you are reducing the period

[Shrimati Parvah Krishnan]

but where presumption of death is there you are making it a longer period.

DR. V. A. SEYID MUHAMMAD: For reasons well-known and well-accepted seven years have been considered as a reasonable period when a man can be presumed to be dead. That is why we have accepted the same test. If I accept five years somebody may come and say why not three and others may say why not four. So, when we accept this principle we follow the well-established principle.

SHRI C. K. CHANDRAPPAN (Tellicherry): If a girl has to wait for seven years to establish that the missing husband is dead then it is as good as saying that she need not marry. That is why we say reduce it to one year.

SHRI M. C. DAGA: Seven years is a difficult period for a lady to wait.

DR. V. A. SEYID MUHAMMAD: When we introduce this principle of presumption we must go by some method. Suppose we say five years somebody may say why not four and others may say why not six. Here we have accepted something which has been in existence for a long time, that is, for seven years if a man is not heard of then he will be presumed to be dead. *(Interruptions)*.

If it is found that this results in hardship certainly we will re-consider the matter.

SHRI VASANT SATHE (Akola): Supposing woman (puts a notice in the Press that such and such a man unless he discloses himself in such and such a period I will presume he is dead and I am free to marry. Will that be alright?

DR. V. A. SEYID MUHAMMAD: At the time when we re-consider the question of changing the seven years period all relevant suggestions like the one made by Mr. Sathe will be considered.

Regarding 'repudiation' if a girl is married before the age of fifteen, we have provided that she can repudiate after attaining the age of fifteen and before she is eighteen. There is a similar provision in Muhammadan law and that has been working satisfactorily. That is why we have adopted that except the difference that in Muhammadan law if consummation takes place this will not be permitted, which we have not accepted in this amendment. Because it is working well in Muhammadan law, that is why we have adopted that criterion except the difference that consumation we have not accepted as in the Muhammadan law.

SHRI M. C. DAGA: In Rajasthan and M.P. and in so many other places girls, when they are children, are married at a very early age and here you have given the power that as soon as she attains the age of 15 she can repudiate the marriage. But she has not seen her husband's face and she has not seen her farther-in-law's house. How can she go and give a statement before the court of law? What statement will she give before the courts of law? And on what basis?

SHRI VASANT SATHE: How can she repudiate? On what grounds? *(Interruptions)*.

श्री मूलचन्द डागा : चाइल्ड मैरिज रेस्ट्रेंट एक्ट के होते हुए भी कई लोग छोटे बच्चों की शादी कर देते हैं और वह शादी हिन्दू ला के मुताबिक वैलिड मैरिज कहलाती है ।

श्री नाथूराम मिर्धा (नागौर) : अध्यक्ष महोदय, आप भी गांव के रहने वाले हैं, इस लिए आप गांवों की हालात को जानते होंगे । एक आदमी की 3, 8, 11, 12 और 14 साल की पांच लड़कियां हैं । आर्थिक

स्थिति कमजोर होने की वजह से वह सोचता है कि अगर पांचों लड़कियों की शादी एक साथ कर दी जाये, तो खर्चा कम होगा। लड़की के मेजर होने पर उसका गौना होता है और उस को ससुराल भेजा जाता है। ऐसी 99 परसेंट शादियां कायम रहती हैं। मैं समझता हूं कि श्री डागा के एतराज में बड़ा फ़ोर्स है कि जब लड़की ने अपने पति या समुराल को देखा ही नहीं है, तो वह शादी को रेपुडिएट कैसे कर सकती है। हिन्दुस्तान के गांवों के 99 परसेंट काश्तकारों के सामने ऐसे सवाल आयेंगे। इसलिए इस बारे में माननीय सदस्यों का दिमाग साफ होना चाहिए।

अध्यक्ष महोदय : अगर किसी की मर्जी हो, तो वह करे, लेकिन जबर्दस्ती के सिद्धान्त को नहीं माना जा सकता है।

SHRI M. C. DAGA: According to Hindu Law, it is considered as a valid marriage. You cannot challenge it. Now, how can a girl who has not seen the face of her husband repudiate?

SHRI VASANT SATHE: How can she give her consent?

SHRI M. C. DAGA: You say that at the age of 15 she can go to the court of law. I have given my amendment in this connection.

DR. V. A. SEYID MUHAMMAD: If Mr. Daga carefully reads the Section, he will know that what has been stated is that a girl who has been married before 15 years, can repudiate between the age of 15 and 18. I also said that we have removed the provision—in the Mohammedan Law that consummation will be a bar—so that it means, under the circumstances, that the girl who does not know the husband can go and live with him for one or two years and see whether it is good and it is not automatic that at the attainment of the age of 15 she must go and file a divorce petition. If she does not know her husband, well, let her go and live with him and between the age of 15 and 18 if she is convinced that she cannot get on with him, she can file a petition. It is not compulsory that on the attainment of 15 years, she should file a petition. That is why we have removed the ground which is accepted in Muhammadan law that consummation will be a bar to such petitions.

SHRI D. N. TIWARY (Gopalganj): If she goes to her husband's house, it means she has given her consent to go there and live with him. After that, how can she repudiate the marriag

DR. V. A. SEYID MUHAMMAD: This is to avoid precisely the sort of evil which Shri Daga suggested. The girl is married before she knows the husband. She is not in a position to know what sort of man he is. After going and living with him, if she finds he is not a good man she has a right to repudiate the marriage before she attains 18 years.

SHRI VASANT SATHE: It cannot be one-sided. Suppose a boy marries before 15 years of age and after consummation, he finds that it is not possible to live with that girl. Can he also repudiate the marriage before he attains 18 years?

DR. V. A. SEYID MUHAMMAD: On the other grounds available for divorce, he can, definitely.

SHRI B. V. NAIK (Kanara): I want to know whether the point raised by Mr. Sathe is a valid one, because there are many who would like to repudiate their marriage even at this stage!

DR. V. A. SEYID MUHAMMAD: About proof of mental illness or insanity, Mrs. Parvathi Krishnan suggested that a certificate from a civil surgeon should be considered sufficient. It will not be sufficient because there are various ways of getting a certificate. That is why we have

[Dr. V.A. Seyid Muhammad]

left it to the court to decide whether there is sufficient evidence of mental illness because of which the couple cannot get on with their married life. Instead of producing a certificate, we thought it would be better if it is proved before the court of law.

SHRIMATI PARVATHI KRISHNAN: What is the method of proof? If by insanity we mean a medical condition, surely there has to be some certifying officer.

DR. V. A. SEYID MUHAMMAD: We thought it is rather dangerous to leave it to a medical certificate without proving what exactly the condition is. We do not accept it.

These are the substantial points raised which I wanted to deal with. I do not suggest that the other points are not important, but in view of the fact that most of the suggestions have overlapped and covered the same ground. I do not think it is necessary to deal with the other points. I thank again the hon. members who participated in the discussion and for the general support given to the Bill I, therefore, commend the Bill to the House for acceptance.

MR. SPEAKER: The question is:

"That the Bill further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. SPEAKER: Now, we shall take up clause by clause discussion.

Clause 2—*(Amendment of section 5)*

SHRI B. V. NAIK: I beg to move:

Page 1, —

after line 19, *insert*—

"(d) has reached the voting age as laid down in the Representation of the People Act, 1950." (1)

The purport of this is that the parties to the marriage have reached the voting age as laid down in the Representation of People Act. The hon. Minister is quite aware that only a fortnight ago, Dr. Karan Singh made a fervent appeal for raising the marriage age. If the demographic problem on an unprecedented scale has got to be checked, the only way is to raise the marriage age. We elect our Ministers, our Prime Minister after the age of 21. Even our President is elected after 21. We consider 15 as a much younger age for somebody with whom we have to live for the rest of our life. To marry at the age of 15 is a biological marriage and not a psychological marriage. It is absolutely a sound principle when I say that it should be 21 years. I do not hold a brief for chastity, virginity and all that. I am not against pre-marital sexual relationship But I consider this age of 21 reasonable for living together with harmony, companionship and progress and to contain our population explosion. I would suggest that this may please be given a thought or an assurance may be given that it will be looked into.

SHRI M C DAGA: I beg to move:

Page 1,—

omit lines 14 to 17. (3)

SHRI DINESH JOARDER (Malda): I beg to move:

Page 1, lines 16 and 17,—

omit "and the procreation of children" (16)

In clause 2, you have said that any person who is suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. I think, unsoundness of mind is, in other sense, a cruelty. You have made this as a ground for dissolution. If any party is suffering from any mental disease, it is also a kind if cruelty. How is this correct ? It would be enough if you say, "if he or she is unfit for marriage". But you have also added that he or she must be unfit for marriage as well as

be unfit for the procreation of children. That is something more. (*interruption*) You are liberalising the provision in regard to marriage restraint. So, I want that this part of the clause should be dropped ; I mean the words "and the procreation of children". Otherwise it would be too harsh and it would be difficult to decide whether he is a man having unsoundness of mind to such an extent that he is unfit for marriage, and then again to decide whether he is unfit for the procreation of children. How will it be proved? I think this will create complications. so, I want you to omit the words, "and the procreation of children". (*intetruptions*)

MR. SPEAKER : Has the Minister got any comments on this ?

DR. V. A. SEYID MUHAMMAD : I have none.

MR. SPEAKER : I shall now put all the amendments to the vote of the House, I mean amendments Nos. 1, 3 and 16.

Amendments Nos. 1, 3 and 16 were put and negatived.

MR. SPEAKER : The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

MR. SPEAKER : For Clauses 3 to 5, there are no amendments. I put them to the vote of the House. The question is : "That Clauses 3 to 5 stand part of the Bill."

The motion was adopted.

Clause 3 and 5 were added to the Bill.

MR. SPEAKER : There is one amendment by shri Dinesh Joarder to clause 6.

Clause 6

(*Amendment of Section 12*)

SHRI DINESH JOARDER: I beg to move

Page

Omit lines 24 to 27. (17)

Here, there is an unnecessary addition while defining potence or impotence of the husband. The clause here says :

"(a) that the marriage has not been consummated owing to the impotence of the respondent ;

Previously, the clause was very simple : it said that if any partner to the marriage was impotent, it would create a ground for either separation or, after that, for divorce. I have already said that a marriage can be consummated in different ways temporarily. i.e. with drug-effect or in an extraneous manner. In whatever way it is done, it may be that once or twice the marriage is consummated by an impotent man ; but that will not create any ground for the dissolution of the marriage or for separation, or for the whole of the life. I think it hurts and it is also not desirable.

DR.V A. SEYID MUHAMMAD : The amendment is not acceptable.

MR. CHAIRMAN : I shall now put amendment No. 17 to the vote of the House.

Amendment No. 17 was put and negatived.

MR. SPEAKER: The question is

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7—(*Amendment of section 13.*)

MR. SPEAKER: There are amendments to clause 7.

SHRI B. V. NAIK: I beg to move:

Page 2,—

omit lines 39 to 41. (2)

SHRI M. C. DAGA: I beg to move:

Page 2, line 41,—

after "spouse" *insert*—

"without the consent or against the wish of such party"

[Shri M. C. Dogra]

Page 2, line 43,—

after "cruelty" *insert*—

"or not in a befitting manner as one expects from another" (5)

Page 3, line 2,—

for "two years" *substitute* "one year" (6)

Page 3, line 34,—

for "one year" *substitute* "six months" (7)

Page 4, lines 3 and 4,—

for "one year" *substitute* "three months" (8)

Page 4,—

(i) line 6,—

for "fifteen" *substitute* "eighteen".

(ii) line 8—

for "before attaining the age of eighteen years" *substitute* "this can only be done provided husband and wife have lived together and lead a married life at least for a period of one-year." (9)

SHRI DINESH JOARDER: I beg to move:

Page 3,—

omit lines 24 to 32. (18)

Page 4, line 8,—

for "eighteen" *substitute* "nineteen" (19)

SHRIMATI PARVATHI KRISHNAN: I beg to move:

Page 3,—

after line 23, *insert*—

'(iiia) in clause (vii), for the words "seven years" "the words one year" shall be substituted. (27)

Page 4, lines 3 and 4,—

for "one year" *substitute* "six months" (28)

SHRI D. N. TIWARY (Gopalganj): I beg to move:

Page 3,—

after line 34, *insert*—

'(ii) in clause (ii), the word "or" shall be inserted at the end ;

(iii) after clause (ii), the following clause shall be inserted, namely:—

"(iii) that there has been no resumption of co-habitation as between the parties to the marriage for a period of one year or upwards after passing a decree or order, as the case may be, of separate maintenance in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (or under corresponding section 488 of the Code of Criminal Procedure, 1898) to which they were parties. "' (31)

Pages 3 and 4, —

Omit lines 40 to 45 and 1 to 4 respectively. (32)

Let me explain my amendments. On the earlier day, the Law Minister had said that he would reply to the point I had raised here. But he did not mention anything about it. My first amendment is this : I want this to be inserted after line 34 at page 3 :

"(ii) in clause (ii), the word "or" shall be inserted at the end ;

(iii) after clause (ii), the following shall be inserted namely :—

"(iii) that there has been no resumption of co-habitation as between the Parties to the marriage for a period of one year or upwards after passing a decree or order, as the case may be, of separate maintenance in a suit under section 18 of the

Hindu Adoptions and Maintenance Act, 1956 or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (or under corresponding section 488 of the Code of Criminal Procedure, 1898) to which they were parties.".

This has to be brought here. Then in the same page, you have to omit lines 40 to 45. Here you have not given a right to the husband to get married or go for divorce while you have given a right to the wife. Even if she is getting alimony and getting it for life long, the man remains unmarried for life long. That is very harsh for the husband who is giving money for the maintenance of the wife. They are living separately for years together. The husband has no right to apply for divorce while the wife has got the right for divorce. This is a discrimination. If you want to amend this, you should give the right to both the parties and remove this discrimination.

(*Interruptions*)

SHRIMATI PARVATHI KRISHNAN (Coimbatore) : Sir, now I find that the Minister is in amood to reply to the amendments. (*Interruptions*)

I would like to say something about the waiting period of seven years in the case of a missing person. This is a point which we have already dealt with. This is regarding presuming the spouce dead or whatever it is.

Now, there are occasions when it is presumed that the husband is dead or missing during a war. Then perhaps there may be an element of doubt, because it may be possible that he has been taken as a prisoner; it may be possible that he is likely to come back and so on. Except for that, on other occasions, if you ask them to wait for seven years, it is a pretty long time. Because in our country, we have to take it with the objective situation. What happens if a woman has to wait for seven years? Then they think that she is over-aged or too old for marriage. As far as law is concerned, such a thing comes under the category of proper age, but it is over-aged, as far as society is concerned. Therefore, I am in agreement with Mr. Sathe and others that this should not be a one-sided thing and apply only to wife. As far as husband is concerned, it should apply to him also, because there may be such occasions in regard to a wife also.

During the marriage season, we read in the newspapers that one marriage party or the other is washed away when there are floods. Am I right, Mr. Daga? As you know, it happens in Rajasthan. Then there are so many cases of dacoits and other things, etc. Then there are cases where a man has just disappeared leaving no trace. It may be possible that he does not want to come back ; it may be possible that he is alive. But you have to wait for seven years to presume that he is dead.

For instance, now we have got the case, particularly, of missing smugglers. What has hapened to the wives of those smugglers? Therefore, whether you can really send them notices, we do not know. But the point is that it is a very serious proposition, particularly in society as it obtains in India today. This reply you have been constantly giving is "you wait and watch the situation" What are you going to wait for and what are you going to watch for ? The reality is before us already and the experience is also there.

Therefore, I would appeal to the Minister may be he is not in a position to take a decision of his own — that he should take courage in both hands, and keeping in view the need of the emergency, he should accept this amendment.

SHRI DINESH JOARDER : In the first instance, I say that this important Bill has been brought to this House for discussion in such a hurried manner that every important provision of the Bill has not been properly gone into .It has been brough

[Shri Dinesh Joarder]

forward in such a casual manner that the Minister himself takes the Bill in that fashion. On the first day of the discussion there, was the senior Minister present here and now the reply has been given by another Minister who does not know what points were raised during the discussion except certain notes that have been given to him.

Many important points have been raised during the discussion in regard to compulsory registration of marriage, raising of marriageable age, guardianship of minor children, missing of husband for several years, unsoundness of mind and various other matters. That is why I had said in the beginning that this Bill should have been sent either to the Select Committee or for eliciting public opinion. In this hurried manner, we cannot do full justice to each and every provision of the Bill nor can the Minister do. He is not prepared to answer the questions that we raised regarding several important provisions of the Bill. This is the casual manner in which it is being passed.

As regards my amendment to this clause, the provision of waiting for seven years is too harsh. The period should be minimised. In regard to repudiation of marriage by a minor party, it is stated that before reaching 18 years of age, he or She shall have to repudiate the marriage. Now, in the Special Marriage Act, the marriageable age is 18 years. For attaining majority 18 years is the age for girls. Unless and until she attains majority and maturity of thinking, she should not be given an option, whether she will continue or repudiate that marriage. That would have been the proper thing to do. What is provided here is that before attaining majority and maturity of thinking, he or she shall have to repudiate the marriage. This is not in accordance with the law that we are having. For repudiating the marriage, the age should at least 19 years that is, after attaining the age of majority and maturity of thinking. After attaining the age of 18, she should be given at least one year to decide whether she will continue with that marriage or she will repudiate that marriage. Only then she should be given an option. That is why I want that the age should be raised from 18 years to 19 years for repudiation of marriage by a minor.

श्री मूलचन्द डागा : अध्यक्ष महोदय, मैं एक बार फिर आपका अमूल्य समय लेता हूं। हमारे राजस्थान और दूसरे बहुत से प्रदेशों में लड़कियों में 4 परसेंट एजूकेशन है। केरल में 58 परसेंट एजूकेशन लड़कियों में है लेकिन हमारे राजस्थान में लड़कियां खास कर गांवों में बिलकुल पढ़ी लिखी नहीं हैं। उनके मां बाप गरीबी के कारण छोटेपन में ही उन की शादी कर देते हैं। हिन्दू ला के अनुसार इस तरह की शादी वैलिड है। अब 15 वर्ष की लड़की जिसने शादी के बाद पति का मुंह न देखा हो, जो ससुराल न गई हो उसको आप अधिकार देते हैं कि वह शादी को रेप्युडिएट कर सकती है। मेरा अमेन्डमेंट है इस सम्बन्ध में और मैं समझता हूं कि जब तक लड़की 18 वर्ष की न हो जाय, वह अपनी ससुराल में जा कर न रह ले तब तक उस को आप यह अधिकार न दें। आप मेहरबानी कर के इस प्राविजन को बदलें नहीं तो जैसा मैं कह चुका हूं गांवों में गरीब लोग अपनी लड़कियों को बेचते हैं, रुपया लेते हैं और जैसे ही लड़की 15 साल की होगी वे दोबारा उसकी शादी करेंगे और कह देंगे कि बचपन में इसकी शादी हो गई थी। या फिर आप हिन्दू मैरिज ला में अमेंडमेंट करें। यह कहां तक उचित होगा कि जिस लड़की ने पति का मुंह न देखा हो, जो ससुराल में न रही हो, जो पढ़ी लिखी न हो उस को आप यह अधिकार दे दें। यहां कुछ पढ़े लिखे लोगों के कारण उन गरीबों के घर तबाह होने का मौका मत दीजिये इस तरह का प्राविजन करने से वे लड़कियों को बेचेंगे और बेच कर पैसा कमायेंगे। जब तक लड़की 18 वर्ष की न हो जाय, उस को ऐसा अधिकार नहीं दिया जाना चाहिये।

12·00 hrs.

SHRI B.V. NAIK : The Hon. Minister drew particular attention to the grounds of divorce. What I am requesting the Hon. Minister is this. When we changed over from the original phraseography of living in adultery to a single act of adultery, first I asked a question. to which I did not get a clear-cut answer categorically, regarding population. Now, do you want, through the Marriage Laws or whatever they are, to create for the citizens, both males and females, of this country a situation conducive to marriage or conducive to divorce ? I am not saying there is no handicap in the previous one of 'living in adultery.

Secondly, why are you trying to bring out the private lives of well-meaning couples into the public? Therefore, like the Australian Law which I quoted the other day why can't we interpret or give a direction for the interpretation of acts of adultery as cruelty ? It says 'after the slolemnization of marriage, treated the petitioner with cruelty'. We can take adultery as part and parcel of cruelty. Why do we want black and white and solid proofs for all these things ? I would request the Hon. Minister to kindly accept this. Otherwise, instead of helping the Indian marital system, though acting with good intentions, he would be harming it. I hope he will kindly agree to this.

DR. V.A. SEYID MUHAMMAD: Regarding Mrs. Parvathi Krishnan's amendment, in Section 13 (vii) there is already a provision regarding seven years as the presumption period; and as Mr. Sathe has suggested, it is not applicable to only women ; it is applicable to both men and women. While I appreciate the force of the argument that seven years is a pretty long period and it may work hardship, the difficulty is this. When there is a situation where a couple was living happily married and for reasons known or unknown. the husband or the wife, as the case may be, leaves and is not heard of for several years, you have to wait sufficiently long to presume one of them is dead. I can understnd it if they had quarrelled and gone away but, where the couple had been living happily and, for reasons beyond their control, get separated, to jump to a conclusion that one is dead is not easy. That is why we have taken the well accepted principle of seven years.

SHRI DINESH GOARDER : But in Section 14 it has been stated :

> "Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for repudiation of marriage or divorce unless, on the date of the petition, three years have elapsed since the date of marriage"

Not, that has become one year. But after that, it is said "Provided that the Court may, on an application made to it in accordance with such rules as may be ....." In cases of hardship and exceptional suffering, the Court can entertain the petition even before that statutory period ? why not keep a provision in respect of 'missing' also ? In cases of exceptional deprivity or exceptional sufflering, the court can condone that seven-year period, so that the court can entertain the petition in two or three years also.

SHRIMATI PARVATHI KRISHNAN: He made a reference to people being happily married and asked as to why they should not wait for seven years. My point is this : I agree that, if the persons were happily married, they might wait othroughut their lives. You are not going to say 'Do not wait' or that you must immediately get married. But when one or the other party has disappeared completely and there is absolutely no trace of them (the wife or the husband) the other party may wish to marry again . It is only then that they will go to the court not otherwise. People do not automatically go. Therefore, this argument about being happily married and all that, I cannot understand.

DR. V.A. SEYID MUHAMMAD : I have already said what I wanted to say in justification of that.

MR. SPEAKER : I shall now put all the Amendments together to the vote of the House unless any Member wants his Amendment to be put separately.

SHRI D.N. TIWARY : I want my Amendment No. 31 to be put separately.

MR. SPEAKER : I shall now put Amendment No. 31, moved by Shri D.N. Tiwary, to the vote of the House.

Amendment No. 31 was put and negatived.

MR. SPEAKER : I shall now put all the other Amendments to Clause 7, together to the vote of the House.

Amendments Nos. 2, 4 to 9, 18, 19, 27, 28 and 32 were put and negatived.

MR. SPEAKER: The question is :

"That Clause 7 stand part of the Bill."

The motion was adopted

Clause 7 was added to the Bill.

MR. SPEAKER : Is Mr. Daga moving his Amendments to Clause 8 ?

SHRI M. C. DAGA : I am not moving.

MR. SPEAKER : The question is:

"That Clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

MR. SPEAKER : Is Mr. Daga moving his Amendments to Clause 9 ?

SHRI M. C. DAGA : I am not moving.

MR SPEAKER : Mr. DINESH JOARDER.

SHRI DINESH JOARDER : I am not moving.

MR. SPEAKER : The question is :

"That Clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.
Clauses 10 to 14 were added to the Bill.

MR. SPEAKER : Now Clause 15. Is Mr. Daga moving his Amendments ?

SHRI M C. DAGA : I think, he can agree to this small Amendment. Here you have said :

> "Every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the Hogh Court or of the Supreme Court printed or published with the previous permission of the Court."

Here I want the words 'with the previous permission of the court' to be omitted. Why do you want to give this power to the Court when a judgement is already published in a particular report ? You should not give this power to the Court. Otherwise, stop it altogether. Why do you say that it can be published with the previous permission of the Court ?

DR. V. A. SEYID MUHAMMAD: I do not accept this.

MR. SPEAKER: Is Shri Daga moving his amendments ?

MR. SPEAKER: I am not moving my amendment.

MR. SPEAKER: The question is :

"That Clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

MR. SPEAKER: Is Shri Joarder moving his Amendment to Clause 16 ?

SHRI DINESH JOARDER: I am not moving my amendment.

MR. SPEAKER: The question is :

"That clause 16 stand part of the Bill"

The motion was adopted.

Clause 16 was added to the Bill.

Clause 17 was added to the Bill.

MR. SPEAKER : Is Shri Joarder moving his amendment to clause 18 ?

SHRI DINESH JOARDER : No, Sir.

MR. SPEAKER : The question is :

"That clause 18 stand part of the Bill"

The motion was adopted.

Clause 18 was added to the Bill.

Clauses 19 and 20 were added to the Bill.

Clause 21—(*Amendment of section 14.*)

SHRI DINESH JOARDER : I beg to move :

Page 9,—lines 33 and 34,—

omit "and the procreation of children" (23)

I have already stated my argument in relation to my amendment to the Hindu Marriage Act, 1955. This amendment relates to the special Marriage Act, 1954 regarding unsoundness of mind rendering a man unfit for marriage as well as procreation of children. I repeat that argument in respect of this amendment also.

MR. SPEAKER: I will put amendment No. 23 to the vote of the House.

Amendment No. 23 was put and negatived.

MR. SPEAKER: The question is:

"*That clause 21 stand part of the Bill.*"

The motion was adopted.

Clause 21 was added to the Bill.

Clauses 22 to 26 were added to the Bill.

Clause 27—(*Amendment of section 27.*)

SHRI DINESH JOARDER: I beg to move:

Page 11,—

After line 4 *insert*—

'(bb) after clause (c), the following Clause shall be inserted, namely :—

"(cc) has been adjudged as guilty of any economic offence or any offence connected with drug control or food adulteration." (24)

Page 11,-

omit lines : 27 to 35." (25)

Sir, if a partner of the marriage suffers imprisonment for seven years or more for certain criminal offence, that has been made as a ground for divorce. What I want is that if either of them is found guilty of economic offences like smuggling etc. or any offences connected with drug control or food adulteration this should also be made a ground for the other party for going for separation or divorce. These offences should be included as a ground for dissolution of marriage.

SHRIMATI PARVATHI KRISHNAN: I beg to move:

Page 11,—

after line 10, *insert*—

"Provided that the said mental disorder is certified by a specialist whose rank shall not be less than that of a civil surgeon." (29)

MR. SPEAKER: I will put amendments Nos. 24, 25 and 29 to the vote of the House

The Amendments Nos. 24, 25 and 29 were put and negatived.

MR. SPEAKER: The question is:

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

Clauses 28 to 39 were added to the Bill.

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

DR. V. A. SEYID MUHAMMAD: I beg to move :

"That the Bill be passed."

MR. SPEAKER : Motion moved.

"That the Bill be passed".

SHRIMATI PARVATHI KRISHNAN: From our side we are happy about this Bill and we extend our full support to it. But at this stage I would like to say just one or two things and not take up much of your time.

Firstly, I was very disappointed, I must say, at the very lukewarm manner in which the hon. Minister dealt with the whole question of compulsory registration of marriages. From the beginning we have been stressing that compulsory registration is a very necessary thing because this is a factor which comes particularly for the protection of women in our country. I am not going again to repeat all those arguments that I used during the first reading. But, by replying that this is for the State Governments to decide, I think, the Minister is escaping his responsibility. Because, after all there is the United Nations Convention and when the UN convention was adopted, at that time in 1962, the Indian delegate said that the time was not yet ripe for such legislation. So, how long are we going to have this position ? Now, the Minister says that it is left to the States as though this is something that is not to be decided for the country as a whole and as though the conditions for this particular matter of social importance, protection for women, differ from State to State. This is really a very serious matter and I think this idea of waiting and watching like the character in My Fair Lady, is really too much. I would request the Minister to take it very seriously and move as early as possible at least an amendment to the Hindu Marriages Act. After all as far as compulsory registration of marriages, if that would come, I would welcome it. I am one of those who stands for a uniform Civil Code for all in this country and if you could, since you have got your precedent with the Registration of Births and Deaths, why cannot you extend it to marriages also. Because this is the only way in which you will be able to give protection, particularly, to the women in the rural areas. Only if that protection is there, you will not be having the harrowing cases, the heart-breaking cases of wives who are deserted at a very young age or even at an older age.

Secondly, I am not at all convinced by the Minister's argument regarding raising the age of marriage to 18, at least under the Hindu Marriages Act to bring it on par with the Special Marriages Act.

These are two very important issues and I hope that the Minister will take the matter very seriously and not just continue to watch, wait and then drag in the State Governments saying, 'We are being extremely democratic and extremely autonomous by allowing the State Governments, etc., etc.'. This is a central legislation which requires an all India perspective and an all-India approach and an all-India standard.

Lastly I shall make a final appeal with regard to the presumption of death. The seven years period has been prescribed for the purpose. The presumption of death is more or less a conclusive one. I would request that special attention may be given to this point and some proviso may kindly be thought of.

We had asked that some protection should be given to the victims of fake marriages, brain drain marriages, marriages through the advertisements in the newspapers. I would like to know what protection will be given to these girls who are the victims of such marriages, because they have to wait for one to two years to get the marriages annulled or to get a divorce. This period is too long a period

in such cases. If you want to avoid heart-breaking and suicides, you have to evolve some provision and give some protection has to be given to the girls who are victims of such circumstances.

श्री मूल चन्द डागा : इस बिल से एक बात तो होगी । भारत में ड़ाइवोर्स छः महीने में ही हो जाया करेगा । होम स्वीट हो, देअर इज नथिंग लाइक स्वीट होम वाली बात नहीं रह जाएगी । इससे मैं समझता हूं कि डाइवोर्स बहुत ही कामन हो जाएगा ।

इस से ज्यूडिशल सैपेरेशन के लिए ज्यादा वक्त लग जायेगा । अब ज्यूडिशल सैपेरेशन के वही ग्राउंड्ज हैं जो डाइवोर्स के हैं । लेकिन डाइवोर्स की डिक्री छः महीने में ही हो सकती है लेकिन ज्यूडिशल सैपेरेशन की डिक्री होने में एक साल तक इंतजार करना पड़ेगा । एक साल तक इंतजार करने के बाद फिर ड़ाइवोर्स के लिए दरख्वास्त देनी पड़ेगी । इस कानून का क्या मंशा है ? एक तरफ जिस ने डिक्री हासिल कर ली है ज्यूडिशल सैपेरेशन की उस को तो एक साल तक इंतजार करना होगा और एक साल के बाद वह दरख्वास्त देगा और फिर उसको ड़ाइवोर्स मिलेगा.....

अध्यक्ष महोदय : यह थर्ड रीडिंग है । तफसीलात में मत जाएं । बहुत इम्पार्टेंट प्वाइंट हो तो कहें ।

श्री मूल चन्द डागा : आप लड़की को तो रिप्युडिएट करने का अधिकार देते हैं और लड़के की शादी हो जाती है और वह नाबालिग हैं तो उस को कोई अधिकार नहीं देते हैं । यह भी ठीक नहीं है । कानून आप बहुत हरीडली पास करवा रहे हैं ।

यह एक सोशल लैजिस्लेशन है । इस को सारे भारत पर और सब लोगों पर लागू आपको करना चाहिये था । बिना किसी जात के भेदभाव के आपको सभी पर इस को लागू करना चाहिये था । तभी इस का फायदा हो सकता है , वर्ना नहीं ।

DR. V. A. SEYID MUHAMMAD: I do not wish to answer point by point because I have already replied. But in regard to the points made by Shrimati Parvathi Krishnan, I can assure her that it is not because we had not thought seriously over the matter or we took it lightly. The presumption that a man is dead; we thought that instead of fixing three, four or five years without its being based on any principle, without fixing it arbitrarily, we thought it was better to have some accepted principle in the matter. As I submitted, it was not a question of evading, watching or waiting. In social legislations one has to see the action and counter-action and the social compulsions. It is in that sense that we have put forward the amendments. It is not waiting and watching just for nothing.

We have to see the reaction and the repercussions of this amendment which is being passed now. When we see that conditions compel us to change or to accede to the demands and suggestions, certainly, without hesitation, we will do so.

MR. SPEAKER: The question is:

"That the Bill be passed"

The motion was adopted.