ing the Government servants a class by themselves.

It is also quite likely that if any such favoured treatment is allowed, apart from the constitutional objection it may be abused by some Government servants. Merely because he is a Government servant, he has been saved from sub-clause 6. Therefore, the tendency would be for transfer of property to a Government servant either under the feeling that he is exempted, or even otherwise also. I do not like to deal with this particular aspect of the question, but let us not do anything that is either unconstitutional or likely to be abused.

So, I request my hon. friend not to press this Bill.

Shri Tangamani: I am grateful to the hon. Minister for the explanation that he has given and for the assurance that the Central Government employees will not meet with hardship, but my real fear is that most of the rules to which he made reference are rules relating to 1955, and there is a specific reference that the lands or houses acquired by them should be before 1955, but the Act to which I referred is the Act of 1958. At least I hope the rules will be so modified that there is no question of evicting these people for five years. The rule says:

> "If it appears to the Central Government that no efforts have been made to obtain vacant possession...."

How can he take any steps for getting vacant possession when the Act definitely bars him from moving the Controller for getting vacant possession? That was my point.

I am aware of the Constitutional provision, but I have only mentioned that if a certain class of people are otherwise debarred, that disqualification will have to be counterbalanced and they may be given certain facilities. It is not trying to give extra benefit to a certain group of people. Here are certain people who are under certain disadvantages according to the rules. If the rules regarding allotment are clear, this question will not arise at all. Only where the Government servant can prove that the rules really debar him from continuing in the place which was allotted, this provision can be invoked. So, I was rather surprised why article 14 was brought in with reference to such an innocuous legislation.

Anyway, in an indirect way he has promised that there will not be any hardship.

Shri Datar: These rules were made only in 1960.

Shri Tangamani: Mostly they refer to occupation prior to 1955. They are all amendments to these rules. My grievance is that the amendments do not go far enough. They have not taken into consideration the Act of 1958, that is my point.

In view of what he has said, I am not pressing the Bill as I wanted to. I only hope the Government will see to it that the rules are modified, and that those who are now under any disqualification or have to pay enhanced rent where the five year period has not lapsed, will be repaid the arrears.

Mr. Deputy-Speaker: Has the hon. Member the permission of the House to withdraw the Bill?

Hon. Members: Yes.

The Bill was, by leave, withdrawn.

16.07 hrs.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

(Amendment of Section 488) by Shri Ajit Singh Sarhadi

Shri Ajit Singh Sarhadi (Ludhiana): I beg to move:

[Shri Ajit Singh Sarhadi]

"That the Bill further to amend the Code of Criminal Procedure, 1898 be taken into consideration."

The amendments which this Bill proposes are two. Firstly, in section 488 of the Criminal Procedure Code it proposes that the word "child" wherever it occurs should be substituted by "daughter or son". Secondly, the amendment proposed is that in sub-section (4), for the words "if she is living in adultery", the words "if she had sexual intercourse with any person other than her spouse" should be substituted.

My object in bringing these two minor amendments is to clarify the confusion and meet the conflict which has crept in in the rulings of the different High Courts.

The original section 488 runs as under:

"If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs."

The expression used here is "legitimate or illegitimate child". "Child" is the word which has created some confusion. As the hon. Minister will bear me out, certain High Courts have given interpretations to this word "child" as a person below the age of 18 who is not able to contract, that is a minor. But the words in the section "a child who is unable to maintain itself" clearly postulate that the intention of the legislature was not this, that it should be a minor child, but any offspring which is not able to maintain itself. Whatever the age, he or she would be entitled to maintenance from the parent if unable to maintain himself or herself. Of course, the moment a girl gets married, she is able to maintain herself because she is married, but otherwise the object of the original section was this. A daughter or a son who is unable to maintain herself or himself would be entitled to maintenance because she or he is unable to maintain herself or himself. But we find the different High Courts interpreting the word 'child' differently.

I need not cite all the authorities that are on the point. But I would just refer to a few. The Madras High Court, in A.I.R. 1950 Madras 394, has definitely held that a child means a minor. And the moment a person is able to contract, he or she would not be entitled to maintenance because the word 'child' is used. This was based on the original ruling in 1914 Madras 249. Another ruling of the Madras High Court in 1925 Madras 491 has held about a daughter that if she gets married and is in a poor condition and her husband is not able to maintain her, still she is entitled. That is contradictory to the ruling in 1950 Madras 394. Similarly, in 1941 Madras 685, a single judge ruling has held that a child does not mean any minor but a category of persons who are not able to maintain themselves. So, in the Madras High Court itself there is no final judgment.

I will just draw the attention of the Minister to the rulings of the Calcutta High Court. In 1935 Calcutta 485, it has been held that a child means a minor. Then, later on in 1950 Calcutta 465, a single judge ruling and also in 1951 Calcutta 66, another single judge ruling, it has been held that the age is not the criterion whether a person is a child or not. He or she would be

entitled to maintenance if he or she is not able to maintain himself or herself. In Calcutta High Court itself we have two ruings on one side and another on the other side; and there is no final authority.

Coming nearer home, our own High Court, in 1933 Lahore 249, has held that a child means a minor and would only be entitled to maintenance. The same year in a decision in Lahore 1026, it was held that age is not the consideration. If he or she is unable to maintain himself or herself then he or she would be entitled to maintenance. In 1941 Lahore 92, the matter was referred to a Division Bench and still we have not got a final ruling. The Division Bench never gave ruling about the definition of the word 'child'. Recently, in 1960, the Punjab High Court has held that the word 'child' includes any person of any age, daughter or son, who is unable to maintain herself or himself.

Even in Nagpur we have got different authorities. In 1922 Nagpur 249, it was held by a single judge that 'child' means a minor. In 1950 Nagpur 231, it has been held that it refers to a person of any category provided he or she is unable to maintain himself or herself.

So, my respectful submission is that this is a very important section which lays down the liability of the parent to maintain the child; that is of the father to maintain his offspring whether a girl or a boy. How far that liability goes is an important question. I would certainly say that the liability lasts as long as the father is alive if the child, whatever its age, is unable to maintain itself.

Suppose there is a lame daughter or a blind daughter who is unable to maintain herself—or a blind son—then, certainly, the liability is on the father.

I submit that the original intention of section 448(1) was definitely this that if the child of whatever age, he or she, is unable to maintain itself, then it would be liability of the father. But the different decisions of the different High Courts and different decisions of the same High Court *inter se* have created a conflict and a confusion. Therefore, I have proposed in this Bill that the word 'child' be substituted by the words 'daughter or son', in order to eliminate the question of age at all because that word has created confusion. Every person if he or she is unable to maintain himself or herself should be entitled to maintenance provided the other conditions mentioned in section 488 are fulfilled. This is the first part of my amendment.

The next part relates to section 488(4). Originally, the clause runs thus:

> "No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

This definitely postulates that if she is living in adultery she is not entitled to maintenance from her husband. There is a consensus of opinion in all the High Courts that if she is living in adultery, that is, if she is the mistress of somebody else she is not entitled. But if the lapse is one, two three or four, it would not disentitle her to maintenance. So far the decision is correct and that is the interpretation of section 488(4). The original allowance has to be fixed under section 488(1). And when the question of realisation comes in, under clause (4), it can be contended that she is living in adultery. That has been interpreted to be as, being the mistress of somebody else and living with him. If she has committed lapses, once or twice, then, it would not disentitle her to maintenance.

But we have passed the Hindu Marriage Act of 1955. It lays down that a spouse is entitled to judicial

[Shri Ajit Singh Sarhadi]

separation on the grounds given in clause (f) of section 10. It lays down that either party to a marriage whether solemnised before or after the commencement of this Act may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party has had sexual intercourse with a person other than his or her spouse. I will read the relevant words of clause (f).

> "After the solemnisation of the marriage has had sexual intercourse with a person other than his or her spouse."

That is, the moment it is established that the woman has committed even one act of adultery, that entitles the husband to judicial separation. This is the legal position so far as this Act is concerned.

Now, for the purpose of divorce, certainly, living in adultery is one condition under section 13. But, under section, for judicial separation, even one act of adultery is sufficient. But that is not so under section 488 Cr.P.C. It entitles the lady to maintenance howsoever many lapses she may have, provided she is not living as the mistress or somebody else. This is an anomalous position.

Therefore, in order to remove this conflict between the two Acts and to bring a cleaner life, I have proposed an amendment to clause (4) of section 488. That is:

> "for the words 'if she is living in adultery', the words 'if she had sexual intercourse with any person other than her spouse' shall be substituted."

I have only shifted these words bodily from clause (f) of section 10 of the Hindu Marriage Act and incorporated them here. That is such an act of sexual intercourse would disentitle the lady to maintenance from her husband. It brings it in consonance with the provisions of the Hindu Marriage Act pertaining to judicial separation. The second reason is that it would lead to a cleaner life. We have given the right of judicial separation and the right of divorce for the reason that domestic discord should not remain.

Mr. Deputy-Speaker: Why should these two be equated? Take the instance of a wife; if there has been one act of adultery or sexual intercourse with a person other than her spouse, then the husband has the choice to seek judicial separation. When he seeks that, simply because one lapse has been committed, he should have the advantage of absolving himself from paying compensation as well?

Shri Ajit Singh Sarhadi: Your observations are very relevant and I will meet the point. I agree that these two Acts relate to social legislation. Anybody would not certainly go in for judicial separation even if there is one act. If one spouse wants to remain separate, none wants to have a claim; that would lead to more domestic harmony. But the moment the woman comes forward despite more than ten lapses or even a few and claims maintenance the husband should have a right to make a plea that she is not entitled to maintenance because of adultery. Your point would cut the other way also; you will be forcing everybody to go in for judicial separation on one act of adultery.

Mr. Deputy-Speaker: There is no question of forcing anybody but the effect of the two has been kept rather separate. One is not so serious as the other. In one case if he feels offended he must feel offended—and wants a remedy, he can go as far as separation but if it is a continuous lapse and the lady is living in adultery then certainly she could not claim maintenance.

Shri Ajit Singh Sarhadi: If she lives in adultery the husband can seek divorce.

Mr. Deputy-Speaker: If she lives in adultery and she has to go to the court for maintenance then certainly she has already deserted or she is not being kept by the husband already when she goes to the court for maintenance. Therefore, she is not being maintained. Though it may not be judicial separation by law, already they would be living separately.

Shri Ajit Singh Sarhadi: That is by implication. That gives a right to spouse to bring in a petition for divorce if she is living in adultery; that debars her of maintenance.

My respectful submission to the House is to see whether it is not necessary to bring harmony between the two provisions which are identical. The moment you deprive a women who has committed an act of adultery from the right of maintenance under section 488, you lead her to a cleaner life than otherwise. When the debate on this section took place, this was objected to. I place this amendment for the consideration of the hon. Minister and I hope the Government will find its way to consider it somehow.

Mr. Deputy-Speaker: Motion moved:

> "That the Bill further to amend the Code of Criminal Procedure, 1898 be taken into consideration."

The Minister of State in the Ministry of Home Affairs (Shri Datar): Sir, I can very clearly understand the objects which the hon. Member has in view. But we have to take into consideration the context in which section 488 was introduced, not in the substantive law of the land but in the criminal law of the land. Therefore, it would not be proper to draw an anology between section 488 of the Cr.P.C. in so far as it bears on the right or obligation of maintenance and the other Acts, the Hindu Marriage Act or the Hindu Divorce Act or the other Acts of different communities.

In the Criminal Procedure Code, naturally we deal with the desire to maintain a peaceful society and a more or less harmonious society. I may point out why section 488 has been introduced in the Criminal Procedure Code. The object is to prevent domestic troubles in the family getting into the society and creating further trouble. If the husband and wife are so scandalously quarrelling with each other, it may even lead to trouble not only in the family but in the society also. When the Criminal Procedure Code was framed there was a very large measure of illiteracy, almost an astounding measure of illiteracy, in the whole of India. Secondly, let us assume that a husband is in a position to maintain his wife, but still does not do so on account of certain reasons, right or wrong, then it will lead to vagrancy on the part of the wife. In the case of poor families, if a woman is not maintained properly she would go out and become a vagrant and perhaps in certain cases she will be compelled to lead not necessarily a desirable type of life. It is on account of these considerations of the general security and harmony of the society that the provision regarding maintenance was made so that peace and harmony should remain in the family and therefore harmony in society should be ensured to a certain extent. That is the reason why it is necessary to understand the context in which section 488 was introduced. This is a special provision and if I mistake not, it is only in the Indian criminal law.

Before I deal with the two points which the hon. Member has made out, I may point out that the Law Commission have now been considering the general question as to whether any revision in the Criminal Procedure Code as also in the Indian Penal Code is necessary. They are examining the two Codes very carefully to see whether any changes in the law are necessary. Therefore, I am con-

[Shri Datar]

fident that it would also consider the suitability or otherwise of the present provisions in section 488 and I would assure my hon. friend that a copy of the debate on this Bill will also be forwarded to the Law Commission for their proper consideration. It was only in 1956 that we had a fairly exhaustive revision of the Criminal Procedure Code. It would not be proper that so far as such important laws are concerned, I refer to these two Codes, they should be amended piecemeal. All the same my hon. friend has made a number of suggestions which I am quite confident the Law Commission will take into account and consider whether any changes are at all necessary. This is so far as the general aspect of the matter is concerned.

My hon. friend proposes to make two changes. One is that in place of the word "child", the words "son or daughter" should be substituted. Secondly, in place of the expression "living in adultery", he wants the expression, "sexual intercourse" etc., should be substituted. The word "child", as my hon. friend rightly pointed out, has been held to mean a minor child or a minor son or a minor daughter. I will not go into the old history. But I was just reminded of the principles on which maintenance was to be granted in the original law of the land, namely, Manu Smriti. 3,000 years ago, as you are aware, Manu Smriti laid down certain principles of law, some of which are in vogue even today, so far as Hindu law is concerned. Manu Smriti and Yagnavalkya Smriti are two very precious documents dealing not only with the principles but also with the enunciation of the various doctrines dealing with civil and criminal law. In the Manu Smriti itself, they have laid down the conditions under which a person or a relative could be entitled to maintenance: not all persons are entitled to maintenance. But with regard to each category of relative, a certain expression or an attribute has been put in. Then only he or she will be entitled to maintenance.

I was reminded of three categories of persons who were entitled to maintenance. One was *mata* and *pita*, the father and mother. Every father and mother is not entitled to maintenance. That is the reason why it has been put down as वृद्धौ माता पितरौ that is, parent, father or mother, is entitled to maintenance, only when they are very old. साध्वी भार्या Then comes wife, so long as she is a chaste wife. As I have pointed out in this case, same exception in the interests of society was made so far as chastity is concerned. That is the reason why in the Hindu law, considerable importance was attached to maintenance of chastity, and the good conduct of the wife before she is entitled to maintenance. You must have seen in the various earlier rulings—rulings of the eighties and the nineties—what they have said. It was stated that if it was found that a wife had become unchaste on account of certain extenuating circumstances, she should be given what was known as a starving allowance. That means, an allowance just sufficient to keep her from starvation. In that connection, the word "साध्वी भार्या has been put in. That was the reason why good conduct or chastity was insisted upon and now also it is part of the Hindu law of the land.

Coming to the relevant portion, this is the first category सुता श्च शु. Then comes the second category. So far as the son or daughter is concerned, he or she is entitled to maintenance provided he or she is a *shishu*, that is, a minor. The word *shishu* has been put in to show that only a minor is entitled to maintenance. For example, take the case of a major, unmarried daughter or a major son. Is she or he entitled to maintenance? No. Two conditions were necessary.

Mr. Deputy-Speaker: There is one difference between the conditions that prevailed then and that are prevalent now. There was no question of unemployment then. Everyone who could work and was a major could find employment and earn for himself or herself. Now, the conditions are different; even if the person is willing, prepared or is capable of working, he or she might not find employment.

Shri Datar: Merely because he does not find employment, the question is whether he or she should be a drain on the parents. That is what I was trying to point out. So far as the original law was concerned, two principles were laid down. One is that after a son or a daughter became a major, there was no question of his inability to maintain himself. He has got to maintain himself or to take the consequences. Therefore, the word *"shishu"* was put in. *Shishu* means a child, a minor child. I am obliged to my hon. friend, Shri Ajit Singh Sarhadi, for the views he has pointed out so far as the High Courts of Madras and Calcutta are concerned. They have rightly interpreted the expression "child" as corresponding to the Sanskrit word *"shishu"* which means a minor.

For example, let us take the case of a minor girl. If the minor girl has been married or could have been married in the former times, without the question of her age coming in, in that case, the moment she is married, she has to find out her maintenance from her husband's family and not from her father's family. So far as the son is concerned, so long as he is a minor, he has got to be provided for, with maintenance by the father. Apart from the other question of Hindu law, where a minor also had an inherent interest in that property, he had got to be maintained because maintenance depended upon the right of possession of property. Apart from the possession of property, the father had an obligation to maintain his son so long as the son is a minor. The question of "unable to maintain" was put in because there might be certain cases where there is a boy, say, of 15 years of age—technically he is not a major—if he is strong enough and well-educated, it is his duty to maintain himself and not to seek maintenance from his father. Therefore, I would submit that the word "child" was purposely put in as corresponding to the Sanskrit word *"shishu"* which meant minor. So, I would point out to my hon. friend that if the words "son or daughter" are put in, a case might arise where even a major might claim maintenance and might say that he is not in a position to maintain himself. The question arises only in the case of a minor and not otherwise. So, I submit that in view of what my hon. friend has pointed out, there are different judicial pronouncements so far as the interpretation of the expression "child" is concerned, and we might better leave it to the Law Commission to consider the question. But still, I would like to tell my hon. friend, in all humility, that the word "child" was purposely put in when the Criminal Procedure Code was enacted, with the object that the word "child" has to mean a minor son or a minor daughter.

Secondly, the contention of my hon. friend is that section 488 of the Criminal Procedure Code ought to be brought into conformity with what he has stated, that is, the Hindu Marriage Act. So far as the Hindu Marriage Act is concerned, there are certain obligations and rights which have been provided for. Certain obligations have been provided for or provided against. That is the reason why certain results would follow Let us, for example, say there is even a single lapse from virtue. My hon. friend wants the words "sexual intercourse with any person other than his spouse", to be put in in the place of the words "living in adultery". Let us not take into account either the considerations of morality or the considerations that prevailed with the framers of the law when ths Hindu

[Shri Datar]

Marriage Act or other Acts were framed by Parliament or the legislatures. Here, we have to take into account the question that it has a bearing on the Criminal Procedure Code. Therefore, assuming for argument's sake, there is a single lapse from virtue, the next question that will have to be considered is whether it is a voluntary act or by force; specially in a society which is still, to a large extent in the rural areas, illiterate, one has to be very careful. Often times, on account of false inducements and certain other circumtances, it is quite likely that a young woman might be led astray without understanding the full implications. I can even concede for the sake of argument that in a particular case, she might have even voluntarily submitted herself under the stress of what you can call infatuation. But the question is, whether such a single act has to be penal in the sense that she has to lose all her right of maintenance. That is why the words put in were 'living in adultery'.

When the Cr. P.C. was framed, adultery' was considered at great length and the present definition of the word 'adultery' in the Indian Penal Code was arrived at after a lot of discussion. I believe it went on for two or three years and ultimately a limited definition of the expression adultery' was evolved. It is not the adultery that we in Hindu society understand. It is a particular type of definition of adultery that ultimately found favour with the framers of I.P.C. But apart from that, let us understand that the word here is used in a general sense. So far as the wife is concerned, living in adultery means living in a course of unchastity. When a person commits an offence once, then there is a possibility of what is known as *locus penitentiae;* he can improve and repent. But if a woman has been living in adultery in the sense that she is carrying on unchastity more or less as a matter one, then it becomes a course of conduct. Then it will be presumed that her course of conduct or her indulgence in adultery was one which could be called voluntary and persistent on her part. So, the Cr. P.C. stated that when a woman has been living in adultery, persisting in living on terms of illicit intimacy with others more or less habitually, she ought to be disentitled to maintenance. That was why this particular expression was put in.

I remember a Bombay High Court ruling that a single lapse from virtue should not be considered as a bar under section 488; they took the general view against the background of the Cr. P.C. It is not a question of ethics, morality or conduct of a particular person so far as substantive rights are concerned. In view of what I have pointed out, this expression was purposely put in and it has been interpreted righly. We might not say that they are quite correct so far as strict ethics are concerned. But generally, taking into account the context of the need for providing maintenance in the interest of the harmony of the family and the harmony of the society, with a view to prevent vagrancy, the expression that has been used is in my opinion deliberate.

The expression 'sexual intercourse with any person other than his or her spouse' is the right expression so far as the Hindu Marriage Act or the law of divorce is concerned. Here we are concerned only with the question of grant of maintenance in the interests of society and with a view to prevent vagrancy and other undesirable social results. So, for that purpose only this expression has been advisedly used and properly interpreted by a number of High Courts.

Taking into account all these circumstances, I hope that my hon. friend, though his object is perfectly understandable, would not press this

the context in which both the words have been used. I hope he would allow us to request the Law Commission to consider this matter also along with their general examination of the Cr. P.C. and the I.P.C.

Shri Ajit Singh Sarhadi: Mr. Deputy-Speaker, I am glad that the Minister has said that the Law Commission is seized of this matter. But I beg to differ in the interpretation that the hon. Minister has given about 'child'. Of course, as he said, the Calcutta and Madras High Courts have held in certain rulings that 'child' is a minor. But there is conconflict in those two High Courts *inter se*. The other High Courts have unanimously held that child does not mean a minor, but means a son or daughter of any age provided he or she is unable to maintain himself or herself.

I referred to the Calcutta High Court judgment in 1935 by a single Judge. In 1950, the Calcutta High Court took a different view. My respectful submission is that if a son or daughter is incapacitated or unable to maintain himself or herself, there should be liability on the father to maintain that child, however old he or she may be. The very purpose of the words 'unable to maintain itself' means that the original intention of the framers was that whatever be the age of the child, if he or she is unable to maintain himself or herself, there is liability on the father to maintain the child. Of course, when the girl is married, that is a different thing. Otherwise, there is liability on the father.

I welcome the fact that the Law Commission will take into consideration all these points for fixing liability on an individual about maintenance and I hope it would also take into consideration liability of one's father and mother also, if they are unable to maintain themselves. That would certainly be correct and I think the Law Commission would be very well-advised to take this into consideration. I submit that the word 'child' should be clarified to mean that whatever the age, the son or daughter who is unable to maintain himself or herself, should be maintained by the father.

I agree with the Minister that the condition for maintenance of wife should be chastity. I submit that even one act of adultery on the part of the woman should disentitle her to maintenance. That will be in accordance with the quotation he has himself made that chastity should be condition precedent to the right of maintenance. So, the expression in Cr. P.C. should be brought into consonance with the provisions of the Hindu Marriage Act. I am glad it will be looked into by the Law Commission and seek permission to withdraw my Bill.

Mr. Deputy-Speaker: Has he the permission of the House to withdraw his Bill?

Some Hon. Members: Yes.

Mr. Deputy-Speaker: Permission is granted.

The Bill was, by leave, withdrawn.

16.48 hrs.

MINIMUM PRICE OF JUTE BILL

Shri Jhulan Sinha (Siwan) *rose*—

Mr. Deputy-Speaker: Would it be of any use to him? He has just the opportunity of speaking for 12 minutes.

Shri Jhulan Sinha: I will be satisfied with whatever I can say during that time.

I beg to move:

> "That the Bill to provide for fixation of minimum price of jute be taken into consideration."

Coming as I do from a State which produces jute in abundance and as it has been affected by fluctuation in