

of the Bill is, therefore, barred under the above rule.

SHRI PAWAN KUMAR BANSAL (Chandigarh) : Sir, in any case, the hon. Member is not present here.

15.52 hrs.

CODE OF CIVIL PROCEDURE
(AMENDMENT) BILL

Amendment of section 51, etc.) by Shri
P. P. Kaliaperumal

[English]

MR. DEPUTY-SPEAKER : The next item on the Agenda, that is, the code of Civil Procedure (Amendment) Bill, 1992 (Amendment of section 51, etc.) by Shri P. P. Kaliaperumal can now be taken up for consideration.

Shri P. P. Kaliaperumal to move

SHRI P. P. KALIAPERUMAL
(Cuddalor) : Sir, I beg to move :

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

Mr Deputy-Speaker, Sir, the object of this Bill is to provide immunity from imprisonment to the indebted persons-in legal phraseology they are termed judgement-debtors-for their failure to discharge the decretal debts or in other words their contractual obligation.

Section 51 of the Code of Civil Procedure empowers the courts of execution to execute the decrees and especially the money-decrees by three modes. The first

mode is by attachment and sale of property. The second mode is by sale without attachment of the property of the judgement-debtors and the third mode is by arrest and detention of the judgement debtors in prison. These are the three modes enumerated under Section 51 of the Civil Procedure Code for execution of the money-decrees. The other provisions relating to arrest and detention of judgement-debtors are section 55, 56, 57, 58 and 59 and rules 11/ 11A 21, 30, 37, 38, 39 and 40 of Order 21 and Rule 37 of the Civil Procedure Code. The present Bill seeks to delete the provisions of the Civil Procedure Code for arrest and detention of the judgement-debtors. The *raison d'être* of the amendment are : Article 21 of the Constitution of India which has been described or applauded as the Magna Carta of India guarantees the right to life and right to property;

I quote Article 21 of the Constitution. It says :

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

The expression 'personal liberty' in Article 21 has been interpreted as 'right of an individual to be free from restriction, free from physical restraint. The reach and ambit of the meaning of the expression 'personal liberty' is wider and is extensive. Article 21 is embedded in Part-III of the Constitution of India which part enumerates the Fundamental Rights. Article 19(1) (d) also guarantees freedom of movement. I quote Article 19(1). It says:

" All citizens shall have the right :-

(a) to freedom of speech and expression;

[Sh. P.P. Kauaperumal]

- (b) to assemble peaceably and without arms;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) to practise any profession, or to carry on any w occupation, trade or business."

So, from the combined reading of Article 21 and also Article 19 it is clear that right to life and right to personal liberty are constitutionally guaranteed rights.

1558 hrs.

(SHRIMATI SANTOSH CHOWDHARY *in the Chair*)

I submit that these constitutionally guaranteed rights—right to life and right to personal liberty—cannot be jettisoned on any account. If an indebted person, if the judgment debtor is arrested and detained in a civil prison, then it means that his right to life and his right to personal liberty are deprived of. Article 21 itself provides that the right to life and right to personal liberty can be abridged or annihilated according to the procedure established by law. My submission is, even this restriction shall stand the test of Article 19 of the Constitution. In this respect, I want to quote the judgment of the Supreme Court which has been reported in AIR 1978 at page 597. I quote :

The law must, therefore, now be taken to be well settled that Article 21 does

not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the Fundamental Right conferred by Article 21, such law in so far as it abridges or takes away any Fundamental Right under Article 19 would have to meet the challenge of the Article. This proposition can no longer be disputed after the decisions in R. C. Cooper's case, Shambhu Nath Sarkar's case and Haradhan Saha's case,

16.00 hrs

Now, if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21, has to stand the test of the fundamental rights conferred under Article 19."

Thus it is established that the law which deprives a person's right to personal liberty within the meaning of Article 21, has to stand the test of Article 19 of the Constitution. hence, the provision of arrest and detention of Judgement debtor in a civil prison is in violation of article 19 (1) (b) and also Article 21 of our constitution. The expression "according to procedure established by Law" in Article 21 must also stand the test of Article 19 (1) (d). But, in fact, the provision for arrest and detention in civil Procedure Code do not stand the test of Article 19 (d). Hence, the provisions of arrest and detention are in violation of Article 19 (1).

The provisions, for arrest and detention, of the Cr. P. C do not also attract the concept of "Reasonable restriction" often pleaded. "Reasonable restriction" as expressed in Article 19 (6) means that it should not be of a excessive nature, beyond what is required in public interest. It is because the provision for arrest and detention is of an

excessive nature unreasonable and it is beyond what is required in the interest of public. The decree can be executed by several means. As I have already stated, a decree can be executed by attachment and sale of the movable as well as immovable properties of the Judgement debtors. The creditors can attach the shares and other documents for the realisation of the debt. Thus, there are ample opportunities for realisation of the Judgment debt. So, where is the necessity to arrest the Judgment debtor and detain him in a civil prison? In this respect, I want to quote the judgment of the Supreme Court which has been reported in AIR 1982, at page 33.

" The expression 'reasonable restriction' signifies that the limitation imposed on a person's enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality".

Hence, Mr. Chairman, I submit that the provisions for arrest and detention do not stand that test of reasonableness; it is not fair; it is not justice and it is not reasonable.

My next reason for deletion of this provision from the Civil Procedure Code is, the right to life and right to personal property are guaranteed by Constitutional law; in other words by substantive law and not by procedural law. But these right can be

abridged or annihilated only by substantive law and not by procedural law. The Code of Civil Procedure, all of us know, is only a procedural law and not substantive law. So the fundamental rights-the right of life and right to personal liberty-guaranteed by our Constitution cannot be abridged, cannot be taken away, cannot be annihilated by a procedural law which is the provision of Civil Procedure Code. For this reason also I submit in this august House that the provision for arrest is unreasonable.

Thirdly, the provision for arrest and detention of an indebted person is also against human rights. We welcome human rights. We are bound to support, protect and foster human rights. The international covenant for civil and political rights is one of the instruments of the universal declaration of human rights. This international covenant for civil and political rights has been adopted by the United Nations General Assembly Resolution 2200A on 16.12. 1966. It came into force on 23rd March 1976. India is a signatory to this covenant.

Article 11 of this international covenant for civil and political rights prohibits arrest and detention of any person for his failure to fulfil his contractual obligation. I quote :

"No one shall be imprisoned merely on the ground of the inability to fulfil a contractual obligation."

This is article 11 of the international covenant on civil and political rights. I want to ask whether it is right to enforce a contractual inability by arrest and detention of the debtor on the teeth of article 11 of the international covenant of civil and political rights. I quote further article 2 of the covenant :

" Each State party to this present covenant undertakes to respect and

[Sh. P.P. Kauaperumal]

ensure to individuals within its territory and suggest for its jurisdiction of rights recognised in this covenant".

Thus India has a legal obligation, moral obligation and international obligation to promote and protect human rights. Article 51 of the Constitution of India obligates a State to foster and respect an international law and treaty obligations. So the provision for arrest and detention of debtor must also stand the test of article 11 of the international covenant for civil and political rights. It is evident, it is not disputable. Hence also the provision for arrest and detention is improper.

The provision for arrest and detention are often being misused by the creditors. Quite often, creditors are filing affidavits in the courts on false grounds, imaginary grounds and concocted grounds about the judgment debtors, stating false information about the income, property, etc. On the basis of the affidavits, courts issue arrest warrants and detain the judgment debtors in prison. But the poor judgment debtors are not able to defend themselves in court of law and get themselves released.

As is said, access to justice is very costly in India. It is not an easy procedure. They have to spend a lot of money. Already they are debtors; how can they engage lawyers, appear before the courts and get justice? So, they are not able to defend them in the court of law. Hence I feel that the amendments are imperative.

The Civil Procedure Code only binds our courts and not the International Covenants. The courts are not bound by the International Covenant. They are bound by the Civil Procedure Code. So, the

International Covenant must be transformed into municipal law and also into our national law. Unless and until the provisions of International Covenant are transformed into our national law and also into our municipal law, the courts cannot enforce them. They are bound to enforce only our national law and our municipal law. Since India is a signatory to the civil and political rights, it is obligatory to delete the provisions of arrest and detention of judgment debtor from the Civil Procedure Code.

Indebtedness is widely prevalent in India and especially in rural India. The Royal Commission on Agriculture has portrayed the picture of the rural indebtedness in the following words. I quote :

" Indian farmer is born in debt, lives in debt and dies in debt; and bequeaths debt. It is still a reality".

Indian debtors consist of small farmers, marginal farmers, landless agricultural labourers, rural artisans and so on and so forth. In the land of 'dharithiranarayana', to be poor is not a crime. So, the poor people are deprived of their rights by Shylocks like creditors. Their rights are deprived and annihilated. They are not ordinary rights. They are human rights, fundamental rights, natural rights and what not? So also, the provision for arrest and detention of the debtors is against the fundamental freedom, it is against the human rights and finally, it is also against the social justice which is embedded in our socialistic constitution, the Magna Carta of India.

I therefore plead, Madam Chairman, to delete the provisions for arrest and detention of indebted persons. With these words, I beg to move the code of civil Procedure (Amendment) Bill in this House for consideration.

Thank you.

MR. CHAIRMAN : Motion moved :

" That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. "

SHRI SRIBALLAV PANIGRAHI (Deogarh) : Madam Chairperson, at the outset, I would like to congratulate you. For the first time, you have gone over there to preside over the proceedings of the House.

The hon. mover of the Bill, Shri P. P. Kaliaperumal, has dwelt at length about his intention of moving this Bill. Certainly, the purpose behind moving this Bill is appreciable. As you know, in our Civil Procedure Code, it appears to be a feudal provision, a provision which befits feudal rule and not of a type of democratic rule or socialistic rule. As you know, rich people, solvent people and feudal people were sometimes deriving sadistic pleasure in sending the poor and innocent people to jail. There were several such cases during the pre-Independence days. Things like that had happened.

What was the purpose behind that? They were taking advantage of this provision. They wanted to establish their dominion over the society. They wanted to have a control over the society. They wanted to let loose a reign of terror upon the poor people. Even the bonded labour were paying something and making an agreement for an amount higher than what was paid to them. Things like that had happened. When that particular victim wanted to free himself from this burden, they wanted to suppress him. Sometimes, they went to court of law under this provision. The poor chap could not fight out such a case. He had no property. He had to go to jail. In some cases, it was a

punishment. But then the decree-holder had to bear the expenditure of a particular person. Of course, it was transferred later on to that debt, to his property, etc.

This is a very peculiar provision. The hon. mover has made out a very strong case. The hon. Law Minister is also a lawyer of repute in the apex court. I feel that this provision should be reviewed. Now, it is a proper time. The time is moving very fast. The things are changing. Should a provision of this sort be retained? It is more misused than properly used. There are bad people in the society. There are criminals. When the criminals commit a crime, sending them to jail is all right. But this is not something of a civil nature. Certainly, when the solvent people or the industrialists are involved, they know what they are going to do. Who is paying a debt to whom, his capacity, his risk, etc., everything is known to the creditor. It is only sometimes the poor people in the villages who become the victims.

Secondly, Madam, when Mrs. Indira was there, she had introduced the 20-point programme and that 20-point programme contained a provision about the people who had lot of debts outstanding against them. In such cases, when the loan amount gets more than double, then he need not pay. Interest can go to a maximum of 100 per cent, that is, the capital amount or the principal amount which is called Principle of Damdupat. Both Principal and interest cannot be more than double the principal amount. That is principle of Damdupat. Even such cases are not cared for. We are a party; we have ratified the international agreement. The international covenants in civil and political rights and even the doctrine dated 15th December 1966 had come into force from 23rd March 1976. This provision is present there that no one shall be imprisoned merely on the ground of his inability to fulfil the

[Sh. Sriballav Panigrahi]

contractual obligations and India had ratified this covenant in 1979. Therefore, necessary legislation should be enacted in consonance with this provision. After having rectified this, naturally consequential relevant laws need to be made. Therefore, it is quite appropriate that the amendment proposed by the honourable Mover should receive due attention. It is rather high time to be considered by the Government of India. As I told you a little earlier, there are so many types of debtors or loans getting Government loans, cooperative loans and bank loans. There are so many people who are capable of repaying it but they do not repay. There are people who follow rules scrupulously; they have fear for the rules and laws; they try to abide by the rules and they do not indulge in illegal activities. Take for instance encroachments. We know that encroachment is not legal. But some people encroach over objectionable piece of Government land and they build hutments; they continue with it without caring for anybody. It so happens that after a certain period of time, Government takes a decision that all the encroachments, wherever they are, are legalised. So, those who are followers of rules and regulations stand to lose sometimes and those who defy the rules and regulations stand to gain. This is a very peculiar situation. While moving in my constituency, people ask me a question. People are repaying the Government loans in time but still some action is being taken against them but those who are resorting to different methods do not repay and they just carry on like that. There was a general waiver announcement about two or three years ago.

So, those who have means to repay it, do not bother to repay it and with result that they stand to gain. There should be some provision for very strict way of realisation of

such arrears or dues from such people. This provision should be retained in the Civil Procedure Code which dates back to 1908. After independence so many changes have taken place in our country.

Having regard to all these changes and also the type of socio-economic transformation that we have in mind, there should be a detailed study on our C.P.C. and Cr. P. C. Since, we were a party to it who had ratified this document viz. International Covenant of Civil and Political Rights, it is obligatory on our part also to make necessary further changes in the C.P.C. After that a comprehensive Bill should also be brought forward by the Government.

[Translation]

SHRI MOHAN SINGH (Deoria) :
Madam, Chairperson, I would like to thank the Hon'ble Member who has introduced the Bill for the consideration of the House to amend the Code of Civil Procedure, 1908 and thus has drawn the attention of the House to the civil liberty. The Code of Criminal Procedure enacted in 1885 was also amended in 1974-75 by this august House when there were discussions on human rights all over the world and there were movements at various places for personal liberty. This House amended several preventive sections of this code in 1974-75, particularly, sections 107, 117 and 151 which were mostly of preventive nature with special parameters for ending personal liberties. Extensive amendments were made in them by this House at the instance of the Supreme Court of India. But nothing could have been more tortions than the Code of Civil Procedure, 1908 enacted by the Britishers whose brunt was borne by the oppressed and enslaved Indians. The sections 51 and 52 of this Code clearly state, "if any amount is outstanding against anybody..." then as per this section

that person may be detained for a period of 3 months if the amount payable is Rs. One thousand and if the amount payable is less than Rs. one thousand but more than Rs. 500 he may be detained or imprisoned for a period of 6 weeks. to what extent this section is being misused in a poor country like India can be witnessed in villages where a poor ordinary mans weither engage a lawyer nor can he file a suit in a law court. A rich person in society files a suit in the court for a small amout against the poor and sends them to jail for 1 1/2 to 3 months just for his satisfaction. They are detained for a period of 15 days on the basis of even an official affidavit where even the essential civi amenities are not provided. There is no scope for any facility in Tehsil level jails.

Madam, Chairperson, in our society the rich people who have an income-tax of crores of rupees outstanding against them and who have been sitting pretty on millions of rupees in the name of Bank loans. When this section is used against them, they get stay-orders from the higher courts. A legislation was passed in the last session that a special Court would be formed within 6 months to recover outstanding bank loans. Similarly, provision has been made to take legal action against those rich people who do not pay sales tax, income tax or bank loans. There is a wider scope to amend the Code of Civil Procedure, 1908 in such situation. A Select Committee had been constituted in 1974 after its enforcement for 90 years to amend the Criminal Procedure Code. On similar lines, this Procedure, to face the challenges and to protect the freedom in Independent India, should also be amended. I therefore, urge upon the hon'ble Minister to take advantage of this opportunity and refer this Bill to a Select committee specially keeping in view that this Code of Civil Procedure, 1908 had been enacted by the British Government to harass and ruin the

poor Indians. I would like to thank the hon'ble Member for begning this Bill and by attracting the attention of the House to this one section, he has given us an opportunity to convince the House to consider that there is a scope for amending this Civil Code also. A Comprehensive Bill may be introduced by the Hon'ble Minister and be passed by this House. Only then we shall be able to fulfil our promises of civil liberties, to the cause of which India is committed. The poor common man, unemployed youth, who are harrassed under this section should be benefited by this new Bill. The same section sates that the Court can exonrate a person who declares himslef insolvent. To declare and prove oneself insolvent is very easy in itself. There are many references to show the circumstances in which one can declare himself insolvent. But today circumstances necessitate a complete amendment. With these suggestions, I would like to urge upon the hon. Minister to take the credit that the Civil Code Procedure was thoroughly amended during his ministership.

With these suggesions, I conclude.

[English]

SHRI A. CHARLES (Trivandrum) : Madam, Chairperson, I stand to support, in principle, the Bill introduced by my learned colleague Shri Kaliaperumal.

Madam, this is a Private Bill. Usually the scope of the Bill is to highlight some of the aspects and areas of common interest. Usually under the procedure a Private Member's Bill may not be passed. However, it gives us an opportunity to discuss issues.

Madam, I feel this is an issue which has been very rightly brought forward by my learned friend. In fact, I have gone through the Bill only just now but because of the

[Sh. A Charles]

importance of the Bill, I thought, I should also give my views on this Bill.

The Code of Civil Procedure is an Act 5 of 1908, more than eight decades before we got our independence. There are certain acts which have been handed over as a legacy of the Britishers. I think, the time has come when we have to look back, rethink, re-examine, study and make suitable amendments. Law is said to be the crystallised commonsense of the community. When the thinking of the community changes, when the social needs change, when the social structure changes with the changed times, we have to bring forward legislations to suit the need to the time.

In the Statement of Objects and Reasons, my friend has pointed out Article 11 of the International Covenants of Social and Political Rights. Madam the word used is 'no one shall be imprisoned merely on the grounds of his inability to fulfil contractual obligations.' The word 'inability' is very important there. It is not the refusal or purposeful avoiding the payment. A person has become a pauper and he is unable to pay and in that circumstance if he is to be imprisoned, I am afraid we are still in the barbaric period and I may say that it is a draconian law.

Madam, when I talk on this Bill, a very beautiful story in the Bible comes to my mind. Jesus Christ was preaching all over. Multitudes followed him. He was teaching them in parables and he was fighting against the social injustices of that time. Those were the times of the Law of Moses an eye for an eye, a tooth for a tooth. Can we think of such draconian law in these days.

There was a debtor, he had to pay

20,000 pounds to a rich man and then under the law the debtor can be sold.

His wife and children could be sold, everything could be sold because that was the time of slavery. When this man was caught he was unable to pay. He pleaded with the creditor, he prayed that he and his family should be spared. The rich man was a kind man. He took pity on him and saw the agony of the family. Out of Compassion he was kindated man he gave them freedom. That debtor was happy.

He was rushing to his home. But on the way he saw a small debtor who owed him only two and a half pounds. This man was returning with joy because he was relieved of the debt of a huge sum of 20,000 pounds and he was running back with joy. On seeing the debtor who was to pay him only two and half pounds, he caught him and demanded that he should pay the money. He replied that he was unable to pay and said that he was a pauper. But the first man insisted that he should pay the money. In the story it is said that he caught him by the neck and forced him to pay. Some people were watching this and they were unhappy. They were surprised that poor man owed him only two and a half pounds and this man was cruel and he was going to send the other man to the prison. So, they rushed back to the rich person who set him free and told him about all that had happened. He became furious. He caught debtor and said that he would show no sympathy on him because as he had relieved him of a huge debt he should have also spare mercy to the other man. The story says that he was put into the prison.

So, here is a case of a person who was sent to prison for a small amount of 2½ pounds. What does the Code of Civil Procedure say about this? Again there is a proviso for the arrest and detention of such

a person. There it is provided that where the decree is for the payment of a sum of money, the execution of detention of any person shall not be ordered unless afferr giving the judgement-debtor an opportunity for showing cause. A number of provisos are given. It is only on those conditions that he can be sent to prison.

But I am surprised to see another clause here. Order XXI, First Schedule, under 'EXECUTION OF DECREES AND ORDERS' which says:

"Where a decree is for the payment of money the court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by by the arrest of the judgement-debtor, prior to the preparation of a warrant if he is within the precincts of the Court."

Here it says that if the judgment-debtor is within the precincts of the Court, he can be immediately taken into custody.

But in the main Annexure Section 51, Clause (c) the proviso says, "due notice, reasonable opportunity has to be given". So, I think these two are contradictory and they cannot stand in a court of law. I am sure that it is high time that these provisions are re-examined and looked into. My friend Shri Sriballav Panigrahi was just now pointing out the cases were the abnorrmtal increase of debt comes.

Madam you may know about the small and tiny industrial sector. I know hundreds of cases. I have an association in Kerala which has about one thousand units of the small and tiny industrial sector. More than 80 per cent of the units in the small and tiny industrial sector are now sick. They are

not able to pay the money. It is well-known that if somebody takes Rs. 50,000 as a loan from the nationalised banks or from other financial institutions and under unusual circumstances if he is unable to pay, then he is gradually getting into the debt trap.

And what is the present functioning of the present banking system? Once in three months the interest will be added to the capital and this goes on like that and a person who has taken Rs. 5000, it becomes Rs 5 lakhs after ten years.

In the last Session of the Parliament this august House has passed a legislation on Recovery of Dues Bill. If the dues of a person comes to Rs. 10 lakhs he comes within the ambit of the Act.

In Trivandrum, I know one case where a person has taken Rs. 1 lakh for a business. The amount then came to Rs. 17 lakhs. His house and property were given as security and a decree was passed for auctioning the house and property. The moment he came to know that the house is being auctioned, he committed suicide by hanging in his own house. It was only four months back. I may suggest that if a person takes Rs. 5 lakhs and if the dues come to Rs. 10 lakhs, let him come under the above Act.

I know that there was an Agricultural Debt Relief Act in the erstwhile State of Madras from where the mover of the Bill comes. According to this the maximum amount a debtor will have to pay will be only ample of what he has taken as loan. Thus if a person has take Rs. 1000, the maximum that he has to pay back would be only Rs. 2000 Like that, Rs. 5 lakhs taken as loan, the maximum at any point of time, that one has to repay should be limited to Rupees ten lakhs.

According to the CPC, a debtor can

[Sh. A. Charles]

be sent to the prison at the time of passing the decree if he is within the precincts of the court even though he may not have the time to inform his wife and children. I think, this is unfair. It is high time that we bring forward a suitable amendment to this. I request the hon. Law Minister to look into this; or even we can constitute a Committee to examine and put up proper proposals.

The mover of the Bill has also pointed out about Article 19 in support of his Bill. I quote :

“ To freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions”.

This is a Section with wider interpretation and we cannot say that everybody will have an access to every place under Article 19 (1) of the Constitution. There are of course restrictions.

Today I have the right of entering this august House. Tomorrow I may not be a Member of Parliament. Then can I have the right of entering this house ? So, article 19 does not give unsheltered freedom to every one to move freely on he likes :

But article 19 gives us a direction. Anyway I congratulate, the mover of the Bill for presenting this Bill. He has presented it in a very learned manner and has given us an opportunity to look into this and to study this. I request that this may be taken very serious note of by the Government and by the learned Law Minister and I hope that the feelings and the sentiments that have been expressed here, will be respected and relief will be given to the really poor debtors who are unable to pay under unusual circumstances.

In any case, under no circumstances anybody be sent to prison because of his inability to repay the debt..

With those words, I support the Bill to the extent that necessary amendments will have to be brought forward to the Code of Civil Procedure so that this anomaly is removed.

[Translation]

SHRI KRISHAN DUTT SULTANPURI (Shimla) : Mr. Chairman, Sir, I rise to support the Bill. It is mentioned in this Bill that the poor who are unable to repay the loans are sentenced to imprisonment which cause lot of hardships to them. Our civil and criminal laws were framed during the period of British rule. These laws should be amended in such a way that the benefits of these reach the poor. We have to see as to how the poor may get rid of indebtedness and how they may be benefitted by modern laws. Many rich persons had taken loans but they did not repay them; their loans upto Rs. ten thousand were waived off. But we do not come forward to help those whose loans should really be waived off. The poor never intend to swallow the loans of the Government or money lenders. Loans are given to the poor but still there are people in villages who in spite of the enactment of many laws, do not want to be indebted heavily. That is why the poor go to banks and cooperative societies but there also, even if they take a loan of Rs. 500/- from them, the amount gradually increases to thousands of rupees. Some people keep the rate of interest so high that they cannot repay it in full throughout their life. Earlier, the rich people used to give loans and in lieu of that the borrower had to render services to the lender. This prompted the late Prime Ministers Shrimati Indira Gandhi and Shri Rajiv Gandhi to introduce the 20 Point Programme which emancipated

the poor from this trap of indebtedness. All the banks have a bad debt account which adjusts the loans of big people, but their reports are not published. There are tax evaders in this country who have undermined our economy. No suitable action is taken against them. When they are asked to pay taxes, they move the High Courts and the Supreme Court and get stay orders. That is why they do not get punished. But the poor who take petty loans are trapped in indebtedness by money lenders and banks and get punished. The cunning bank employees exploit them. Recently, I went to Bihar. There, I found that branches of many banks had given loans to such persons for purchasing machinery etc. who did not have any land. Therefore, the aim of our Government to alleviate poverty is getting a set back. The main object of this Bill is that the poor should not be penalised. As Shri Mohan Singhji has said, they have to pay Rs. 20 thousand just for a loan of Rs. 500/- but no action is taken against those who commit embezzlement of crores of Rupees. The Government should take action against those who are undermining the economy of the nation. Here, it has been said that recovery of loan from women should be made in such a way that they are not exploited. Today, atrocities are being committed on them. 2-3 days back, I was looking at a report where it was stated that a lady was thrown out of her house with her 2 little children by her husband. She filed a case in the court and the court issued a decree against the husband. But even then no alimony was given to her. She was not in a position to bring up her children, though, of course, later her husband was punished by the court. I would like to submit that in such cases, where a husband commits such atrocities on his wife and children, it should be made mandatory on him to pay for their subsistence. Such women against whom decrees are issued but who are widows, no action should be taken against them. We

should fix a limit for a limit for this purpose which does not exist at present. The Government should contemplate seriously on this issue and bring a legislation which should safeguard the interests of widows and destitute women and punish the persons who commit embezzlements. In the erstwhile Greater Punjab, when Shri Chhottu Ram was the Revenue Minister, he had introduced a legislation that no one can buy the land from the farmers. That was the time of Britishers. That is how he saved the farmers. But today we have our own government. We have democracy in our country. Therefore, we want that no one should exploit those who are poor and helpless, who have no sympathisers. There should be stringent provisions in our Civil law to punish such capitalists who have usurped the whole wealth of the nation. The criminal and civil law should be used properly and if any amendment is required in them for this purpose, we should do it. I am grateful to hon. Member Perumal who has introduced this Bill. I support this Bill. I feel that the Government should accept some of his points and the hon. Member will withdraw it if hon. Minister asks him to do so. However, hon. Law Minister may consider as to how the poor can be benefitted from this legislation.

17.00 hrs.

[English]

SHRI B. AKBER PASHA (Vellore) :
Madam Chairman, I rise to support the Civil Code Procedure (Amendment) Bill brought forward by my friend Shri P. Kaliaperumal, who is also from my State. I support the objects of this Bill. He himself is an advocate and he has done it in a nice manner. I did not have the intention of speaking today; but I was prompted by the way he has presented the Bill. I rise to support the Bill.

[Sh. Adber Pasha]

I would like to submit one thing that this Bill is as old as 1908. It is 85 years old. It requires some changes. Hence just like my previous speakers who have also made this suggestion, I suggest that a committee may be constituted to review the various provisions so as to suit the present socioeconomic changes.

1701 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

Many things have been spoken about the hardship of the people who have to borrow money. Some of them have to pay interest as high as 60 per cent per annum which is hitting very hard the poor people. We have to safeguard the citizens and their fundamental rights as well as their human rights.

With these few words I support the Bill and I thank you for giving me this opportunity to speak.

SHRI RAMESH CHENNITHALA (Kottayam) : Mr. Deputy Speaker, I welcome this piece of legislation which Shri P. P. Kaliaperumal has introduced. This Private Members' Bill is on the right direction because this provision in the Civil Procedure of India is totally unacceptable. It should be changed. Actually this is a legacy of the colonial past because as it has been rightly mentioned in the State of Objects and Reasons, article 11 of the international covenant of Civil and political rights says that no one shall be imprisoned merely on the ground of his inability to fulfil contractual obligations. If somebody borrows money from a person and if he cannot give the money back at the prescribed time limit, the party can move the court and the court can pass a decree. If the

person is not in a position to repay the money, he will have to suffer imprisonment. This is highly cruel. This man is not repaying the money because of his inability, because of his poverty. But he has to suffer imprisonment for this. This is against all civilised human norms. I think that the Government will take care of this and the Government should come forward to amend this provision of the Civil Procedure Code.

There are other methods for getting the money back. There must be some provision to get back the money even from the person who has to give the money. The only point is that we have to adopt other methods than imprisonment. This is inhuman. This feudal provision should be deleted from our Civil Procedure Code.

When we speak of civil procedure code, there are certain provisions which are not in tune to the time. So, those are to be looked into and changed. There are certain demands from different corners of our country that certain provisions are inhuman and those do not fit when the time is changed, when the country is progressing, the world is changing. According to the change of the time, the provisions of C.P.C. also should be changed. Unfortunately, for a long time, no amendment or change of the provision has brought about by the Government in this regard. Because of those provisions, the poor people are suffering. Moneyed people can influence the court judgment and other things and they can secure a decree so that they can escape. Only the poor people are suffering.

So, the Bill which has been moved by the hon. Member Shri Kalia Permul is very much relevant and it is highly helpful for the poor people who are suffering from poverty.

I request the hon. Minister who is a very learned lawyer will come forward to

accept the suggestion made by the hon. Member, Shri Kalia Perumal.

SHRI SUDHIR GIRI (Contai) : Mr. Deputy-Speaker, Sir, I rise to support the Bill to amend the Code of Civil Procedure, 1908 moved by Shri P. P. Kaliaperumal. I wholeheartedly support this Bill moved by him on the basis of various grounds.

In the objects and reasons, the hon. Member has pointed out that article 11 of the International Covenant on Civil and Political Rights which came into force on 23.3.1976 says that no one shall be imprisoned merely on the ground of this being inability to fulfil contractual obligation. The law provides for the abolition of section 51 of the Code of Civil Procedure, 1908. This section provides for the imprisonment of persons who have been declared debtors by the courts. Because of the imprisonment, the man who will be imprisoned will lose his civil right. What is the civil right? It is the right which consists in a bunch of privileges which prevail around the human being or individual person concerned. Those privileges enable him to protect his outer value and inner content of health. By outer value means, survival of the man which should be ensured in every civil society. This right was not available in the cave ages.

In the socio-economic condition of the society which was very much primitive, those rights were not recognised at all. After gradual progress and advancement of the society through struggle, we have been in a position to get all these rights. But even in the beginning of the 20th century, there was the British Government by which the colonial rule was established. In those days, the zamindars and landlords of our society could dominate the society and their wishes and intentions could be translated into law and those British rulers also fulfilled their wishes. In such a society, it was possible that when

a man was declared to be indebted to a landlord, he was to be imprisoned. But if the conditions and the circumstances led that individual to take loans and subsequently he failed to repay the loans, he was compelled to be imprisoned by the landlord through the mechanism of the British rule.

If a human being is imprisoned, if he is not given the privileges to move freely in the society, then his inner virtues cannot be developed. I think his inner virtues and his inner contents of value are restricted.

MR. DEPUTY-SPEAKER : Normally, you are given ten minutes. We have to do a lot of business. So, please conclude quickly.

SHRI SUDHIR GIRI : Our society has made advancement. We achieved freedom 45 years ago. So, our rights should be preserved and I think these civil rights differ from political rights. These are not the political rights which the Bill seeks to preserve. But the intention of the author of the Bill is to safeguard the rights and privileges of any individual in our society and he has also quoted the relevant provision of our Constitution which said that international obligations should be restricted positively and I think the human society or the world body consisting of various human societies has very aptly provided for the preservation of the rights of the individual being. So, I think what was possible and what was relevant in the socio-economic conditions in those days in 1908, are not relevant in the present situation.

All those relevances have been lost. So, we have to think anew how best we can safeguard the interests of the individual beings; we have to think how best we can preserve their interests and rights. I think, in the present situation, a stage has been reached in which we can freely discuss how

[Sh. Ramesh Chennithala]

the rights of the individual beings can be saved; preserved in relation to the tortuous behaviour of those who are debtors. I think an expert committee should be constituted with people who have definite commitment to the social uplift of the people who are suppressed, who are deprived of their human value; who are deprived of their right to freedom of speech etc. So, an expert committee should be constituted. In this committee, some Members from both the Houses of Parliament should be included and some people who have actual commitment to the society should also be included. I think the Bill should be adopted by the Minister and the Government should also come forward with effective measures which could actually preserve the rights of the individual beings. So, I support the Bill.

Sir, I would like to conclude by saying that the hon. Member who has moved this Bill had stated in the Statement of Objects and Reasons that right to life and liberty of the indebted persons are also to be protected in a socialist State. Most probably, he has misconceived notion of the nature of our Indian State. Our State is not a socialist State. It is a bourgeois, capitalist, landlord State and the rules and regulations to be framed by this Government and by the States definitely will not protect the interests of the deprived and the downtrodden people. So, I appeal to him, through you, that if he really wants to give relief to the downtrodden, then, he must change his political views because the Congress Government in this country cannot actually give relief to the downtrodden people. Thank you.

MR. DEPUTY-SPEAKER : He is making a suggestion that a Committee should be constituted to go into all these things and suitable amendments shall have to be

effected. I agree with you that he is a part of this system. Everyone is a part of the system existing in the country.

Thank you Shri Sudhir Giri. Now, the hon. Minister to reply..

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. BHARADWAJ) : Mr. Deputy-Speaker, Sir, I am grateful to all the hon. Members who have put forth their views on this Amendment Bill which seeks to amend section 51 of the Code of Civil Procedure. The Bill seeks to further amend the Civil Procedure Code with a view to omit certain provisions relating to arrest and detention of judgment-debtors in civil matters and in civil prisons. The object and the spirit with which this amendment is sought to be brought forward is very noble. We are a democratic society and we value very much the life and liberty of our citizens.

You will find that the hon. Member has stated that the provisions of Code of Civil Procedure 1908 in relation to the arrest and detention in civil prison for their inability to satisfy the money decree passed against them are contrary to Article 11 of the International Covenants on civil and political rights. This is one point which the hon. member has made.

And the other point which the hon. Member has put forward is that the provisions of arrest and detention in these matters are also being misused and the indebted persons' life and liberty is being jeopardised.

The hon. Member has also drawn the attention of the House that this is violative of the Directive Principles enshrined in our Constitution. On all these points, the hon. Member seeks that we should delete clause 1 (c) of Section 51 of Code of Criminal

Procedure and omit subsequent sections 55, 57 and 58 and consequential deletions of the other execution procedure. You kindly find in Section 51 that there are various modes of recovery of the decree money by the decree holder against a judgment debtor and section (c) provides for the method by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section. There is a proviso to this. It says :

“ Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied.

- (a) That the judgement-debtor, with the object or effect of obstructing or delaying the execution of the decree,
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused

or neglected to pay the same, or

- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.”

All these are provisos. What it means is, if a decree holder want to recover money from a judgment-debtor the court will not straightaway arrest him unless it is satisfied that he is acting dishonestly or with a view to concealing property. These provisos have to be satisfied before his arrest can be ordered. Safeguards are there built-in, in that section. Only a dishonest judgment-debtor can be arrested for a specified period.

SHRI A. CHARLES : What about the other clause where he can be taken straightaway ?

SHRI H. R. BHARDWAJ : This is the basic safeguard and nobody can violate it. If he is not in a position to pay money, there is no question of arresting him. If somebody does not have money, wherefrom are you going to get money from him ? He has no money, no property. That would be a torture. If he is straightaway sent to jail, it would be something uncivilised, that a person who has no means is sent to jail.

But, now, in this section itself, this proviso has given sufficient safeguard and before a court will order his detention or arrest, the court has to be satisfied; and this is the duty cast on the court that the court must satisfy that the judgment debtor is doing one of these things and, therefore, his arrest should be ordered. •

The second thing is a part of Section 51. This section contains both the provision and the exception. Therefore, if the court is satisfied that he has no means to pay, there

[Sh. H.R. Bhardwaj]

are two exceptions. A person with nothing on him or a person who has no means or property, cannot be arrested; that is a n accepted proposition and every day we see that. First of all, the court has to be satisfied. Otherwise, what are you going to get by sending a person to jail ? So, this safeguard is given therein.

With regard to violation of Article 11 of the International Covenant on Civil and Political Rights, it was referred to the Law Commission and the Law Commission, headed by Justice Mr. Gajendra Gadkar had examined it. With your kind permission, I will read out the observation of the Law Commission. The Law Commission, after taking into consideration the decision of the High Court of Kerala, have declared that :

“ This question was discussed in a Kerala case, where it was held that the International Covenant on Civil and Political Rights does not have the force of Civil Law. Individual citizens cannot, therefore, complain about breach in Municipal Courts. It was also held, that section 51 (c) does not violate the above article.

The Kerala High Court observed -

As already indicated by me, this provision (provision in the International Covenant) only interdicts imprisonment if that is sought solely on the ground of inability to fulfil the obligation.

Section 51 also declares that if the debtor has no means to pay, he cannot be arrested and detained. If he has, and still refuses or neglects to honour his obligation, or if he commits acts of bad faith, he incurs the liability to imprisonment under section 51

of the Code, but this does not violate the mandate of Article 11. However if he once had the means but now has not, or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrests and confine him in jail so as to coerce him into payment. The construction of the proviso to section 51 C.P.C. suggested by the Division Bench of this Court in Francis V. Palal Central Bank Limited harmonises the noble objective of the International Covenant and the provision in the Civil Procedure Code.”

These provisos to section 51 and Article 11, harmonise each other. You cannot send those innocent people to jail, who have no means to pay that. Therefore, there is an inbuilt safeguard in the section itself. I am not saying that it is a very good provision.

SHRI SRIBALLAV PANIGARHI : The small farmers, marginal farmers and those who have a marginal property, are also being tried under this proviso.

SHRI H. R. BHARDWAJ : Let me reply. It is a very important question. It is not violative of Article 11 of the International Covenant on Civil and Political Rights. This Law Commission's Report is based on the judgment of Kerala High Court .

So, this contention of the hon. Member that it is violative of the International Covenant on Civil and Political rights, in my humble view, is not correct.

The fact remains that the other aspect whether it violates any of the fundamental rights was also answered by the Supreme Court in the judgment of the case of Jolly George Verghese Vs Bank of Cochin, A.I.R. 1980, S.C. 47. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according

to procedure established by law. In para 10 of their judgment in Jolly George Verghese Vs Bank of Cochin, A.I.R. 1980, S.C. 470, the Honourable Supreme Court of India has occasion to observe as follows :

“ The proviso to section 51 of the Code would not suffer from the lethal blow of article 21 and would not therefore be struck down. The provisions of the Code relating to arrest and detention are law within the meaning of that expression as defined in clause (3) of article 13 of the Constitution. This being the position, the provisions of section 51 (c) of the Code are Constitutionally valid and is in harmony with article 11 of the International Covenant.”

So, the submission that it is violative of article 21 also is not legally sound. But there is some force in the argument of the hon. Member Shri Mohan Singh and others that we are a very enlightened and a democratic society where people should not be sent to jail because our country is poor. Shri Panigrahi said about small and marginal farmers. That provision is there in my mind and I personally feel that there is a need to review our Civil Procedure Code, Criminal Procedure Code and the Evidence Act.

Sir, with your permission, I would like to take the House into confidence that we are quite alive that our law needs a lot of change. Recently, we have put the agenda before the nation in the Meeting of the Chief Ministers and the Chief Justices and we are going to give a substantially strong system in favour of the rural poor. That is what we have promised and in that procedure, we are trying to build as much safeguards as possible for the rural poor in which small and marginal farmers, peasants, workers,

Scheduled Castes, Scheduled Tribes, women and Children are covered. One amendment of a section will not solve the problem because, after all once you get a decree against some person, you cannot detain him. But the Question of poverty and pestilence is basic in our country and we should bend the law in favour of the poor. Unless we bend the law in favour of the rural poor and those under-privileged sections of the society who are handicapped because of lack of resources, the answer will not be there by amending one particular section.

So, I congratulate the hon. Member for giving this suggestion and I promise that we will have a wide ranging debate as to how we should improve the system. I agree that this Anglo-Saxon system has not been very successful in recent years due to increasing cost of litigation and other reasons, but this is not an opportunity. I had already discussed this matter at length with Law Ministers throughout the country. We will examine this issue also along with other amendments. Personally, I value his suggestion that no person, for non-payment of money, should sacrifice his life and liberty. This is a very wholesome and noble principle and I quite share this view. But, that needs a different type of procedure and trail. We will examine it while we examine the other laws. So, I request the hon. Member to kindly withdraw this Bill.

SHRI P. P. KALIAPERUMAL : Mr. Deputy Speaker, Sir, as a man who is committed to social justice and human rights I had an opportunity to present this Bill and express my intentions. Since the hon. Law Minister has assured to review the Code of Civil Procedure generally and since he shares my views, I would like to withdraw this Bill.

I beg to move for leave to withdraw the Bill further to amend the Code of Civil Procedure, 1908.

MR. DEPUTY SPEAKER : The question is :

that you all agree. Shri Ram Vilas Paswan.

[ranslation]

" That leave be granted to withdraw the Bill further to amend the Code of Civil Procedure, 1908".

The motion was adopted.

SHRI P. P. KALIAPERUMAL : I withdraw the Bill.

MR. DEPUTY SPEAKER : Item No. 19. Shri Kashiram Ran - Not present.

Item No. 20. Shri Ram Naik
- Not present.

17.36 hrs.

DISCUSSION UNDER RULE 193

Increasing Population in the country

[English]

MR. DEPUTY SPEAKER : Now, we have got sometime. We have also got an important subject to discuss, that is about the population problem, under Rule 193. If you all agree we can take it up now. I take it

SHRIRAMVILASPASWAN (Rosera) : Mr. Deputy Speaker, Sir, today we are going to discuss an issue which is not related to any political party and I am happy to note that the hon. Speaker himself took interest in holding discussion on the issues that have not been discussed in the House during last few years and he took the decision in consultation with all the members of the B. A. C. Today the attendance in the House is poor though we are going to discuss an important issue.

Thanks to the farmers of the country due to whom we are self-reliant in agriculture sector and have been able to face this severe situation arising out of the population explosion. But, the day the fertility of our fields comes to a stand still, the situation will be explosive. The land has its own limitations. America has three times more land than we have today but its population is one third as of ours Canada has one and half times more land than that but its population is very less but our population is increasing. We have 2.4% of the total world land but our population is 16%. This population is increasing day by day. I would like to present some figures before the House :

Country	Population in 1950	Population in 1992
United Kingdom	50 million	58 million
U. S. A.	52 "	255 "
Japan	83 "	124 "
Italy	87 "	58 "
Germany	72 "	80 "
France	42 "	57 "
Canada	14 "	27 "
Australia	8 "	18 "