Shrimati Sucheta Kripalani: It was done so quickly that people did not understand that the third reading was over.

Mr. Deputy-Speaker: There is nothing. Enough has been said in the other readings. Hon. Members will only repeat themselves.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

The Minister in the Ministry of Law (Shri Pataskar): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Joint Committee of the Houses consisting of 45 Members, 30 from this House, namely, Shri Upendranath Barman, Shri Debeswar Sarmah, Shri Chimanlal Chakubhai Shah, Shri U. R. Bogawat, Shri T. R. Neswi, Shri C. D. Gautam, Shri Hanamantrao Ganeshrao Vaishnav, Shri Radhelal Vyas, Chaudhri Hyder Husein, Dr. Kailas Nath Katju, Shri Shobha Ram, Shri Kailash Pati Sinha, Shri Tek Chand, Shri K. Periaswami Gounder, Shri Paidi Lakshmayya, Shri Digambar Singh, Shri George Thomas Kottukapally, Shri Lokenath Mishra, Shri Ganeshi Lal Chaudhary, Shri Ram Sahai Tiwari, Shri N. Rachiah, Dr. A. Krishnaswami, Shri Bhawani Singh, Shri Sadhan Chandra Gupta, Shri. S. V. L. Narasimham, Shri K. M. Vallatharas, Shri K. S. Raghavachari, Shri Bijoy Chandra Das, Shri N. R. Muniswamy and the Mover, and 15 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the 15th November, 1955;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of Members to be appointed by Rajya Sabha to the Joint Committee."

This is a Bill to amend the Code of Civil Procedure, that is, a Bill to amend the law relating to the procedure of the courts of civil judicature in our country. There are in all 18 clauses in the Bill and they cover about 24 changes proposed in the Code.

Section 133 of the Code authorises a State Government by notification in the Gazette to exempt from personal appearance in court any person whose rank in the opinion of such Government entitled him to the privilege of exemption. The Rajasthan High Court has recently held that this provision is *ultra vires* on the ground that it offends against article 14 of the Constitution. The amendment proposed in clause 14 of the Bill seeks to amend the section so as to make it constitutionally valid. So, this is a necessary change.

Article 133 of the Constitution gives power to the Supreme Court to hear appeals from any judgment, decree or final order of a High Court if the High Court has certified as laid down in that section. Section 109 of the Civil Procedure Code while providing for such appeals only refers to appeals from decrees, or final orders, but not to judgments. So, there is some sort of a difference in the wording used. It is therefore sought to clarify the position by the addition of clause 12 which is intended to bring section 109 of the Code in line with article 133 of the Constitution. This is also more or less a formal change.

Section 39 of the Civil Procedure Code relates to transfer of decrees of

one court for execution to another court. Courts in former Indian States were foreign courts before the commencement of the Constitution on 26th January, 1950, and the decrees passed by those courts could not be transferred as a rule for execution to courts in the then British India, nor could the decrees passed by courts in the then British India could as a rule be transeferred for execution to the courts in former Indian States. I am aware that in the case of certain States, there were some sort of agreements, and therefore, the decrees could be transferred. But that was not as a matter of rule. After the commencement of the Constitution and the merger of those States, this distinction is gone, and all the courts in India are now Indian courts. In the conditions as they prevailed before 26th January 1950, if a person, say in a court in the State of Hyderabad, filed a suit against a person in, say, the State of Bombay, the person in the State of Bombay might choose not to appear in the court in the Hyderabad State, for any decree passed against him in his absence was not capable of being transferred to any court in Bombay State for execution. The person who obtained such a decree against him would have been required to file a suit on a foreign judgment in the State of Bombay and obtain a decree and then ask for execution of the same. That would have given the person in the State of Bombay an opportunity to put forth his defence. Similar would have been the case with a person who obtained an *ex-parte* decree in a court in the State of Bombay against a person in the State of Hyderabad. It is inequitable under the circumstances that as a result of the merger of the States and the coming into force of our Constitution such *ex-parte* decrees should be allowed to be executed before 26th January, 1950. It is for this purpose that clause 5 seeks to add another sub-section to section 39 of the present Code of Civil Procedure.

I now turn to clauses 2 and 3. Clause 2 wants to limit the rate of interest which a court can award to six per cent. per annum, and clause 3 takes away the power of courts to award interest on costs. Usually, the courts do not allow interest on costs, but occasionally we may find cases where such interest is awarded by certain courts. I think the present provision which we are now seeking to put in is consistent with our present ideas of social justice and the changed economic conditions. And from those points of view, these two clauses are proposed to be put in.

Section 35A of the Code was introduced in the present Code by Act IX of 1922, to enable the court to award compensatory costs in respect of false or vexatious claims or defences, but only in cases where the objection had been taken at the earliest opportunity. As lawyer Members will be aware, this section 35A was not there in the Act of 1908, but it was subsequently put in for this definite purpose, with this added proviso that the objection had to be taken at the earliest opportunity. Experience has shown that to achieve the object underlying this provision, namely, to prevent false and vexatious litigation, the powers of court in these matters should be so enlarged as to enable the court to award such costs, whether objection had been raised by the party at the earliest opportunity or not, and also in cases where the court regards it just to do so. Under the amendment that is now proposed, in any case where the objection had either not been raised or been raised at a later stage, if the court finds that it is just and proper that such compensatory costs should be awarded, then the court will have the power to do so. That is the object of this change. It has also been found necessary that such a provision should apply not only to suits but also to execution proceedings. Clause 4 of the Bill seeks to do this.

Sections 68 to 72 provide that under certain circumstances, execution of decrees by sale of immovable property may be transferred to the collector, and there are connected provisions in

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the Third Schedule of the Code also. This might have served some useful purpose in the case of decrees by moneylenders against ignorant and needy agricultural debtors in the past in spite of the fact that such transfers to collectors led to inordinate delays in the execution of decrees. But this was not a solution to the problem of agricultural indebtedness. The problem is already being solved in a positive manner, and on a definite basis by different States; and social and economic conditions have so changed that it is no longer necessary to continue these provisions even for this limited purpose. The collectors were not so overworked with other duties before, as they are now, and therefore they can hardly find time now to attend to this work. As a matter of fact, as many of our lawyer friends will admit, probably it was with a certain objective that this provision was inserted in the Civil Procedure Code at one time. But experience has shown that in many cases, the collectors have not been able to devote even in the past as much attention to this matter as it really deserved. After all, when a man obtains a decree, then naturally he expects that by executing that decree in course of time he will be able to realise something out of the decree which he had taken pains to obtain. But there was, as I said, at that time the other problem also. It was thought that the collectors were probably better informed about the prices of lands etc. but experience has shown that this work was more or less left in the office to be attended to not by the collector himself but by somebody who was much inferior to him, and I do not know how much attention could be paid by such a person. Therefore, there have been complaints on a very large scale that probably for years together, the execution proceedings have been kept pending without their being attended to in a proper manner.

It is, therefore, desirable that this work of execution should be restored to the courts themselves. I feel confident that the courts will carry out this work which is primarily theirs, promptly, justly and with the consciousness of their added responsibilities as judges in the new set-up of things. It is, therefore, proposed by clauses 8 and 15 of the Bill that sections 68, 69, 70, 71 and 72 of the Code and the Third Schedule should be omitted.

Section 92 relates to public charities. It is now proposed to amend it by clause 10, so as to make it clear that in the same proceedings, the court can direct restoration of the trust property to the new trustee from the former trustee who has been ordered to be removed. What used to happen formerly, under the existing provisions was that supposing a trustee had been removed for incompetence etc. and another trustee had been appointed in his place, then the new trustee had again to start proceedings to have possession of the property. So, provision is now being made that in the same proceeding the court can not only remove one trustee and appoint another trustee, but also order that the possession of the trust property may be handed over to the new trustee from the former trustee.

Mr. Deputy-Speaker: Will the order be executable?

Shri Pataskar: He can himself order. So, there will be no multiplicity of proceedings. Formerly, the new trustee was required to go to court again, and may be, he was required to file a suit and that might get protracted; in the meantime, we do not know what would happen to the trust property. Thus, there was all manner of complications. To avoid all that, it is now thought better to make this provision which will avoid all unnecessary and fresh litigation.

Another important section of the Civil Producere Code is section 47 of the Code. This section is intended to prevent multiplicity of proceedings and consequent delay in settlement of disputes, for as lawyer Members are

aware, there have been many cases where the same matters are raised in execution proceedings, which probably had been raised earlier, and there arose the question as to whether those matters which were raised in the execution proceedings had to be tried by the executive court or there had to be separate proceedings. It has, however, been found that there have been widely different interpretations by the different High Courts regarding the question whether a purchaser at a sale in execution is a party to the suit, and if so, under what circumstances. Whenever a decree is obtained, and the property is put to auction in execution proceedings at the proper time, and it is purchased, it may be that the purchaser is the decree-holder himself, or it may be that the purchaser is a stranger. And naturally, it gave rise to a great deal of difference of opinion in courts as to whether the purchaser could be regarded as a party to the same proceedings. All these doubts are proposed to be set at rest by the amendment to this section proposed in clause 6 of the Bill.

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It is also made further clear that the principle of *res judicata* provided in case of suits under section 11 will apply to execution proceedings also.

Mr. Deputy-Speaker: Should it not apply to the other also?

Shri Pataskar: I am just going to make it a little more clear by saying that even now, I am aware that though this principle is confined only to cases under section 11, courts have tried to extend it to execution proceedings. But it is thought much better that we should also make a provision that the same provisions as are there regarding *res judicata* in section 11 shall apply to execution proceedings also. I think that will stop any further discussion in the matter. It is much better that we lay it down because courts may take a different view.

Shri S. S. More (Sholapur): It will stop the old discussion, but it will start a new one.

Mr. Deputy-Speaker: It may be necessary to say, former proceeding or an earlier stage of the same proceeding. It may not be construed to be a former proceeding. At one stage, that particular point is raised and decided.

Shri Pataskar: That is true.

Mr. Deputy-Speaker: This may be considered by the Select Committee.

Shri Pataskar: The underlying idea is that we want to extend the Provision of *res judicata* also to other proceedings.

Then clause 11 will reduce the number of second appeals to the High Court. The limit was Rs. 500; we propose to raise it to Rs. 1,000. The effect of clause 13 will be to reduce the number of cases in which the High Court can exercise their powers of revision. This is a small matter and I would not take the time of the House further on it.

Section 144 of the Code enables the court to order restitution in case of decrees Clause 15 will enable the court to order restitution even in the case of orders, because that is as much necessary as in the case of decrees.

Avoiding service of summons or notice is a usual method adopted for delaying civil proceedings. Clause 16 provides that service of notice or summons by post should be effected in lieu of or in addition to service by bailiff under certain circumstances. Probably the Joint Committee will also take this into consideration whether, in view of the development of the post office, it will not be possible to still improve upon the present position.

A good deal of time is spent in proving documents. Now, whatever the parties may or may not do in this matter under Order XII, Rule 2 of the Code, the court has been given power to call upon parties to admit or not to admit documents produced in the case and to record such admissions. Under Order XII, Rule 2 of the Code, if one party gives notice to the other either

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to admit or not to admit a document, certain consequences follow. For instance, if it is not admitted, it has to be proved, and if the party succeeds, then the costs are thrown on to the other side. But it is found that in many cases actually in the courts, parties do not choose to give such notice. Therefore, it is proposed that the court should be given power to call upon the parties to admit or not to admit documents produced in the case and to record such admissions. We are trying to give this power to the court, irrespective of what the parties may or may not do.

Another important change is the one made to encourage parties to keep their witnesses present in court at a trial. Even now, I am aware that parties can keep their witnesses present. But as we all know, usually a question is asked as to whether you have not kept the witness present, and a suggestion is made to the court that this witness may not be believed because he has been brought to the court not as a result of a summons issued through the court, but by the party himself. Now, if we make a definite provision, I think it will not be open to anyone to suggest that simply because a witness has been kept present by a party, any adverse inference should be drawn against him on that account. That is the purpose of this provision.

Very often judgments are delivered long after the hearing has been completed and arguments heard. It is true that delays are due not merely to defects in procedure...

Mr. Deputy-Speaker: Judges ought not to forget what has happened.

Shri Pataskar: Without going into details, I would say that it is a highly unsatisfactory state of things, that a Judge should have heard a case, the arguments and so on, and then after sleeping over it for some months, when he might have forgotten the whole thing, deliver the judgment. But even now, it is not possible to make a hard and fast rule as to when it should be completed. But we want to give an indication as to what we expect the Judges to do, that they should not take a long time...

Mr. Deputy-Speaker: If the judgment is not passed within a fortnight, the case may stand automatically transferred to another Judge, and the Judge asked for an explanation. I think that will straighten matters. (*Interruption*).

Shri Pataskar: That is one of the important matters, and I hope even the discussion in this House may serve as a warning to Judges that they should not delay any such thing.

These and such other provisions are made to facilitate the early disposal of cases and proceedings—I have only dealt with the important provisions where changes are proposed to be made. It will thus be seen that the Bill is one intended to carry out urgent amendments to the Code of Civil Procedure.

There has been considerable dissatisfaction in the public mind about the increasing dilatoriness, expense and complications in the administration of civil justice. There are complaints of delays in the trial and decision of cases in the original courts, in decision of appeals, second appeals and revision applications, and in execution proceedings of final decrees and orders. It is true that delays are due not merely to defects in procedure but also to other causes. We are all aware that with the same, existing procedure, there are Judges who can really decide the cases quite early enough. What we require along with it is the proper functioning of the judiciary, their earnestness to avoid delay, their efficiency in grasping the complicated problems arising before them and lastly, their correct approach and anxiety to decide the matters without undue delay, but with due regard also to the ends of justice in arriving at as correct a decision as is humanly possible. As we know, justice delayed is, in many cases, as good as justice denied, but

it is equally true that mere speed will also, in many cases, end in defeating the very cause of justice itself. The problem, therefore, of the administration of civil justice is a very delicate and complicated problem, but in its proper solution lies the well-being and contentment of the common man. Administration of civil justice must inspire in the common man a feeling and a sense of confidence, that in his dealings between man and man and in the preservation of his civil rights, he will get justice without undue delay and expense. In fact, justice must be easily available, must be cheap, must be real and must also be speedy.

The main objection to this will be: why are you bringing in a measure like this at this stage? I know there is a case for overhauling the entire system of civil judicial administration, but this is a matter which involves detailed consideration of various problems of far-reaching consequences. It can only be undertaken after a very careful investigation and after a very thorough comparison with many other systems, if we want to change the system itself. Such a change must naturally be left to be inquired into by the proposed Law Commission. It is likely that such a change, even if decided upon or recommended by the Commission, will take a long time to be implemented.

However, leaving aside this larger question, there is no reason why we should not try to improve the present procedure of administration of civil justice in matters like those governed by this Bill. This matter is being considered from time to time during the last many years. Various committees had been set up by the Centre and the States from time to time to consider this problem. There was the Civil Justice Committee appointed by the Government of India in 1924 under the chairmanship of Justice Rankin. That committee submitted its report in 1925. The Government of Uttar Pradesh set up a Judicial Reforms Committee in April, 1950, under the chairmanship of Justice Wanchoo. That committee submitted its report in 1951. The Government of West Bengal had also set up a similar committee. A memorandum dealing with the administration of civil as well as criminal justice was circulated some time in 1953 to the State Governments. Probably hon. Members are aware that it was at the time when the proposals regarding the amendment to the Criminal Procedure Code was also circulated to the State Governments.

Mr. Deputy-Speaker: Which is the most important clause here which cuts directly at the delay?

Shri A. M. Thomas (Ernakulam): Not a single clause, Sir.

Mr. Deputy-Speaker: That appears to be the main object as stated in the Statement of Objects and Reasons. I would like to state that whatever question I am putting here is on behalf of all the Members here. I must also understand what is going on. Whenever an important matter comes up, immediately people rush up to the High Court or the Supreme Court with an application for writ and once the writ is secured there is a suspension of everything in the world. What is all this that is going on endlessly?

Shri Pataskar: We are aware that this matter of issuing writs and causing delay is a matter which really disturbs Government also. But the question is that that cannot be prevented merely by an amendment of the Civil Procedure Code because, after all, the writs are issued as well as several stay orders, under certain provisions which are incorporated in the Constitution itself. Therefore, as I said, I am aware that if we want to overhaul the system—the necessity for which I for one think there is—that problem will have to be solved not by a Bill of this nature.

Shri S. S. More: What is the urgency of this Bill because all the matters that are sought to be amended.....

Shri Pataskar: I am just trying to show why I have brought a Bill of this kind at this stage, when I myself have

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admitted that this is not as far-reaching as many of us would like.

Mr. Deputy-Speaker: I want to know from the hon. Minister why this has been introduced in view of the objections that were raised by the hon. Members during the debate on the Criminal Procedure Code (Amendment) Bill. I want to know why this Bill has been introduced in view of the impending appointment of the Law Commission. Will not the Commission go into procedure; is it?

Shri Pataskar: I will try to make myself clear at this stage before I proceed to the other part of my argument. At the time when we were considering the Code of Criminal Procedure, it was very strongly urged—and probably with some justification—why this sort of thing should be there when we are going to appoint a Law Commission. So far as the Civil Procedure Code is concerned, I will shortly be able to show facts as to why, from time to time, the Civil Procedure Code had to be amended on such small matters because of so many changes. But, before I come to that, I will show that supposing a Law Commission is appointed—that Commission will not be concerned only with matters of procedure, civil or criminal but with several other matters also—I cannot say anything now—but as experience has shown in other countries, it will take a considerable time before it makes its report. After that report is received, there will be some further time to find out what action should be taken by Government with respect to those matters. It may be that the whole system of civil administration has to be overhauled and a change made which may take further time. The principal object of this Bill is that supposing during that time the present Civil Procedure Code, which has been there in existence from at least 1908 in its present form—really it has been in existence from 1859—there are some changes to be effected in the way which I have pointed out—though it may not give the entire relief which is required or which the public clamour for—it will at any rate lead to the results which we would like to be achieved. I would like to urge before Members of this House that there is no reason why we should hold up everything because ultimately we are thinking of doing something which would take some time. That is my only justification for bringing forward this Bill. From that point of view I have been saying that there was a Civil Justice Committee appointed as far back as the year 1924. That report is there. Then there was another Committee—because every State was also anxious—appointed by the U.P. Government, and a third appointed by the West Bengal Government. Everybody is anxious but what happens is that because something larger and bigger is not being done everything is kept like that. After all the whole system may have to be changed—we do not know what will happen—but, for the present, whatever we could effect so that we might give some relief in the matter of dilatoriness or expense or cutting short of the proceedings, that should be done. There are three objects primarily. There are two provisions for the purpose of bringing the Act into line with the Constitution. Then, with respect to execution proceedings there has been considerable agitation that circumstances have changed and this transfer to the collector need not be there. There is another provision which I have not referred to with regard to summary trial of suits on negotiable instruments etc. It is only in the High Courts, I think, of Bombay and some other places that they have this summary power of trying suits. They have got the procedure in the original side of the Bombay High Court that on suits on negotiable instruments unless the defendant gives security he is not allowed to let in defence. That is the summary procedure prescribed. An attempt is made now to empower certain judges with this power of hearing suits summarily. How far this should go and how far it should not go, all this will be examined. These are changes more

or less without touching the entire form of civil judicial administration. We find that for the last so many years the matter has been simply kept pending. It is thought necessary that some of these changes which may not be far-reaching but which will give some relief may be undertaken.

We have fully considered the reports submitted by these committees as also the opinions of the State Governments and other institutions on the memorandum which was circulated to them and on the basis of those the present Bill has been drafted. I have already explained some of the important provisions of this Bill and the object with which these provisions are being put before this House for its consideration and approval. It would not be out of place here to give a brief history of the present Civil Procedure Code which is proposed to be amended to judge properly the necessity of such measures from time to time. I am only going to deal with the question why a Bill of this kind is necessary.

The first Code of Civil Procedure enacted in our country was the Code of 1859, being Act VIII of that year, and that applied only to what were known as Mufussil Courts then and did not apply to.....

Shri S. S. More: All lawyers are supposed to know this.

Shri Pataskar: I am talking to those also who are not lawyers. Otherwise I would have simply moved the Bill and sat down. Unfortunately, as my hon. friend knows, there is a good deal of prejudice against lawyers also. I will try to dispel as much as I can. I was going to say at the end that this is not meant for lawyers.

Mr. Deputy-Speaker: Sometimes if it is very lengthy it adds to the prejudice.

Shri Pataskar: I will try to clear it up.

Pandit Thakur Das Bhargava (Gurgaon): Ten hours have to be spent on this Bill.

Shri Pataskar: I am not going to take very long but for the explanation. I will briefly refer to the history of the Civil Procedure Code, how many times it has been amended and why it had been necessary—for the ordinary layman. I think it is better to know that.

The first Code was the Code of 1859, being Act VIII of that year, and that applied, as I already mentioned, only to what were known as Mufussil Courts then and did not apply to the then existing Supreme Courts and the Courts of Sudder Diwani Adalat in the Presidency Towns of Bombay, Madras and Calcutta. These Courts were subsequently abolished by the High Courts Act of 1861 and the powers of those Courts were vested in the Chartered High Courts. The Letters Patent of 1862 establishing these High Courts extended to them the procedure of the Code of 1859. The Charters of 1865 empowered the High Courts to make Rules and Orders regulating proceedings in civil cases, but required them to be guided as far as possible by the provisions of the Code of 1859. That is why there is still this distinction between mufussil courts and some of the High Courts—original side. I will just now point out to those friends who are not lawyers as to how many times it had become necessary to amend the Code of Civil Procedure right up from 1859 to now. This Code was amended by some ten amending Acts between the years 1859 and 1872 and was ultimately replaced by the Code of 1877. This Code was again superseded by the Code of 1882 after being amended twice in the years 1878 and 1879. This again was amended some fifteen times between the years 1882 and 1895. Ultimately, after an exhaustive inquiry, the present Code of Civil Procedure was passed in 1908, replacing the former Code of 1882. The object of giving this history is to show as to how difficult it is that because the Procedure Code of 1908 changed entirely the basis of the Acts between 1859 and 1882, it also took so many years even then. For minor changes the Government have always been coming to this House in order

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that they may be so amended as circumstances required from time to time. The present Code of 1908 has been amended since then some thirty times or more and that too as often as it was found necessary to do so, but the main form and features have been maintained. Naturally, these are only amendments, not in the form itself or in the scope of the Code of Civil Procedure, but from time to time certain minor changes are required, as for instance, section 35A. After 1908, it was found that unnecessarily vexatious claims had been filed, and in the year 1952, we found that there should be further strengthening up of this section, and therefore we come before the House now, whether the parties apply for it or not, in order that frivolous defences, frivolous plaints should be prevented, there should be changes in the provisions of section 35A.

This brief history will show how in the matter of mere procedure changes have to be effected often to suit the varying conditions from time to time. Whenever there is a difficulty and it is found that by a suitable amendment the public cause will be better served, there has always been a tendency to come before the House to get it changed. It would not, therefore, be in public interest to wait for the complete overhauling of the system itself and amendments are necessary to make even the present procedure more suitable. My object, therefore, in coming before the House is to make the Code of Civil Procedure, as it stands, more suitable and the object is not an entire overhauling.

There is a general feeling amongst certain sections of the public in this country that "procedure is a fetish". Here, of course, my friend, Shri More will agree with me that the common man thinks that the lawyer is talking of procedure, which is something fetish. Whether this feeling is justified or not, it is difficult to say. It is true that procedure must not be allowed to override or obstruct legal rights, but after all, procedure is in a sense the machinery of law and must be properly applied and so maintained that it can effectively, speedily and usefully carry out the purposes of law. That is really the object of procedure or the importance of the law of procedure. It is from this point of view that the present Bill has been brought before the House.

Some amendments have become necessary in order to bring some of the provisions of the Code in line with the provisions of the Constitution; some have become necessary in order to delete some rather obsolete provisions, which serve no useful purpose, and the rest are intended to avoid delays, to prevent frivolous litigations and to avoid multiplicity of proceedings, as in the case of trustees.

The proposed provisions, though not far-reaching,—I do not claim they are far-reaching—have become necessary and will serve useful purpose. They are simple and more or less not controversial.

Civil Procedure Code is in its nature a terse and dry matter and my excuse for taking some time of the House at this stage was to explain to those of us who are not lawyers the necessity for and the implications of the proposed changes.

With these words, I commend my motion for the acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, be referred to a Joint Committee of the Houses consisting of 45 Members, 30 from this House, namely, Shri Upendranath Barman, Shri Debeswar Sarmah, Shri Chimanlal Chakubhai Shah, Shri U. R. Bogawat, Shri T. R. Neswi, Shri C. D. Gautam, Shri Hanamantrao Ganeshrao Vaishnav, Shri

Radhelal Vyas, Chaudhri Hyder Husein, Dr. Kailas Nath Katju, Shri Shobha Ram, Shri Kailash Pati Sinha, Shri Tek Chand, Shri K. Periaswami Gounder, Shri Paidi Lakshmayya, Shri Digambar Singh, Shri George Thomas Kottukapally, Shri Lokenath Mishra, Shri Ganeshi Lal Chaudhary, Shri Ram Sahai Tiwari, Shri N. Rachiah, Dr. A. Krishnaswami, Shri Bhawani Singh, Shri Sadhan Chandra Gupta, Shri S. V. L. Narasimham, Shri K. M. Vallatharas, Shri K. S. Raghavachari, Shri Bijoy Chandra Das, Shri N. R. Muniswamy and the Mover, and 15 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee:

that the Committee shall make a report to this House by the 15th November, 1955;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of Members to be appointed by Rajya Sabha to the Joint Committee."

Some amendments have been tabled to this motion. Shri Bogawat is absent. Shri Agrawal may move his amendment.

Shri M. L. Agrawal (Pilibhit Distt. *cum* Bareilly Distt. East): I beg to move:

That in the motion *after* "and 15 Members from Rajya Sabha" *add*:

"with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary".

Shri S. V. Ramaswamy (Salem): May I know from the hon. Minister as to the scope of the proposed Law Commission? Are they going to go into substantive law alone or also into procedural law? The answer to this will help us to clarify the position and that would also circumscribe the debate.

Shri Pataskar: So far as the Law Commission is concerned, yesterday my colleague Shri Biswas stated that he will soon make an announcement about that. I think it is much better if we leave the matter there.

Shri M. L. Agrawal: My object in moving the amendment is much the same as that of the hon. Minister—to remove some defects of the Code which can be removed easily without waiting for the report of any expert committee or the Law Commission.

Previous experience has shown that the recommendations of the Rankin Committee, the Wanchoo Committee and others have been pending before the Parliament and the country for such a long time and no action has been taken on them. Therefore, I agree with the view of the hon. Minister that a thorough overhaul of the Code of Civil Procedure is a difficult task and it cannot be undertaken easily. But there is no reason why we cannot improve the present Civil Procedure Code in respect of particular provisions which we can easily do without waiting for the report of the Law Commission, which is likely to take a long time. We all know that Parliamentary legislation is a rather lengthy and complicated process—firstly to have the report of the Commission, then to have a Bill which must be long enough, and then to pilot it through both Houses of Parliament would take a very long time. Therefore, I welcome the present Bill which has been brought by the hon. Minister. Some of the provisions are of a far reaching character while others are of a trivial nature. Even as they are, in my opinion, they are an improvement on the

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present position. The object of my amendment is this. Why should we confine ourselves to the provisions of the Bill which the hon. Minister has placed before the House? There are other provisions which can also be suitably amended if we give some thought and attention. The hon. Minister has been able to bring forward only some provisions which he thinks can obviously be amended for the benefit of the public, but there are other provisions also which can also be incorporated. To enable the Joint Committee to make further amendments which would be equally beneficial, I have brought forward this amendment. This clothes the Joint Committee with the power to consider the whole Civil Procedure Code and cull out such provisions as can be easily included in its fold. For instance, in this connection, I would place before the House the provisions regarding the arrest and detention of a judgment-debtor for payment of a decree of money. Now the present Code certainly gives that power, namely, that judgment-debtors—men, not women—who have money to give can be arrested and detained in execution of the decree. It is true that the Act of 1936 has, to a large extent, circumscribed the powers of the decree-holder to have a judgment-debtor of a money decree to be arrested and detained. All the same the provisions remain there. There are various other provisions to which I would like to refer.

Mr. Deputy-Speaker: A decree-holder has only to file an affidavit that the judgment-debtor is likely to run away and in almost every case he is likely to be arrested, notwithstanding the wholesome provision that has been made.

Shri M. L. Agrawal: Then again according to the present notion of society and social justice, to which the hon. Minister just now referred, it is repugnant and obnoxious that a man should be arrested and detained for non-compliance with a money decree. This is such an obvious demand which can be easily incorporated in the Civil Procedure Code. We should provide that no man would be after the passing of this amending Bill be arrested or detained for non-compliance with a money decree. Apart from the propriety or otherwise of arresting and detaining a judgment-debtor for payment of a money decree, there is also a constitutional difficulty. I would in this connection refer to Section 56 of the Code by which women are exempted from being arrested and detained in execution of money decrees. Now, article 15 of the Constitution has abolished all discrimination between sexes. Moreover, according to article 14, all people of the Union must have equal rights, equal protection of the law. If that is so, why should section 56 of the Civil Procedure Code prohibiting the arrest and detention of women in money decrees, discriminate in favour of women? It is high time we did away with this anomaly.

I am only pointing out a few of the anomalies. There may be many more like this and it is for the Joint Committee to go into them. For example, the proviso to section 51 and rules 11, 21, 30, 37 and 40 of order 21 will have to be amended to bring about this effect. Then there is Order 38 which contains a provision about arrest before judgment or attachment before judgment.

Mr. Deputy-Speaker: If arrest in execution of a decree is done away with there would be no arrest before judgment.

Shri M. L. Agrawal: Then again there is Order 21, Rule 2. According to sub-rule (1) it is the statutory duty laid on the decree holder that he must certify payment or adjustment in decree. But the decree holder seldom does so, with the result that no payment or adjustment not certified in court is recognised by the court. But what is the penalty? Although the duty is there on the decree holder to get that certificate, he does not do it. I, therefore, submit that the provision must be so amended as to impose some

penalty on the decree holder that in case he does not certify, he must suffer some penalty.

There are many similar provisions. There is Order 21, Rule 86. If an auction purchaser at the time of auction wanted to take property he had to deposit 25 per cent. of the sale money and the remainder he had to deposit within 15 days. If he did not do so, he forfeited the 25 per cent. deposited by him. Obviously, this rule was very stringent, because if he failed to deposit, the whole amount had to be forfeited to Government. By a later amendment this provision was modified and it has been laid down that the court may forfeit the deposit. But some courts have interpreted this rule to mean that the court can either forfeit the whole amount after defraying the expenses, or not at all. This is very hard. I think by a suitable amendment the power of the court should be made such that either it forfeits the whole amount or a part only.

Now, in Order 21, Rule 72, it is laid down that a decree-holder if he wants to purchase must have previous permission of the court.

Mr. Deputy-Speaker: The hon. Member will kindly resume his seat. I am sure all hon. Members are sharing the same difficulties. But the point is this. The hon. Member has not so far touched upon a single clause of the Bill.

Shri Raghavachari (Penukonda): He is supporting his amendment.

Mr. Deputy-Speaker: I have given him sufficient opportunity to do that.

On a previous occasion, when the Preventive Detention Bill was under discussion, Sardar Hukam Singh tabled an amendment that some sections of the parent Act were very important having regard to the liberty of the subject, and therefore some directions should be given to the Select Committee to look into not only the clauses of the Bill but also the ancillary sections of the parent Act. As a special case that was then allowed.

Nobody challenges the right of this House to do anything it likes. But the Civil Procedure Code contains so many orders and there are a number of points on which there can be difference of opinion.

Shri S. S. More: May I in this connection bring to your notice that when we were discussing the Code of Criminal Procedure a similar amendment moved by Shri Sinhasan Singh was accepted by the House, and the Bill was referred to the Select Committee with instructions to reopen the other clauses also.

Mr. Deputy-Speaker: Was it done?

Pandit Thakur Das Bhargava: In fact the House ordered the Select Committee to go into those matters and to an extent it went into those matters.

Shri S. S. More: I was on the Select Committee. When the matter was taken up by the Select Committee, Dr. Katju, who was then in charge of Home Affairs, said that the changes suggested were important and unless we consulted the State Governments it would be too risky on our part to accept them. He promised he would refer them to the States, invite their comments and then see his way to embody them in a later amending measure.

Mr. Deputy-Speaker: When we are sending some instructions to the Joint Committee, we should be specific about the sections which they should consider. It is not proper that we should give a *carte blanche* that the whole of the Civil Procedure Code may be reopened. I can certainly understand an amendment that one or two of the sections of the parent Act may be considered. To say: "All right, let this go to the Select Committee so that the whole legislation may be gone into" shows that we are trying to convert an amending Bill into a consolidating, revising Bill. That is my difficulty. Any hon. Member may place himself in my position, and argue the matter or give instructions. That is

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the difficulty. I have no objection. After all it is in the hands of the House. I have not ruled the amendment out of order; it is quite in order.

Shri S. S. More: May I ask you one question, Sir? Do you really desire that when we want some improvement in the other sections not covered by the amending Bill, we should particularise them in our amendments? What is the way?

Mr. Deputy-Speaker: I would have liked to mention some of the important matters. In the amendment itself, you can say, for instance, 1, 2, 3, 4 or 5 sections may be considered. Otherwise, the whole Act may be considered endlessly. We will focus on a few points. It is open to all the 500 hon. Members to be present; under the rules hon. Members are open to give such suggestions.

Shri Patashkar: I would like to make one appeal: as far as possible, I would request hon. Members to be more practical in our approach to the solution of this matter.

Mr. Deputy-Speaker: I have found it in practice at a time when the British Government brought a Bill—I forgot the name. They brought such a Bill saying that there is no human species; they are to be treated as chattal so far as attachment in the execution of a decree amount was concerned. That is how it was put before us. When I suggested some difficulty, the then Law Minister said: 'Hon. Member who comes from that side seemed to be a red boiled Tory..... I know how it is carried out; each District Munsif calls it in a particular manner. Now, therefore, hon. Members may refer to a few very important points and they may go to the Select Committee of course with such powers to the Select Committee to take any other matter of importance.

Shri M. L. Agrawal: I quite appreciate the difficulty that you have put before this House. Certainly the Select Committee could not go through every matter in this Bill. The amendment which I had originally sent had a limited aim. It wanted that the suggestions made by Members of Parliament may be considered by the Select Committee. I have been able to put forward some five or six suggestions during this short time. If other hon. Members also make their suggestions as you very appropriately said, those points will be considered by the Committee. I would not go into the details of the suggestions that I have made.

I will put one more suggestion and that is about the provision contained in Order 41, Rule 27—that is with regard to the powers of the appellate court to admit additional evidence. At present the discretion of the appellate court is circumscribed. At present additional evidence can be led only when it has been refused in the lower court and secondly if the court requires it for the ends of justice or for some other cause for delivering judgment. The court should, in my opinion, have full power to allow additional evidence in cases where it had been refused by the lower court and it has been discovered at a later stage and the court considers it necessary or important or for some other reason for meeting the ends of justice; if he considers it expedient and in the interest of justice, then evidence should be taken. It may be decisive and affect the decision of the case. So, full discretion should be vested with the court. The words in the rule are "or for a sufficient cause". The court can take additional evidence not only when it considers it necessary for delivering judgment but for other causes also. But there are cases in which these words have been interpreted not to give such a wide power to the court. Therefore, I would submit that the appellate courts' powers must be full and they must have full authority to take additional evidence when in their opinion the case justified it.

These are some of the other points to which I would like the Select Committee to give its attention and consider whether they should be amended or not. Otherwise, I support generally the provisions of the Bill which has been put before us by the hon. Minister for being referred to the Select Committee. In this Bill clauses 4, 6, 8, 9, 10, 14 and 16 are very necessary and therefore, I would commend to the House that when the Bill is being referred to the Select Committee, they should have the authority and direction from this House that they may consider such other matters as I had referred to in my speech and as may be referred to by other hon. Members of either this House or the otner House.

Mr. Deputy-Speaker: Amendment moved:

That in the motion *after* "and 15 Members from Rajya Sabha" *add*:

"with instructions to suggest and recommend amendments to any other sections of the said Code not covered by the Bill, if in the opinion of the said Committee such amendments are necessary".

Some Hon. Members *rose*—

Mr. Deputy-Speaker: I hope the hon. Members are aware of the rule that hon. Members whose names are here and are willing to spend a lot of time and exert on behalf of the Parliament and the Select Committee would wait until they have an opportunity in the Select Committee. They ought not to rise now if their names also are on the Select Committee. The others will nave an opportunity to speak.

DELHI JOINT WATER AND SEWAGE BOARD (AMENDMENT) BILL

Mr. Deputy-Speaker: Now, the other Bill has been kept waiting. I shall take up that Bill and dispose of it and come back to this. I must put it to the House formally.

The question is:

"That the Bill, as amended, be passed".

Those in favour will say 'Aye'.

Several Hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say 'No.'

Some Hon. Members: No.

Mr. Deputy-Speaker: The 'Ayes' have it.

Some Hon. Members: No, Sir. The 'Noes' have it.

Mr. Deputy-Speaker: Those against the motion will kindly stand up in their seats.

There are thirteen.

Now, those who are in favour will kindly stand up in their seats.

I find a large number and therefore by an overwhelming majority the motion is adopted.

Shrimati Renu Chakravartty: It is a slight majority.

Shrimati Sucheta Kripalani: It is a marginal majority.

Mr. Deputy-Speaker: Twenty is less than 21.

The motion was adopted.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL—*contd.*

Mr. Deputy-Speaker: Now, we will take up the Code of Civil Procedure (Amendment) Bill. Having regard to the length of time it is not necessary for me to impose any restriction at this stage, but, anyhow, hon. Members will have, I think, an idea of the time that they can take. 20 minutes I think will be all right except in exceptional cases which is always an exception.

Shri A. M. Thomas: Sir, I welcome this Bill so far as it goes, but the impression formed by me after going through the various provisions of the Bill and the impression left with me after reading the Statement of Objects