

# **JOINT/SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1935**

**The Code of Civil Procedure  
(Amendment) Bill  
(Amendment of Section 406)**

List of Reports of Joint and Select Committees  
presented to the Legislative Assembly in 1935.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks
1.	The Indian Mines (Amendment) Bill.	5. 3.1935.	
2.	The Payment of Wages Bill.	2. 9.1935.	
3.	The Code of Criminal Procedure(Amendment)Bill ( <u>Amendment of Section 406</u> ).	4. 9.1935.	
4.	The Code of Civil Procedure( <del>S</del> Second Amendment) Bill( <u>Insertion of New Section 44A</u> ).	18. 9.1935.	
5.	The Cantonments (Amendment) Bill.	24. 9. 1935.	

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## LEGISLATIVE ASSEMBLY.

We, the undersigned, members of the Select Committee to which the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have added two sub-sections to the substantive part of the proposed new section with the following objects :—

- (a) We consider that provision should be made for cases where the decree to be executed has been wholly or partly satisfied. Unless the copy of the decree is accompanied by a certificate in this respect, there is a risk of the execution of satisfied decrees [sub-section (2)].
- (b) We think it desirable that orders passed in the course of proceedings under the new section should be treated in all respects (e.g., as to appealability) in the same manner as proceedings under section 47 of the Code [sub-section (3), clause (a)].
- (c) It would, in our opinion, be unadvisable to leave to judicial decision the question whether the exceptions set out in section 13 of the Code apply to the execution of decrees under the new section ; and we have inserted a substantive provision asserting the applicability of these exceptions [sub-section (3), clause (b)].

SIMLA :

The 17th September, 1935. }

3. In *Explanation 2* we have made an addition limiting the scope of notifiable territories to territories within the British Empire and the States in India. We consider that so wide a power of notification may with propriety be limited to territories in which superior Courts will be of an ascertainable standard.

4. We have appended a third *Explanation* with two objects in view, namely :—

- (a) to include the Court of Appeal in the United Kingdom among “superior Courts”, as legal opinion is available to the effect that it was not so included under the Bill as introduced ; and
- (b) to define decrees so as to assimilate the meaning of the term to that applicable to the corresponding British statute [section 10, Foreign Judgments (Reciprocal Enforcement) Act, 1933—23 Geo. 5. Cap. 13]. We do not consider that arbitration awards should be comprised in the term.

5. The Bill was published in the Gazette of India, dated the 16th February, 1935.

6. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

N. N. SIRCAR.

BHULABHAI J. DESAI.

LALCHAND NAVALRAI.

F. E. JAMES.

\*K. L. GAUBA.

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\* Subject to a note.

### NOTE.

I feel that in the circumstances in sub-section (2) “*Prima facie*” would be better than “conclusive”.

K. L. GAUBA.

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words printed in Italics indicate the amendments suggested by the Committee.)

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## BILL

*Further to amend the Code of Civil Procedure, 1908, for certain purposes.*

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for the purposes V of 1908. hereinafter appearing; It is hereby enacted as follows :—

1. (1) This Act may be called the Code of Civil Procedure (Second Amendment) Act, 1935.  
Short title and com-  
mencement.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

2. After section 44 of the Code of Civil Procedure, 1908, the follow- V of 1908.  
Insertion of new section 44A in Act V of 1908. ing section shall be inserted, namely :—

“ 44A. (1) Where a certified copy of a decree of any of the  
Execution of decrees  
passed by Courts in the superior Courts  
United Kingdom and of the United  
other reciprocating terri- Kingdom or any  
tory. reciprocating  
territory has been filed in a District  
Court, the decree may be executed in  
British India as if it had been passed  
by the District Court.

(2) *Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.*

(3) *Proceedings under this section shall—*

(a) *as from the filing of the certified copy of the decree together with the certificate, be deemed to be proceedings under section 47 ; and*

(b) *be subject to the provisions of section 13, so far as they are applicable.*

*Explanation 1.*—‘Superior Courts’, with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

*Explanation 2.*—‘Reciprocating territory’ means any country, or territory, *situated in any part of His Majesty’s Dominions or in India*, which the Governor General in Council may, from time to time, by notification in the Gazette of India,

declare to be reciprocating territory for the purposes of this section ; and ' superior Courts ', with reference to any such territory, means such Courts as may be specified in the said notification.

*Explanation 3.—' Decree ', with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and*

*(a) with reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against such decrees or judgments,*

*but*

*(b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment.*

GOVERNMENT OF INDIA.  
LEGISLATIVE ASSEMBLY  
DEPARTMENT.

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Report of the Select Committee on the  
Bill further to amend the Code of Civil  
Procedure, 1908, for certain purposes;  
with the Bill as amended.