INDIAN PENAL CODE (AMENDMENT) BILL* (*Insertion of new section 383A*)

Mr. Deputy-Speaker: Shri Balkrishna Wasnik is absent. Shri K. N. Pandey.

Shri K. N. Pandey (Hata): I beg to move for leave to introduce a Bill further to amend the Indian Penal Code, 1860.

Mr. Deputy-Speaker: The question is:

> "That leave be granted to introduce a Bill further to amend the Indian Penal Code, 1860".

The motion was adopted.

Shri K. N Pandey: I introduce the Bill.

ALL INDIA DOMESTIC SERVANTS BILL*

Shri Balmiki (Bulandshahr-Reserved-Sch. Castes): I beg to move for leave to introduce a Bill to provide for the registration of domestic servants and to regulate their hours of work, payment of wages, leave and holidays.

Mr. Deputy-Speaker: The question is:

> "That leave be granted to introduce a Bill to provide for the registration of domestic servants and to regulate their hours of work, payment of wages, leave and holidays".

The motion was adopted.

Shri Balmiki: I introduce the Bill.

15.33 hrs.

ARBITRATION (AMENDMENT) BILL (*Amendment of section 2 and 39 and insertion of new Chapter IVA*)—contd.

Mr. Deputy-Speaker: The House will resume further consideration of the following motion moved by Shri Raghunath Singh on the 3rd April 1959:

> "That the Bill further to amend the Arbitration Act, 1940, be taken into consideration".

Out of 1½ hours allotted to the discussion of the Bill, one minute has already been taken on 3rd April 1959, and 1 hour and 29 minutes now remain

Shri Raghunath Singh may now continue his speech.

Shri Raghunath Singh (Varanasi): My amendment is a very small one. I want to say a few words about the history of the Arbitration Act. The law of arbitration in India is substantially contained in two enactments, first, the Arbitration Act (IX of 1899) which was based on the English Arbitration Act. This was applicable to the Presidency towns only and to such parts of India where it could be extended The scope of the Act was confined to arbitration by agreement without the intervention of the court The second enactment on this point is the Civil Procedure Code The second schedule of the Civil Procedure Code deals with arbitration outside the operation and scope of the Act of 1899 It relates, for the most part, to arbitration in suit, but also makes a very brief reference to arbitration being possible also without intervention of the court.

In 1925, the Civil Justice Committee recommended some amendments and change in the law. The English law was amended in 1934 by the Parliament. In 1938, the Central Government placed an officer on special duty

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*Published in the Gazette of India Extraordinary, Part II-Section 2, dated 18.4.1959.

to examine the question of the amendment of the Arbitration Act as passed by the English Parliament.

So the present Arbitration Act (X of 1940) is the result of three enactments—the existing law, English law and the recommendations of the Civil Justice Committee appointed by the Central Government. The scheme of the present Act is contained in Chapters II, III and IV. Chapter II deals with arbitration without intervention of the court, that is, sections 3 to 19. Chapter III deals with arbitration with the intervention of the courts where there is no suit pending, that is, section 20. Chapter IV deals with arbitration in suit, that is, sections 21—25. Chapter VI deals with appeals and orders, that is, section 39. The present Arbitration Act lays down provisions for supervision of the court at every stage from the time the parties enter into an agreement to refer the case of arbitration up to the stage of the order or decree. The arbitrator was empowered to refer the matter for the opinion of the court under section 13.

Now, as I said, my amendment is very short. There are a number of vakils, advocates or legal experts in the country. In the civil courts, whether they may be sub-judges or munsifs, they are also lawyers. They are recruited from the lawyer class. Their education and the education of the lawyers are practically the same. I have not brought this amendment to give some work to the unemployed lawyers; I have brought it in order that there may be speedy justice. There are a large number of cases pending before the High Courts and lower courts also. So India should utilise the legal services of the experts like advocates and vakils. They are working in the courts since 10, 12 and 15 years. Why should not their energy and talents be utilised?

An Hon. Member: With fee or without fee?

Shri Raghunath Singh: No, no, with fee. As they have been working in this line for 10, 15 and 20 years, they can meet out justice. They can decide cases according to the law.

But there are apprehensions in the mind of the parties who agree to arbitration as well as of the arbitrator. The apprehension in the mind of the parties agreeing to arbitration is that there cannot be good justice. Therefore, I have put down in my amendment very clearly that any order or judgment of the arbitartor will be appealable. Moreover, section 39 is also there.

The second apprehension, that is, apprehension in the mind of the abritrator, may be that if he does something, there may be a case of defamation against him. Suppose he takes evidence and passes some decree or judgment; then he will be open to a charge of defamation. Therefore, I have also incorporated in this amendment a provision to the effect that if an arbitrator is appointed, it should not be open to the parties or anybody else to sue him for defamation.

Therefore, to make the law easy and judgment also easy for litigants, I have brought forward this amendment. If my amendment is accepted, it will provide for speedy disposal of cases and relieve persons from the courts' delay. At present, cases are pending for 3, 4, 6 and 8 years. But if the cases are referred to the arbitrator, he will try to do justice quickly.

Thirdly, in my amendment, we are not disturbing any scheme of the Act. Only, if it is accepted, justice will be speedy.

My amendment simply relates to section 25A(i). That section deals with arbitration by agreement for deciding matters without the intervention of the court. Section 25A(ii) deals with pending suits or appeals where the parties agree to refer the matter to arbitration under section 21

[Shri Raghunath Singh]

of the Arbitration Act. Supposing a suit or appeal is pending then the parties are entitled to refer them also to arbitration.

Under section 25A(iii), the court may appoint a sole or more arbitrators. In this scheme I have provided that the arbitrators can be two or three or one as the parties like.

Section 25B provides that C P.C. should be applicable. If a lawyer is appointed arbitrator, his status will be just like a court. Therefore, he should decide the cases according to the procedure outlined in C.P.C. That is why this amendment provides that C.P.C. should be applicable.

The amendment to section 25C—that is the award—says

> "The award of such arbitrators shall be subject to the control of court in the same way as if it were an award of arbitrators made under Chapters II, III and IV and shall be filed in court.. ."

My amendment to section 25D is this. Suppose a lawyer who is working as an arbitrator gives a judgment or passes an order, it shall be filed in court and shall be treated just like a decree or order of a court. Therefore, if it is a decree there must be an appeal.

So, 25E deals with an appeal.

> "Any judgment or decree passed in accordance with the award under section 25C shall be appealable in the same way as if it were a judgment or decree of the court by which it has been passed."

Then, there is the question of remuneration. If a lawyer is working, he must get something also. For remuneration, there are two provisions; either the parties should agree to give some remuneration to the arbitrator or the court should decide what should be the remuneration of the arbitrator.

Shri Easwara Iyer (Trivandrum): You have not forgotten that!

Shri Jaganatha Rao (Koraput): That is the main object of the Bill.

Clause 4 of my amending Bill says:

> "(a) after sub-section 1, the following shall be inserted, namely:—
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> (1a) From the judgment and decree passed under section 25C a first appeal shall lie according to the provisions of section 96."

Section 96, C P.C. deals with appeals from the original decree or order; and there is a provision for second appeal also. That is section 100.

There is one provision also in my amendment that sections 109 and 110 of C P C. will be applicable. It means that the parties can go to the Supreme Court also. Therefore, according to my amendment, there is no apprehension that the arbitrator cannot do justice According to the scheme of my amendment, any order or judgment passed by an arbitrator can be appealed against just like other cases —a first appeal can lie and a second appeal can also go to the Supreme Court Therefore, I say, this amendment should be accepted

This amendment was moved by Shri Kazmi in the first Parliament. He is an eminent lawyer of the Allahabad High Court and he asked me to move this amendment here. Therefore I move this amendment in the Second Lok Sabha and I request the House to accept it.

Mr. Deputy-Speaker: Motion moved:

> "That the Bill further to amend the Arbitration Act, 1940 be taken into consideration."

Shri Achar (Mangalore): Sir, I am afraid I cannot support this Bill.

Mr. Deputy-Speaker: It is not well begun.

Shri Achar: Mr. Deputy-Speaker, Sir, I feel this Bill will not serve the purpose of the Mover has in view. He repeatedly said that the most important consideration he was referring to was the speedier disposal of disputes. In the Bill, I find he not only provides —and I may say that this is almost against the general principles of arbitration law—a first appeal, but a second appeal and appeal even to the Supreme Court (*Interruption*). I am afraid the sections are against the idea of speed disposal.

I may be permitted to submit that the very basic principle of arbitration is that the disputants settle upon a tribunal of their own and they agree to abide by whatever it decides. When that is the case, then, if you provide for arbitration—and a judge of their own—and then subject his judgment not only to one appeal but to an appeal up to the High Court, I doubt very much whether any person would like to arbitrate in such a position

Apart from that, what is the advantage?

Mr. Deputy-Speaker: Shri Raghunath Singh wants to provide for judges who may be paid per case

Shri Achar: Probably it is also to give some employment to lawyers The purpose is just what is better done by the present judiciary He wants the Civil Procedure Code to be applied. I do not know why he has not mentioned the Evidence Act I do not know whether he wants to have it or not because it is not clear from the Bill. Whatever it be, he wants the Civil Procedure Code to be followed by the arbitrator also (*Interruption*). He wants that everything should be done as it is being done by any court. If that is so, why have an arbitrator at all? The courts are there. Of course, Government will look into it and see that there are more Munsifs, Sub-Judges or District Judges or higher courts. So, it looks as if the basic principle of arbitration is ignored.

Formerly, of course, some portion of the arbitration law was in the Civil Procedure Code and some portion in a separate Act But, after 1940, after the whole thing has been consolidated, all that may be done for getting these matters in dispute settled by arbitration has been fully provided in this Act The sections are very clear; and it is only in exceptional cases that an award could be set aside. This is provided, I think, section 30 of the Arbitration Act, if I am not mistaken. Provision is there to set aside the decrees, or rather the awards, given by arbitrators. It reads:

> "An award shall not be set aside except on one or more of the following grounds, viz,
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> that an arbitrator or an umpire has misconducted himself or the proceedings...."

That is, it may be legal misconduct.

> (b) an award has been made after the issue of an order by the court preceding the arbitration or after the arbitration proceedings have become invalid under section 35, and
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> (c) an award has been improperly procured or is otherwise invalid."

As the law now stands, the award cannot be set aside except for these specific grounds The persons select their own judges and are bound by the decision of the arbitrator. The whole basic thing which the amendment provides is that they select their own judges and the judgments must be subjected to all the processes of appeals provided under the ordinary civil law, the first, second and third appeals. If that is the position, I submit that it is not only against the law of arbitration; it is also against having settlement in a speedy manner. So I oppose this Bill.

Shri Easwara Iyer: Mr. Deputy-Speaker, I start with congratulating the hon. Mover of the Bill and his

[Shri Easwara Iyer]

bold attempt for the purpose of amending the Arbitration Act and I submit that I cannot see eye to eye with the proposition put forward by my hon. friend who has just now been opposing the Bill on the gound that the provision for appeals against the decisions of the arbitrators will be very harmful. I am not going into the history of the Arbitration Act. It has been well explained by the Mover. Of course I would say that any reference to arbitration must not be done in an arbitrary manner, so that the provision contained in the Bill that in case an arbitration is submitted before the legal practitioners, the Civil Procedure Code shall apply is by way of abundant caution. Opposition seems to be vehement on this provision. I cannot under that when the proceeding is referred to an arbitrator he can proceed with the arbitration in any manner he thinks. There must be some form or procedure he should adopt. Particularly persons who have been well-versed in legal proceedings in courts as lawyers appearing before the courts should be aware of the procedure that is contained in the Civil Procedure Code and it is only necessary and expedient that they should adopt the Civil Procedure Code. I cannot see why there should be objection to this.

The second objection seems to be regarding the question of providing for appeal against the decision of the arbitrator. Much can be said on both sides, I certainly agree. The question whether it is against the fundamental notion of arbitration that the decision should always be subjected to a test by way of appeal is a matter for the lawyers and legal luminaries. For my own part, I would always say, whatever may be the decision of the arbitrators, whatever may be the qualification erudition or infallibility of the arbitrators chosen by consent of parties, there is every likelihood of an error, likelihood of a feeling with respect to the parties appearing before the arbitrators that there is an error and it is always safe to subject the decision of the arbitrator chosen by the party to a court of correction, that is, a court of appeal. The decision may be tested on its merits by a court of appeal. There is nothing wrong in the procedure.

The whole question is based on this point, as to whether we must submit or we must encourage litigants to submit their case to arbitration. In my short experience as a lawyer, though it may not be as much as that of my learned friend from the other side, I have often found that in trial courts the suits are unnecessarily delayed, maybe, not due to the incapacity or inefficiency of the judicial officers. They are faced with 50 or 60 suits before them. When it comes up he has to take one suit and human nature is such that they take the easiest suits first so that they may be able to dispose of it and add to the number of disposals. Today there is clamour in the whole of India perhaps that there is a lot of delay in litigation. Judicial officers are also human beings and they are hearing this clamour so that the fervour on these people is to see somehow or the other suits are being disposed of. The reaction is seen that way. In Parliament you say there is delay in the disposal. People outside, Ministers, even lawyers, Members of the Opposition all speak that there is plenty of delay in litigation with the result they want to see that somehow or the other a disposal is given. The courts are now-a-days in the danger or in the tendency if I may say so with respect, of becoming courts of discipline rather than courts of justice. So, what do we find? When a party is late by a minute or two, the Judge takes up the case and disposes of it *ex parte;* either he dismisses the suit if the plaintiff is not present or decrees it if the defendent is not present. When an application to restore a suit is filed, on some flimsy ground that he has not given sufficient reason for non-appearance on that day the restoration application is dismissed, because he

wants to add to the number of disposals.

In these circumstances, let us look into the question as to how we can effectively dispose of these pending cases without resort to court by means of the legal luminaries. Arbitration is one such method. Certainly there are a number of defects in this Bill which we need go into one by one but I am certainly in agreement with the main spirit of the Bill. The Bill says that the legal practitioners may also be chosen as arbitrators. Apart from that, the Arbitration Act of 1940 does not put an embargo upon legal practitioners becoming arbitrators. So, even without this Bill legal practitioners can be appointed as arbitrators by consent of parties or by agreement.

The main point is whether their decision has to be the subject matter of appeal or a second or third appeal to the Supreme Court. I will come to it presently. I have come across partition suits. I have come across an instance in my career as a lawyer, when in a partition suit which had been instituted before I have seen the light of the day and which was perhaps been conducted by my father, I have to apear for one side for the legal representative as the decree for final partition has not been passed; it has been pending for more than a quarter of a century. Why is it that such a delay has been happening? It is because that courts cannot concentrate their attention on this single partition suit, with ever so many partition suits. Subsequent to this an enabling partition has been passed. In such cases, if the parties do agree that such a partition could be effected by the arbitration, the lawyers could certainly take them up and expeditiously dispose of them by taking evidence by following the procedure in the Civil Procedure Code. My friend on the other side was saying that there was no scope for taking evidence in the arbitration proceedings. Section 13 of the Arbitration Act gives power to the arbitrator to administer oath to the parties and witnesses appearing before him. All the powers are given to the arbitrator. It is not as if the arbitrator can proceed in any manner he thinks. He must form a certain procedure in such circumstances where the suits involving partnership deeds, looking into the accounts, complicated system of accounts come up. In such cases it could be expeditiously disposed of if it is to be disposed of by one single personality or two personalities who have been concentrating their labour on that case for a short period.

16 hrs.

Certainly, another point which is in favour of this Bill is that there are cases where—of course, I do not want to travel beyond the purview of this Bill—even today the clamour is that some of these judicial officers are incapable or inefficient. I do not want to say anything beyond that. The Law Commission itself has reported that judicial officers are now not appointed on merits. The Law Commission says that regional, communal and other considerations have been made for the purpose of appointment of judicial officers. There is always a feeling in the mind of the party facing trial that the suit will not be correctly dealt with if the particular officer is inefficient or incapable. Under such circumstances both the parties would agree to fix a person whom both would think, apart from his legal erudition or otherwise, as a respectable personality who knows something about the case, and who could decide the case by giving an award without intervention of the court. There may be such cases. It depends upon the question of choice of the personnel. The choice of the personnel may be left to the parties. If the parties are satisfied with respect to the person who decides the case, the decision will be more in conformity with justice, and there will not be this criticism that the Judge has been inefficient or incapable.

Then there is the question of giving appeal. I am only on this question whether we should eschew the appeal

[Shri Easwara Iyer]

provision, the second appeal provision or the appeal to the Supreme Court. It is a matter that this House has to decide. For my part, I would ask, what is wrong in providing for an appeal? Certainly the decision of the arbitrator could be tested on merits by a court of appeal. A question may be asked, will here not be delay in the appeal, in the second appeal or in the appeal to the Supreme Court? We all as lawyers know that the disposal of a civil or criminal appeal or hearing both sides will not be of as much delay as in a case of trial proceedings where evidence is being taken, where witnesses are examined, where records and documents have to be produced and all the complicated procedure gone through. In the case of an appeal both sides appear by lawyer or otherwise and the matter could be argued out and decided. Therefore, the question of delay is not there. There is also this added advantage that the decision of the arbitrator will be tested on its merits by the appellate court. It is not that the appellate court is superior to the arbitrator, but always the fallibility of human judgment is there and it can be tested by a court.

Therefore, it is a case where appeal should be provided. Of course, my hon. friends on the other side might say that this would go against the fundamental notions of arbitration law. My respectful submission before this House would be, why should we be so conservative? What is the fundamental notion of arbitration law? Does the arbitration law say that the decision of the arbitrator shall always be final? It says that it can be set aside on error and other things. The power of the court to remit it back to the arbitrator is there. What is the fundamental notion of arbitration law? Why not enlarge on this fundamental notion? Legal institutions, like political institutions, should also grow. Why should lawyers be conservative? If political philosophy envisages a welfare State, why not we envisage a legal philosophy which is suited for a welfare State based on sociological jurisprudence? If that is so, the scope of the arbitration law should also be enlarged to find place for arbitration by persons who are well versed in practice in courts.

The Bill may be lacking in its correct draftsmanship or the Bill may be wanting in certain other provisions. These are matters that have to be examined by this House. I would have welcomed my hon. friend to move for circulation of the Bill for public opinion. Anyhow, I would say that it is a bold venture and a good inroad into the law of arbitration.

Shri Mulchand Dube (Farrukhabad): Mr. Deputy-Speaker, Sir, my hon. friend does not seem to have noticed that the provisions of the Evidence Act do not apply to proceedings before an arbitrator. If that is so, how will the judgment be appealable. The arbitrators, whether they are lawyers or otherwise, if they are not going to follow the provisions of the Evidence Act and they are not going to record full evidence, how will an appellate court be able to decide the matter? My submission is that this point has been overlooked by my learned friend.

He says that the award should be appealable. Under Section 13 of the Arbitration Act, the arbitrators are not bound to give any reasons for the award that they have given. Section 13 is not touched by my hon. friend. If Section 13 is not being touched, another difficulty arises. He says that the procedure to be followed will be that provided by the Civil Procedure Code. That may be so. Under the Civil Procedure Code, reasons have to be given for judgment of the court. But Section 13 of the Arbitration Act still remains there. If Section 13 remains it is not compulsory for the arbitrator to give reasons for the award. Added to that, as I said, if the provisions of the Evidence Act do not apply, it would be impossible to decide the appeals.

Therefore, my submission is that the amendment that my learned friend has brought forward is not quite in order.

Shri Jaganatha Rao: Mr. Deputy-Speaker, Sir, I am not able to appreciate the principle underlying the Bill. My hon. friend, Shri Raghunath Singh, wants a clear provision which would enable the legal practitioners being appointed as arbitrators. The existing Act does not provide any prohibition. As a matter of fact, in many cases we know that in courts lawyers are being chosen as arbitrators and they decide cases.

Secondly, he wants the procedure to be as provided under the Civil Procedure Code. Then the very purpose of arbitration is lost. If arbitrators follow the same procedure as in the civil courts, where is the point in referring the matter to arbitration? The whole point in referring the matter to arbitration is that the matter in dispute will be decided speedily and to the best satisfaction of both the parties because both parties select as arbitrators persons in whom they have faith and confidence.

Thirdly, he wants a provision for providing appeal against every award. That again goes against the spirit of arbitration. It is not a conservative opinion as my hon. friend, Shri Easwara Iyer, said. But the very object of arbitration is defeated if every award becomes the subject matter of an appeal. The existing Arbitration Act of 1940 provides for cases where the award can be remitted or set aside by the court in certain circumstances. Barring that, if we make the award a judgment of the civil court and provide for first appeal, second appeal and appeal to the Supreme Court, the very principle of arbitration is lost.

Shri Easwara Iyer: What is the principle of arbitration? There is no such principle.

Shri Jaganatha Rao: The object of referring a dispute to arbitration is to have speedy justice. That purpose is defeated by this.

Then, about remuneration of arbitrators also he wants to introduce a provision. There is already a provision in the existing Act—Section 38—whereby it is open to the arbitrators not to submit the award unless the fees are paid. Therefore, I do not see any need for such an amendment.

Lastly, he wants provision for first appeal, second appeal and appeal to Supreme Court against the awards of arbitrators. Here again I do not see any reason for it. I do not think that any need has arisen after the passing of the Arbitration Act in 1940 to have such a provision. As a matter of fact, as stated by my hon. friend, Shri Mulchand Dube, it is open to the arbitrators to record evidence and examine witnesses after administering the oath, but they are not bound to record evidence *in extenso*. In the absence of such evidence it is not possible for the appellate court to come to a different finding. As a matter of fact, if reasons are assigned the award is set aside by the court. They can only give their findings. I know of a case where the late Shri N. N. Sircar, Law Member of the Government of India, gave an award in a very important matter. He gave the reasons also. The award was quite justifiable, but the Calcutta Court set aside that saying that he was not bound to give reasons and having given the reasons the award is vitiated. So, Sir, the Arbitration Act of 1940 is all comprehensive and it meets with the needs of the litigant public. I do not see any reason or any urgent necessity why the amendments which my hon. friend Shri Raghunath Singh seeks to incorporate should be agreed to by the House.

The Minister of Law (Shri A. K. Sen): Mr. Deputy-Speaker, Sir, much that I intended to say has been covered by my esteemed friend Shri Jaganatha Rao. I have frankly not been able to appreciate the necessity of this Bill or the usefulness which it

[Shri A. K. Sen]

seeks to serve. The main provisions are sought to be incorporated in Chapter IV of the Indian Arbitration Act of 1940. Chapter IV deals with references made in a pending suit and I presume that though it is not very clear from a reading of the Bill Chapter IVA is intended to cover only those references which are made in a pending suit.

The first section or rather clause in the proposed Bill under Chapter IVA is the appointment of legal practitioners as arbitrator or arbitrators. Under the present Act the parties may choose legal practitioners if they so desire, and the Arbitration Act provides that if the parties so agree then the arbitration shall be in accordance with that agreement. That is section 22 of the Arbitration Act which says:

> "The arbitrator shall be appointed in such manner as will be agreed upon between the parties".

So, there is no prohibition against parties choosing a lawyer if they so desire, and in that event the court is bound to refer the matter to the lawyers so chosen.

Shri Raghunath Singh: That is for the arbitrator in a suit under section 22. There are three kinds of suits.

Shri A. K. Sen: I presume that Chapter IVA is intended to cover arbitration in pending matters, in suits pending in courts. So far as the Arbitration Act relating to disputes which have not reached the courts is concerned, there is equally no prohibition in choosing lawyers or a lawyer. We are not concerned with that really because the Bill seeks to confine itself only to arbitration references in pending suits.

The next clause is designed to provide for reference to one or more legal practitioners. That also is covered by the present Arbitration Act because if the parties agree to refer it to more than one arbitrator who are legal practitioners they can do so. If instead of one legal practitioner they intend to refer it to two, three or four, they can do so.

Then, thirdly, whenever the court has to appoint a sole arbitrator or arbitrators under this Act, it may appoint one or more legal practitioners as the sole arbitrator or arbitrators, as the case may be, for deciding the dispute. I take it that this is with regard to the appointment under section 8 or section 20 of the Indian Arbitration Act where the parties to an arbitration agreement cannot agree the appointment of arbitrators and they apply to a court for appointing an arbitrator. After the original arbitrator has died or has become incapable of acting when the arbitration agreement is filed the court is approached for appointing an arbitrator or an umpire. In both cases the court has power to appoint a legal practitioner.

I know of many cases in which I had appeared myself in proceedings under either section 8 or section 20 of the Indian Arbitration Act where the court has appointed reputed legal practitioners in whose award the parties had respect regard. I have done it in innumerable cases, I think, and most often when a court is approached under section 8 or section 20 usually, unless the parties themselves are thinking of a common friend or a person who has influence in the community or in the family, the court usually appoints a legal practitioner. But that does not mean that in every case a legal practitioner should be appointed. There are many cases even in pending suits where I remember brothers belonging to a business family were quarrelling so that every day there used to be fresh proceedings in court, and after protracted proceedings, I remember myself and the counsel for the other side, without consulting the client, agreed to nominate the uncle, the maternal uncle, of the brothers to arbitrate. This gent'eman entered into the reference and decided the whole matter in one week, I remember, to the entire satisfaction of the brothers. Though the original

clients were cursing us when we referred the matter to arbitration, without consulting them, after one week they came with sweets to me and thanked me heartily for having referred the proceedings to the maternal uncle. That shows there is necessity for having arbitrators who are not legal practitioners in the sense in which we really accept that term.

The next provision of importance is about the procedure to be followed. Shri Raghunath Singh want the arbitrators to convert themselves into courts to be governed by the Civil Procedure Code. I think that will be completely negativing the very essence of arbitration. Arbitration means the parties voluntarily set up a forum which, unfettered by the rules of procedure of ordinary courts, deals with the matter in accordance with the principles of natural justice and with the desire of brining about substantial justice between the parties and giving an award. The only requirement under the present law is that the arbitrators have to follow the principles of natural justice, which includes various things. That means the arbitration cannot shut out evidence. If the party seeks to adduce evidence, the arbitrator must hear him and allow witnesses to be called. He cannot shut out the evidence. He must hear the parties and then decide.

I was told that the arbitrators can proceed without calling witnesses or things of that sort. I do not think that anyone having experience in arbitration matters can agree to that proposition because if a party desires to call a witness, the Arbitration Act, 1940, gives power to the court under section 43, I think, for issuing processes and for the attendance of witnesses. If the arbitrator refuses to hear witnesses, he will be guilty of misconduct in the sense in which the word misconduct is used. Therefore, I do not think there is any ground whatsoever for apprehending that arbitration proceedings can be conducted arbitrarily without following the principles of natural justice. In fact, it will otherwise be completely upsetting the entire fabric of arbitration if we convert or seek to convert the arbitrators into regular courts of law bound down by the rules of procedure.

Look at the consequences which will emerge if this provision is accepted. There will be applications for documents, inspection, interlocutories, commissions, this that and the other. The whole paraphernalia of the courts of law will be open.

Shri Easwara Iyer: Is it not a case where these procedures are specially prescribed for the proceedings under Chapter IV? It does not generally deal with arbitration.

Shri A. K. Sen: For any arbitration. I have done it myself. Even for arbitration proceedings which are not in relation to pending suits, if I want to call a witness, I just approach an arbitrator and make an application to a court, and the witness is sent for in the sense that he does not come voluntarily. But he is to be compelled to come. I remember in one case I had a witness called from Bihar right up to Calcutta by issuing a process. This is not confined only to cases or arbitration references in relation to proceedings which have already been initiated in courts, or in other words, reference under section 21. This covers all sorts of arbitration and if the whole paraphernalia, particularly under the Civil Procedure Code, is thrown open, the consequence will be that we shall really carry the court into the arbitrator's room. It is done in no country in the world in which arbitration has been accepted as a good form of settling disputes. It is mostly confined as a potent instrument of settling disputes in commercial communities.

For instance, take the hundreds of cases which are decided in Calcutta or Bombay either by the Bengal Chamber of Commerce or by the Bombay Cotton Growers' Association and the various other arbitration forums which had

[Shri A. K. Sen]

been set up under the different chambers of commerce and which are compulsorily incorporated in certain forms of contracts like jute contracts, cotton contracts and so on, where there is compulsory arbitration, making it obligatory for the parties to go to the forums set up. Hundreds of thousands of arbitration cases are decided every year. Imagine those forums being converted into courts. I think it will be completely destroying the whole system which has been set up with care and which has been serving the commercial community very very usefully.

Really that disposes of the main substance of this Bill. Coming to first appeals, second appeals, etc., I concede that if arbitrators are converted into courts of law bound to follow the Civil Procedure Code, it will follow logically that we should have the entire gambut of the appellate procedure, first appeal, second appeal, Supreme Court and so on, on merits. But again it would be destroying the whole concept of arbitration and the whole structure which the Arbitration Act envisages under its provisions. That means, arbitrators will have a right of judgment in every case, give their findings on facts, points of law, etc. In other words, they will have to be trained judges, if the appellate court can really function as an appellate court. Otherwise, there will have to be a remand in order that the appellate court may deal with the matter properly. I personally think that it is anything but arbitration. Everywhere, it has now been well settled that arbitrators have to act quickly according to their own terms and according to their own notions. Take the famous case regarding the arbitrator's power to award damages in commercial contracts. It was argued at one time that arbitrators are not really required to follow the golden rule governing the question of damages, finding out the market rate, the difference between the market rate and the contract rate, etc., in awarding it on their own knowledge, without examining witnesses.

I remember it was the Chief Justice of England who said that commercial arbitrators are appointed for their own special knowledge. If they have to depend on evidence, market rates, contract rates, and so on, it will be the end of commercial arbitration. They are chosen because they have special knowledge and they can deal with it firmly and speedily, without the inconveniences or infirmities from which courts of law would normally suffer.

Shri Easwara Iyer: Commercial arbitrators will not be hit by this Bill; they will not come within the ambit of this Bill.

Shri A. K. Sen: Of course, they will. There is no difference between commercial and other arbitrators. Really arbitration is more important for commercial cases rather than for ordinary family disputes, which hardly go to arbitration, because they always find their way into courts of law.

That, therefore, disposes of the entire argument which seems to lie behind this Bill. It seems that we have been obsessed by our notions as to how courts of law should function and we have failed to appreciate that arbitrators are really different from courts. They are chosen because of their special skill, aptitude and other qualities which appeal to the parties to the dispute, so that they find it is a better forum than a court of law voluntarily. But if you compel those parties to seek in a different form the same type of forum which the law provides for compulsory adjudication in the form of courts, I think that will destroy the entire fabric of arbitration.

For these reasons, I oppose the Bill on behalf of the Government.

Shri Ramanath Singh: As far as arbitration appeal is concerned, we have got the Panchayat Act in U.P.

in which the Evidence Act is not applicable, but there are appeals—first appeal, second appeal, etc.

Shri Raghubir Sahai (Budaun): They are not appealable; they are only revisable.

Shri A. K. Sen: I do not know about this case, but majority of panchayat laws provide for a revision and not an appeal.

Shri Raghubir Sahai: Yes; only revision is provided; there is no appeal.

Mr. Deputy-Speaker: The Law Minister's appeal has had no impression on Mr. Raghunath Singh? Shall I put it to the House or is he withdrawing it?

Shri Raghunath Singh: It should be put to the vote of the House.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Arbitration Act, 1940 be taken into consideration."

The motion was negatived.

16·27 hrs.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL (*Amendment of sections of 342 and 562*).

Shri Raghubir Sahai (Budaun): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Select Committee consisting of Shri Sinhasan Singh, Shri Upendranath Barman, Shri Shree Narayan Das, Pandit Munishwar Dutt Upadhyay, Shri Raghubar Dayal Mishra, Shri Jaganatha Rao, Shri Khushwaqt Rai, Shri Yadav Narayan Jadhav, Shri Resham Lal Jangde, Shri Ganpati Ram, Shri Satyendra Narayan Sinha, Shri K. T. K. Tangamani, Shri Sumat Prasad, Shri Raghunath Singh, Shri Uma Charan Patnaik, Shri Naushir Bharucha, Shri Harish Chandra Mathur, Shri Radeshyam Ramkumar Morarka, Shri Shivram Rango Rane, Shri Vutukuru Rami Reddy and the Mover, with instructions to report by the last day of the second week of the next session."

This Bill was introduced on 7th March, 1958 and on 5th September, 1958, after discussion in the House, a motion was adopted for its circulation. It was provided that opinions may be invited till the 31st December, 1958. Opinions have been received and are now available to the hon. Members of this House. I take this opportunity of expressing my gratitude to the Secretariat of the Lok Sabha for promptly executing this onerous task of securing opinions from almost all the States, tabulating them, publishing them and supplying them to hon. Members with the greatest possible expedition.

I am making this motion because it is provided in the Rules of Procedure that after the opinions have been received the Mover of the Bill should make a motion for its reference to a Select Committee. 181 opinions have been received from 13 States and five Territories. It is only Andhra, opinion from where has not so far been received. I am told that they are in transit. Out of these opinions.....

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): Then why not we wait?

Shri Raghubir Sahai: Because I learn that they have been despatched by the Andhra Government. They might have been received by now or they might be received in the course of a day or two and they can then be made available to us.

Mr. Deputy-Speaker: How did this news reach the hon. Member?

Shri Braj Raj Singh (Firozabad): Was it intuition?