

LOK SABHA

**SELECT COMMITTEE ON THE  
INDIAN RAILWAYS (AMEND-  
MENT) BILL, 1961**

**EVIDENCE**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*August, 1961*

*Price 0.35 nP.*

**WITNESSES EXAMINED**

---

<b>Name of the Association and its spokesmen</b>	<b>Date of hearing</b>	<b>Page</b>
--	----------------------------	-------------

---

**Indian Produce Association**

**10-7-61**

**Spokesmen:**

- 1. Shri V. S. Aggarwal**
- 2. Shri S. N. Murarka**
- 3. Shri R. S. Sharma**

---

SELECT COMMITTEE ON THE INDIAN RAILWAYS  
(AMENDMENT) BILL, 1961

MINUTES OF EVIDENCE GIVEN BEFORE THE SELECT COMMITTEE ON THE  
INDIAN RAILWAYS (AMENDMENT) BILL, 1961.

*Monday, the 10th July, 1961 at 10.00 hrs.*

PRESENT

Dr. Sushila Nayar—*Chairman*,

MEMBERS

2. Shri S. A. Agadi
3. Shri M. Ayyakkannu
4. Shri Pulin Behari Banerji
5. Shri Laxmanrao Shrawanji Bhatkar
6. Shri Ranbir Singh Chaudhuri
7. Shri N. R. Ghosh
8. Shri Yadav Narayan Jadhav
9. Shri Banarsi Prasad Jhunjunwala
10. Shri Liladhar Kotoki
11. Shri Sarjoo Pandey
12. Shri Nanubhai Nichhabhai Patel
13. Shri Ram Garib
14. Shri Vutukuru Rami Reddy
15. Shri Shobha Ram
16. Shri Sinhasan Singh
17. Shri Jagjivan Ram

DRAFTSMAN

Shri K. G. Viswanathan, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri R. B. Lal, *Additional Member, Railway Board.*

Shri M. P. Sathaye, *Joint Director, (Traffic) Railway Board.*

Shri A. N. Kapur, *Deputy Director, Railway Board.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

*Indian Produce Association, Calcutta.*

*Spokesmen:*

Shri V. S. Aggarwal

Shri S. M. Murarka

Shri R. S. Sharma

*(Witnesses were called in and they took their seats)*

**Mr. Chairman:** We are very glad to have you with us, and we thank you for having offered to come and help the Select Committee in making this Bill as good as we possibly can. With your suggestions and your experience, I am sure your evidence will be of great use to the Committee.

Before we start on this, I want to make it clear that your evidence is likely to be made public, and may be published unless you specifically want something to be kept confidential. Even in that case, any Member of Parliament can ask to see the evidence, and it will be allowed. I hope that is all right.

**Shri Aggarwal:** We are thankful to you for giving us this opportunity. All that we say can be published. There is nothing confidential in that.

**Mr. Chairman:** We have circulated your memorandum to the Members, but you can give the highlights, or explain whichever aspects you wish to explain, and then the Members can put you questions.

**Shri Aggarwal:** We are very glad that the railways are taking up the responsibility of common carrier. Up to now it has been our experience that we had to face a lot of difficulties in getting our claims passed, claims which we thought were reasonable. Under the conditions, the bailee is responsible; even otherwise, we found that the claims were very difficult to get through. I do not know if it would be relevant to say how we faced all these difficulties.

**Mr. Chairman:** You can give a few examples, which will impress it on the Members.

**Shri Aggarwal:** One of the recent examples that came to me was the denial of the claim of about Rs. 3,000 on the basis that it was time-barred. My member received short delivery of 21 full bags of mustard seed. He made a claim. The claim was put in time, within six months, but there was a small clerical mistake. Instead of one station, he mentioned another. He was receiving a consignment from Raisinghnagar but his client was from Shriganganagar. All the time Shriganganagar was in his mind. All the other details were correct, but instead of Raisinghnagar he put Shriganganagar. He had put his claim in time. According to the details given, the railways could, in time, have said that the details did not agree, and asked him to furnish with correct details, but they sat on it. He went on writing to them, and even after the period of six months nothing happened. My Secretary went to the officer concerned, and when he took out the file, he found that because the details were not correct, the railway did not give a reply, they just filed the case.

Even if six months had passed, it was definitely something in which the railways could help. Before the expiry of the period, they should have written that the details given were not correct, and asked for correct details. But after six months when it was brought to their notice, it was positively something in which the railways were negligent, or they did not do their duty as they should have done. Still, we appealed to everybody, and nothing came out. Common justice and equity demand that our laws should not be so strict; there should be something to the aggrieved party to do. This sort of things shows the indifference to the consignors.

There are other ways in which they repudiate cases. One of them was in foodgrains and oilseeds. We always use single bags. Nobody in this country or anywhere else uses double bags for oilseeds or foodgrains. So many cases were repudiated on the basis that the bookings station had mentioned, "bagging new, but single". There is no practice or rule which prescribes that there should be anything better than a single new bag.

So, we feel, that the general policy has been that in cases of higher value, the railway administration just sits on it. Sometimes, they do not even repudiate, but if they repudiate, it is on flimsy grounds. When the cases go to court, their inspectors come to you for settlement not before. Before that they will not listen to you, but they come to you after the cases have gone to court,

when unnecessarily my court fees and Government's court expenses are involved.

This fact can also be a very easily verified if you ask the railways to submit a list of the cases which they have contested, and the percentage of their success.

If, by any chance, a case goes to court, it takes four or five years to get it on the list. If the claims are small, the railway administration feels that nobody is going to file a suit for such small amounts, and they are then repudiated under the policy of "try repudiation".

All these things leave in the public or at least in the business community a feelings that the railways somehow or the other want to repudiate the claims as long as they can do it.

We felt that some of the rules are very strict and that the same policy may go on. That is why we have come before you. But, if the new rules are worked not in the old spirit but in a better spirit, then, you will have done a great service to the business community and the Government.

Now, I come to the details. Section 73(c), 'Act of public enemies'. This is a term which is very general and which can be extended to any length. If there is no proper protection in the sheds, thieves can also become public enemies; a railway employee conniving with others may also become a public enemy.

The situation has, of course, improved during the last 2 or 3 years. But our experience has been that 'running train theft' is a weapon which is very often used whenever there is a shortage of full bags in a large number. They say that the theft has taken place in a running train and so the railways are not responsible. We pressed on the Board and then they have come to this that if there is a running train theft plea the administration will give all details as to where the theft took place and how it took place. Thereafter, the number of repudiations on the plea of running train theft has gone down very much. So, we want an assurance that this would not be unnecessarily extended.

Then, under clause (e), we have, 'orders or restrictions imposed by the Central Government or a State Government or any officer or authority subordinate to the Central Government or a State Government:'.

We have no objection to this. But this brings to my mind a case which my Secretary told me. There was a consignment of oil booked from some station in U. P. to Calcutta. By mistake it went to Cuttack. There was a ban on the movement of oil from Cuttack to any other place. The party lived in Calcutta and he had nothing to do with Cuttack. So, the railways detained the wagon and sold the oil and paid the price to the party because they said there was ban on the movement of oil from Cuttack. This can be, sometimes, very harmful to the parties.

If there is misdirection, my plea is that it should be rectified or corrected. I will give you an example. Now, it is fortunate that our food situation has improved recently. About a year or a year and a half back, the price of rice was Rs. 30 in Calcutta and Rs. 16 in Cuttack. If, for example, some consignment had been booked from Bihar or U. P. to Calcutta, the party got it on the basis of Rs. 30 a md. that was prevailing in Calcutta. If by mistake it went to Cuttack and the District Magistrate said that because there was a ban on the movement of rice and so sold it there, the party would get only about 50 per cent of what he expected to get. So, there should be some provision to rectify this.

**Mr. Chairman:** If there is a misdirection of goods your plea is that the restriction should not apply and that it should be brought to the destination to which it was originally booked.

**Shri Aggarwal:** Yes. If we add the words, 'only on reasonable grounds and in public interest', that would cover my point.

**Shri N. R. Ghosh:** Is it misdirection by the party?

**Shri Aggarwal:** No; by the railways.

**Shri N. R. Ghosh:** Then how does this apply at all?

**Shri Aggarwal:** My feeling is that if there is any restriction of the State Government or the District Magistrate, the railways should not take notice of that because it applies only to bookings from that State but not to consignments which came there by mistake from outside.

As the phraseology stands the railway authorities may feel that they are not liable. I want the railway administration to be liable. The railway administration has power to refuse to submit to the State authorities; otherwise, they are liable to us.

**Mr. Chairman:** May I know if there have been several cases of this type or is this an isolated case?

**Shri Aggarwal:** It may be that there have not been several cases. But supposing the consignment is one of oil the total value of which is about Rs. 40,000; the difference, sometimes, may be Rs. 10,000 which, I think, is too much for a small merchant to bear. So, there is no harm if we make such a provision even if the cases are not very many.

**Mr. Chairman:** I think it would be better if questions are asked point by point. About this first point, 'public enemy', has anybody any question to ask?

**Shri Sinhasan Singh:** What do Government mean by 'public enemy'?

**Shri N. R. Ghosh:** If Government says that 'public enemy' does not include common loss, the question does not arise.

**Shri Sinhasan Singh:** According to the witness, the term 'public enemy' is very wide and it may include even a railway employee who connives, and the consignor or consignee will not get the damages. If others play foul the railways may say that they are not responsible and the consignor or consignee is punished for the offence of some people for which the Government is not prepared to take the responsibility. We should make a provision so that such things may not happen. We have got the Security Police and others to guard against such things. In the case of war I can understand it. But if for these things Government is not responsible then people will have no remedy.

I want to know what Government have to say about this; whom they want to treat as 'public enemy'. We must be definite when we make an enactment. We must define what 'public enemy' means. Unfortunately, 'public enemy' has not been so far defined—even under the General Clauses Act. For the first time, we have the expression introduced here. So, we have to define it.

**Shri Viswanathan:** This question was actually considered at the time of drafting the Bill, and it was considered that the words "public enemies" may safely be used. It only means King's enemies. These words occurred in section 82. I shall read the note recorded on the subject, which says:

"A carrier in the United Kingdom was always free from liability for loss or damage caused by an act of the King's enemies. By the 'King's enemies' is meant 'public enemies', with whom the nation is at war and not thieves. There are many kinds of *vis major* other



than compulsion exercised by the King's enemies and for damage caused by any of these, the common carrier is liable though an ordinary bailee is not. It will be observed that the two chief cases in which the law exempts a carrier from so large a liability are both so well known to all the countries when they happen, that no person would be so rash as to attempt to prove that they had happened when they had not, namely, the act of God and the King's enemies."

This is a quotation from Best C. J. in *Riley vs Horne*, an English case. So, the words "public enemies" mean the King's enemies. In the present context, however, the words "King's enemies" were not considered appropriate and accordingly the words "public enemies" have been used.

**Shri N. R. Ghosh:** As the present rule stands, and according to the rulings of our high courts, "public enemies" means only the people who are at war with us. Otherwise, a common thief is not considered to be a public enemy. If you have no objection to that, you can just clarify the definition. This connotation may be made explicit.

**Shri Viswanathan:** These words do not necessarily mean that we are at war with somebody.

**Shri N. R. Ghosh:** If a wording has been borrowed from a foreign country, United Kingdom or any other country, then that same wording is used here also.

**Mr. Chairman:** Let us at this moment confine ourselves to getting clarifications from these gentlemen, and then, amongst ourselves, in the light of what they tell us, we can discuss and decide as to what action is to be taken.

**Shri N. R. Ghosh:** The only point was whether the words "public enemies" are widely interpreted or not. It now appears that these words are open to wide interpretation.

**Shri Sinhasan Singh:** We invited a clarification from the Government side. Before putting questions to the witnesses, we must ourselves be very clear about the position.

**Mr. Chairman:** I never objected to your asking a question from the Secretary or any other Member on this side. What I am saying is that we should get clarifications from the witnesses first and then we can decide about amendments later on.

**Shri Sinhasan Singh:** Very well; let them go on.

**Mr. Chairman:** What I would like to know from you Mr. Aggarwal is this, whether there has been any instance, in your knowledge, to show that these words have been widely used and interpreted and therefore the business community has had to suffer?

**Shri Aggarwal:** No. My apprehension was based on this only, namely, there may be misuse of the words "Public enemy" just like "running theft" and that plea may be frequently put forward. I would be perfectly satisfied even if the words "public enemies" mean people who are at war with the country.

**Mr. Chairman:** So far as you are concerned, you are satisfied with the definition given in the Bill; that is, "public enemies" are not ordinary common thieves or robbers but those people who are at war with the country.

**Shri Aggarwal:** Yes.

**Mr. Chairman:** We may now proceed to the next point.

**Shri Aggarwal:** I now take up section 73(f) which reads as follows:

"act or omission or negligence of the consignor or the consignee or the agent or servant of the consignor or the consignee;"

This is perfectly all right as it goes, but what I wanted to add was that if there were two cases of negligence, one on the part of my man and the other on the part of the railway staff, then, under this provision, in a case of combined negligence, the railway staff should not go free.

**Mr. Chairman:** Is that likely to happen? What happens if both are negligent?

**Shri Viswanathan:** To start with, if there is some omission on the part of the consignor and the consignee, this clause would be attracted.

**Mr. Chairman:** The proviso makes it very clear. It says:

"Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or

v

non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods."

**Shri Aggarwal:** But my point is that since this negligence on the part of the consignee or the consignor is likely to happen, it would be either at the booking point or at the destination. What is said here is, "reasonable foresight and care in the carriage of the animals" etc. "Carriage" means carriage during the running of the train.

**Shri Viswanathan:** If the "reasonable foresight and care" are proved, the railway is not liable.

**Mr. Chairman:** The railway will not be held responsible in that case. But if on further evidence and investigation, it is proved that the railway did not exercise adequate care or foresight then it will be held liable.

**Shri N. R. Ghosh:** There is also a law of contributory negligence for which no enactment is necessary.

**Mr. Chairman:** The proviso is there.

**Shri Aggarwal:** Section 73(h) mentions latent defects. Sub-clause (g) has almost covered everything. It says:

"natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;"

After having mentioned the words 'inherent defect, quality or vice of the goods', I do not know what the framers have in mind when they say 'latent defect'.

**Mr. Chairman:** I suppose 'latent defect' is something that is not obvious on the surface.

**Shri N. R. Ghosh:** It is not patent, as it is said in law. A latent defect is different from a patent defect.

**Shri Sharma:** A defect which cannot be known with ordinary prudence is a latent defect.

**Shri Viswanathan:** It means that it is a defect which is not obvious on the face of it.

**Shri Sharma:** If the term is so wide, then the officers will put a very strict interpretation, and on that basis, they can repudiate

many claims saying that there was some latent defect in the packing, because there will be no means of verifying it, and it will be a matter of opinion only.

**Shri N. R. Ghosh:** It is a matter of expert opinion. It has to be proved in law.

**Shri Sharma:** The use of the words 'latent defect' makes it so wide that it gives the officers very wide scope for repudiating all claims.

**Shri N. R. Ghosh:** But this is the law all over the world. Otherwise, the railways become absolutely helpless.

**Mr. Chairman:** In the first instance, the railways do not open a package and see whether everything is all right inside it, but later on, when investigation takes place, they may open it and they may have a careful examination made, and then they may discover that there was some defect which was a latent defect, although on the surface everything might have been judged to be all right inside the package. In that case, how can the railways be held responsible? Latent defect is something which can be found out only after investigation.

**Shri Aggarwal:** In that case, I would say, as suggested, that it is the law everywhere—I have seen many laws myself—that this would refer only to latent defect not discoverable by common prudence.

**Shri N. R. Ghosh:** That is the meaning. The word 'latent' means that by itself.

**Mr. Chairman:** The fear of the witness is that the term 'latent' may be too wide. The committee will take note of that while deliberating upon the clauses. Now, let us proceed to the next clause.

**Shri N. R. Ghosh:** 'Latent' is the orthodox expression of legislation everywhere.

**Shri Aggarwal:** Now, I come to new section 76F (b) which reads thus:

"where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit."

**Then, we find:**

“...the railway administration shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.”.

My point is that all the time the consignment is in the hands of the railways, and it will be very difficult for the consignor to prove that there was any misconduct or negligence. Suppose I have handed over a sound consignment, and it arrives in a bad condition. I do not know how it has been dealt with or how it has deteriorated or suffered. It should be for the railways to prove that their staff were not negligent and so on.

**Shri Viswanathan:** That is why the railways have been put under an obligation to explain how the consignment was dealt with in the course of its transit. That is what has been provided for in the later part of new section 76F, which reads thus:

“the railway administration shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.”.

**Shri Aggarwal:** My point is this. The railways write to us about how it was dealt with and so on. But I want that they should prove it to the court, if I go to a court, that their staff were not negligent.

**Mr. Chairman:** This is not a new provision, but it is already there in the law. Have you had any instances where you have had trouble because of this provision? Do you know of any cases in which people have been put to difficulties because of this provision?

**Shri Aggarwal:** At one station, we have had so many cases of shortages and pilferages for some years; sometimes, these shortages etc. are very heavy, and we have not been able to get any relief. In fact, as is provided here, there was a provision that the railway officials should see to it that as soon as it was discovered that the consignment was in a bad condition, there should be a note by the

person who received it at the booking end, and he should call for details as to what had happened, right from the place of booking. But that did not help us very much.

**Mr. Chairman:** I suppose what it means is this. Suppose you have got a wooden case with nails and so on, and it is not possible to open it just by pushing the covering on one side. One has to hammer and remove the nails before one starts pilfering. When you find that the things inside such a package have been pilfered, the railways will have to say that the consignment was booked on such and such a date, it lay in such and such a place for so many hours in the custody of so-and-so and so on, so that it can be seen whether it was lying in a place where somebody could have used a hammer etc. and opened the case and pilfered the things, and then put the case again in its original position. I think that is what they mean when they say that the railways will have to disclose in detail in whose possession or control the package was and so on.

It is provided here that the railways will have to disclose to the consignor how the package was dealt with, in whose possession or control it was and so on. If negligence or misconduct on the part of the railway administration or any of its servants cannot be fairly inferred from such disclosure, then how can the railways be held responsible? If it cannot be obviously inferred, then the burden of proving such negligence or misconduct shall lie on the consignor. If that is not done, then supposing at the time of booking itself, the package contains, let us say, instead of mangoes, stones and sand etc., then the railways would be held responsible. How can the railways be held responsible in that case?

**Shri N. R. Ghosh:** This kind of thing very often happens.

**Mr. Chairman:** While we have to protect the interests of the business community, we have also to remember that the business community's hands are not always clean, and they may also play tricks. We must not make the railways responsible for the practices indulged in by some unscrupulous people.

**Shri Aggarwal:** I was thinking of my own trade, and my own commodity, namely foodgrains and oilseeds. I was not thinking of mangoes.

**Mr. Chairman:** I gave it only by way of illustration. Instead of oilseeds, something else may be there in the package.

**Shri Jagjivan Ram:** This provision applies to cases where goods are carried at owner's risk rate; so, owner's risk will arise in those cases.

**Mr. Chairman:** While I agree that the witness can raise some doubts on the basis of a reasonable fear that some clauses of the Bill may be misinterpreted or interpreted in a way that may cause difficulty to the business community, I must, however, point out, that many of these clauses are not new; so, he may only ask for amendments in the light of experience gained, in cases where he has had some difficulty with some of these clauses.

**Shri Aggarwal:** I shall give you a specific example. I did not like to mention stations. But we diverted our oilseeds traffic from Howrah to Chitapur for Calcutta. In the beginning, for several years, we had lots of thefts. What would happen? Somebody would take out my consignment and pass it on to somebody else because his consignment was short. That was happening at the station itself. He may be giving details which are incorrect as to where it happened, how it happened, etc.

**Mr. Chairman:** Do you mean to say that packages were opened and the contents were taken out or some packages as a whole were removed.

**Shri Aggarwal:** Some packages were opened and things were taken out. If a whole package was removed, then the railway would have to pay the claim for the whole package. But if there is some sort of packing deficiency, bagging being not new or strong or bagging being patched, etc.....

**Mr. Chairman:** Are we thinking of such covering? "Covering or protection which is not readily removable by hand"—I think it is more like nailed packages which are intended here and not the kind of thing you are mentioning.

**Shri Jagjivan Ram:** As I pointed out, goods like foodgrains and oilseeds are not carried at owner's risk.

**Shri Aggarwal:** In many cases, we may not get a railway risk R.R.

**श्री सिंहासन सिंह :** सभापति महोदय, मैं आपकी आत्ता से एक प्रश्न पूछना चाहता हूँ। इनकी तरफ से कहा जा रहा है कि इन की दिक्कतें बहुत ज्यादा हैं और इनकी डिफिकल्टीज बहुत बढ़ जाएंगी। रेलवे में एक क्लेज संस्थान है और उसके पास इस तरह के बहुत से क्लेज आते हैं जहा पर ओपन डिलिवरी सिस्टम में माल कुछ बुक किया जाता है और ओपन डिलिवरी कुछ और ही डिमांड की जाती है और इसका नतीजा यह होता है कि ओपन डिलिवरी में रेलवे को हर हालत में क्लेम पे करना

पड़ता है। मुझे भी रेलवे का थोड़ा सा अनुभव है। हजारों तरह का माल रेलवे से आता जाता है और वे लोग उसको देख भी नहीं सकते हैं और उनको कनसाइरी के ईमान पर ही भरोसा करके मुहर लगा देनी पड़ती है। इस तरह के जो केस होते हैं, जो फाड होते हैं, इनको कैसे चेक किया जाए, क्या इसका भी कोई उपाय आप बता सकते हैं? इस प्रावित्रो में रेलवे अपने ऊपर यह भार ले रही है कि वह साबित करे कि उसने सही काम किया है। मैं जानना चाहता हूँ कि क्या आप कोई तरीका बता सकते हैं जिससे कि इस तरह फाइज को रोका जा सके?

**Shri Aggarwal:** As far as frauds and other things are concerned, I can only try to help, but there can never be a fool-proof check I can suggest. Such things are very uncommon.

**Shri N. R. Ghosh:** They are not uncommon. There are many such cases in practical experience.

**Mr. Chairman:** That is why it is necessary to have some protection of this kind, so that the railway administration can also be guarded against frauds. We are trying to guard against misconduct, negligence, etc. on the part of the railway administration. That is the object. Let us proceed. As the hon. Minister pointed out, it is at owner's risk.

**Shri Aggarwal:** My next point is about section 77C(2). It throws the onus of the whole thing on the person who books. If there is any deficiency, he has got to point it out.

**Shri N. R. Ghosh:** The onus is on the railway and not on the consignor.

**Mr. Chairman:** The railway must prove that at the time it was delivered to them, it was defectively packed or liable to leakage, etc. and secondly that this defect was not brought to their notice. If it was brought to their notice, they will immediately say, "We will not take it".

**Shri Jagjivan Ram:** Or, we will take extra care about it.

**Mr. Chairman:** So, the defect was there when you packed your goods and you did not point out that defect to the authorities, so that they could not take extra precaution nor ask you to improve the packing. The onus of proving it is entirely on the railways.

**Shri Aggarwal:** But the whole responsibility is thrown on the consignor and the station master is allowed to sit idle and just do nothing. He should be vigilant. After all, he is accepting a valuable consignment. So, it is his duty to be very vigilant in such matters.



**Mr. Chairman:** Do you mean to say that the station master should examine each and every package that is received very carefully and see whether the packing is defective? How is it possible for the station master to check each and every parcel?

**Shri Jagjivan Ram:** In some cases, nobody can say whether the packing is defective unless the packing is opened. Unless the station master opens each consignment he will not be in a position to know whether the packing is defective or not.

**Shri N. R. Ghosh:** A few minutes ago there was a reference to single packing and double packing. As a matter of fact, in many cases, in the railway receipt it is noted that the consignment is in single packing when it should have been in double packing. If that is pointed out and if, in spite of that, they refuse to have double packing, they must reap the consequences.

**Shri Aggarwal:** As far as single and double packing are concerned, I can only say that they are never done throughout the world—not only in India but throughout the world. Wheat, gram and commodities of that nature are not packed in double bags. For example, Government is a big dealer in foodgrains. But it is not doing it. Even in the case of shipping, where the consignment receives harsh treatment, the packing is single in foreign countries.

**Mr. Chairman:** So, you are asking for relaxation of the conditions by the railways; that is to say, instead of double packing, single packing should be allowed.

**Shri Aggarwal:** In fact, the rules do not insist on double packing. It is the over-zealous station master who does it. If you go through the rules, they do not provide for compulsory double packing.

**Shri Sinhasan Singh:** Suppose the railways say that for parcels the plank should be one inch thick. He cannot be sure whether the plank of a particular parcel is actually one inch thick unless he opens the parcel. So, unless you certify that you have followed their specifications fully, the railways have no alternative except to do this.

**Shri Aggarwal:** That contingency will not arise because under the new scheme there is a standard packing. So, as far as packing is concerned, we will have to conform to that specification.

**Mr. Chairman:** Clause 77C(2)(b) reads:

“that such defective condition or defective or improper packing was not brought to the notice of the railway administration or of any of its servants at the time of delivery of the

goods to the railway administration for carriage by railway:

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved."

Unless the railway administration can prove these two things they shall be responsible for the packages.

**Shri Aggarwal:** I did not quite catch the point of the hon. Minister. I was referring to the packing and not to the contents.

**Mr. Chairman:** This clause says that the railway administration shall not be responsible for the damage or deterioration of goods if they can prove that at the time it was given it was defectively packed and, secondly, nobody had pointed out to them that they were not properly packed and so they had to take extra care. If the railway administration can provide these two things, then they are not responsible; otherwise they are.

**Shri Murarka:** What the hon. Member has just now referred to about the thickness of the plank, whether it should be one inch or more, that relates to the specification of the packing which is different from packing itself. One can easily check up whether the packing is defective or not. If the packing is defective, then it should not be accepted. The other point relates to the specification of the container and not to packing.

**Shri Sharma:** We have to see how the claims officers interpret the rules. There was some reference now to single or double packing for grains. The rules provide that single packing need be made, but it should be good and not torn. Even then, the station masters just look at it and put a remark in the railway receipt that the packing is defective and double packing should have been there and on the basis of that remark the claims officers will decide the dispute. They put a harsh interpretation on the rules.

**Mr. Chairman:** We cannot provide legislation to guard against misuse of legislation. Any individual who misuses it should be brought to the notice of the authorities.

**Shri N. R. Ghosh:** The courts are there to enforce them.

**Shri Yadav Narayan Jadhav:** Under clause 77C(2)(a) the onus of proof is on the railway administration. But do they make a note at the time of accepting the parcel that the packing is defective?

**Shri R. B. Lal:** For example for piecegoods there is a special packing condition that each piece will be wrapped in alkathene of a certain thickness by so and so. If on opening the package at the destination we find this particular covering is not there, then this clause is applied.

**Shri Yadav Narayan Jadhav:** Since the onus of proof is on the administration, it has to prove that the package was in a defective condition when it was accepted. How could they prove it unless they have already made a note to that effect when they received the parcel?

**Shri Jagjivan Ram:** There are certain packages by the outward appearance of which you cannot say whether its packing is defective or not. A case of piecegoods should first be wrapped in a particular way and then the outer packing shall have to be provided. Now what the station master will see will be the outer packing. He will not know whether the inner lining has been provided or not.

**Shri Yadav Narayan Jadhav:** This will be a case of favouritism. That is what I want to drive at.

**Shri Jagjivan Ram:** Whatever it may be we have to face the facts.

**Mr. Chairman:** How will you know that the packing was defective at the time the package was received?

**Shri Jagjivan Ram:** When it is found at the destination that the goods in the package have been damaged, the question of open delivery will arise. There when the package is opened the station master finds that the inner packing was not according to the specifications laid down by the Railways. Then he says that it is defective packing.

**Mr. Chairman:** Suppose there was leakage which may be due to the fact that something was broken. Now, a little packing has been put in to stop that leakage. How is the Railway going to prove that this defect in packing was there when the goods were received rather than that somebody played tricks with it, that there was some hole made in it and later on some little packing was put in it?

**Shri Jagjivan Ram:** If it is proved that due to the negligence of the Railways somebody pilfered the goods on the way, the Railways will be responsible and we will have to pay compensation for that.

**Shri Jhunjhunwala:** Suppose the goods are defective and the packing is all right. How are the Railways going to prove that the goods were defective at the time of packing?

**Shri Aggarwal:** That, I think, can be proved if the station master is vigilant enough.

**Shri Jhunjhunwala:** How is the station master to know that the goods were defective at the time of packing unless the whole thing is opened up?

**Shri Jagjivan Ram:** What you are pointing out is a case of fraud committed by the party and we are suffering on account of that. We will have to pay the compensation.

**Shri Aggarwal:** If you will permit me, I shall answer the question raised by the hon. Member. The station master is expected to mark the bags or parcels with numbers and all that. In the case of a whole wagon consignment it is received at the other end with all those markings on the bags. The R/R also bears the marks and he can say that the marks on the R/R are there as they were put at the time of loading. Unless somebody says that the station master took the stuff out and filled it again it is proved that the consignment was as it was tendered. So, there is a way of proving that sort of a thing.

**Mr. Chairman:** Your contention is that if the specifications, which are referred to with regard to packing etc., are not observed the Railways will not be responsible.

**Shri Yadav Narayan Jadhav:** Why should the Railways accept it?

**Mr. Chairman:** They should not accept such packages, but some times they may not notice these things and the owner does not point it out to them. So they accept it. But they cannot be held responsible for that if they prove that the packing was defective at the very beginning. So, your contention is that these special orders, namely, that the packing should be of a particular type, are not all right.

**Shri Aggarwal:** My point is that this is giving a clean chit to the station master and is putting a premium on his negligence. I have some cases in mind where the packing can be defective and the station master can exercise some care. For example, in our commercial committees we have decided that a bag of foodgrains should bear so many stiches. I think it is 12 or 16 stiches. Now, sometimes there may be only seven stiches. The station master can very well see or feel that there are short stiches. Then, you provide that the bags should not bear patches. If there are patches on the bags, the station master can see them. In such cases you will repudiate it.

You will say that the consignor did it knowingly and therefore let him suffer. We are having a lot of business of that sort, namely, of cent per cent payment against R/R. In this case the party himself may be careless or may want to save a little money, but the station master is also expected to exercise a little care.

**Mr. Chairman:** It is asking a little bit too much. The party whose goods are consigned is careless, does not stitch the package properly and does not use a proper type of packing; but you expect the station master to check it and tell you that the stitching is defective or that the bags bear patches. Do you not think that the businessman who is buying all this should himself have a man to see that the bags are properly stitched and are sent properly?

**Shri Sharma:** The Rules will provide the specifications for the bags and packages. These specifications are very minute and detailed. Now, you expect the station master to check all that. When you expect the station master to check the thickness of the thread or the stitches on the package, he is supposed also to check up the general condition of the package.

**Shri Viswanathan:** Suppose, the goods are defectively packed and the station master is not able to find that out. In the course of transit if the goods are lost, the Railways are responsible.

**Mr. Chairman:** He could have found it out and after finding it out, instead of pointing it out to you or rejecting it, he accepted it and there was a loss. Then afterwards he says, "I am not responsible for the loss because I noticed at the very beginning that the packing was defective."

**Shri Aggarwal:** To me it looks like a case of the accused having to prove that he is not guilty.

**Mr. Chairman:** All that it means is that you left your goods there and they were received. You have just relied on a third person to send those sacks which have not been stitched properly. In other words, you expect the Railways to take the responsibility of verifying that the stitches were properly put and of bringing it to your notice if there is a defect. I think it is expecting a little bit too much.

**Shri N. R. Ghosh:** It is a commercial transaction in which both sides earn some money. There should be no analogy of the criminal side given here.

**Mr. Chairman:** Anyway, you object to the fact that the Railways disclaim the responsibility even though they can prove that the packing was defective at the very beginning.

**Shri Aggarwal:** My point is that they should point out that the packing is defective and it will be accepted at owner's risk so that no trouble arises at the destination. The Station Master can exercise his discretion.

**Mr. Chairman:** Any way, we have understood your point and the Committee will consider it. Let us now proceed to the next point. New Section 78.

**Shri Aggarwal:** I want to say something about Section 78(c) (i):

“(i) improper loading or unloading by the consignor or the consignee or by an agent of the consignor or the consignee,”

I want to understand what is implied behind this.

**Shri R. B. Lal:** For example, there is heavy machinery. The loading is required to be done by the sender. Now, if it drops down in the course of loading or unloading and some damage is caused to it, the Railway administration will not be responsible for this.

**Shri Aggarwal:** Then I come to sub-clause (d):

“for any indirect or consequential damages or for loss of particular market.”

Sometimes what happens is that the consignments arrive very late and there is a definite proof that there has been negligence on the part of the Railways. I have a case in mind where the wagon arrived at the marshalling yard outside Howrah and it was lying there for full one month. There was no defect on the seals or anything else. As a result of that, the party suffered loss because of a fall in market. The wagon arrived in about 47 days, whereas usually it should have arrived in 7 to 10 days. If there was anything else which the Railways could not help, I would not mind it. But the wagon was lying there for full one month and the party suffered the loss. That claim has been rejected on the plea that the fall in market will not be accepted by the Railways. I had a talk with Shri R. B. Lal and he said there was no such thing. If that assurance is given to me here, I would accept it. In actual practice, the claims on account of fall in market are being rejected. If it is a reasonable delay due to some circumstances which the Railways cannot help, then it is all right. But,

if it is due to the gross negligence on the part of the staff, then the claim should be paid.

**Shri N. R. Ghosh:** The plea of fall in market can never be accepted. But if there is unnecessary delay, you can just put forward the claim on other grounds, not on the ground of fall in market.

**Shri R. B. Lal:** If there is negligence on the part of the Railways and there is the delay and as a result of the delay there is a fall in market, the Railways generally pay the damages. But this is loss of a particular market. For example, the consignee might have ordered some goods for a particular festival, say, Dewali and the goods are delayed by two days after Dewali and that particular market has been lost. The Railways will not be responsible for the loss of that particular market. If the goods have been delayed for a long time and there has been negligence on the part of the Railways, then the Railways are responsible for a fall in market.

**Shri Sharma:** If that is so, then the expression 'for loss of particular market' should be more amplified to make the meaning clear. After all, it will be interpreted by the officers.

**Shri R. B. Lal:** It is very well understood. It is quite clear. This is the expression used in all law books.

**Shri Sharma:** You may say: for loss of particular market for a particular occasion.

**Shri Sinhasan Singh:** Suppose the consignee sends for some goods for the Holi festival and the goods reach him after the Holi festival is over. Now, because the goods arrive after the Holi festival, the prices come down and there is a loss. The party should not be penalised. There should be some such provision made. The Railways should be penalised for the delay. There should be quick delivery.

**Shri R. B. Lal:** For example, some merchant has to sell something in a market held every Wednesday. But there is a delay and the goods arrive on the morning of Thursday. Then, that particular market has been lost. The Railways will not be responsible for that.

**Shri Sharma:** You may at least put it like this: . . . of particular market on a specific or a particular occasion.

**Shri R. B. Lal:** According to the British Act, it is clearly understood by everyone.

**Shri Aggarwal:** I have one case in my mind. I do not know if you can provide any remedy for it. For example, I have contracted to sell something to Lever Brothers till 30th July. Now, the wagon arrives, say, from Andhra and from Kharagpur, without my knowledge, it is diverted to some other siding. It is lying there. Because of that my contract with Lever Brothers is cancelled. In this case of which I am talking it is not negligence only, but there was even connivance. I want to know whether the rules provide for anything in this behalf.

**Shri R. B. Lal:** We do not know what particular contract you have got or in what manner it will be affected by a few days delay. If the goods have been damaged or the markets have fallen because of negligence on the part of the Railway, then of course your claims can be entertained. Suppose a girder required for the construction of a factory is sent by rail and it is delayed. You may say that the labour was idle, but for that we cannot accept your claim. But if the girder is lost or damaged and the railway was negligent, then of course your claim is justified, but not for labour sitting idle.

**Shri Aggarwal:** The word "consequential" is too far-fetched.

**Shri Lal:** This is the practice and as a matter of fact this is copied from the British Act.

**Mr. Chairman:** Anything else?

**Shri Sharma:** Though we have said something on section 77, we want to add something to what we have said. It should be six months from the date of delivery of consignment, not from the date of booking. There may be cases where a consignment reaches very late. Why should the consignor suffer for it? Therefore we suggest that it should be six months from the date of delivery of the consignment unless it is a case of non-delivery in which case it will be from the date of booking.

Then I want to say that as human beings errors cannot be avoided when giving particulars at the time of preferring claims. When there is a clerical mistake it should not be pleaded by the Railway that it cannot be amended after six months.

**Mr. Chairman:** The most important clause according to your memorandum is clause 78(d) because it has taken away most of the space. Have you got any grievance in this regard?

**Shri Sharma:** In view of the assurance given by Shri Lal there is no grievance. But based on our experiences we can say that we hardly get any compensation in such circumstances.



**Shri N. R. Ghosh:** Our experience is that you get more than what you deserve . . .

**Mr. Chairman:** If one gets 500 times extra or if one hardly gets anything—both are not desirable. As far as it is possible we should try to amend this Bill to make it reasonable, and remove grievances on both sides.

You must have seen on page 4 of the memorandum a draft of sub-clause (d) of clause 78, suggested by them. It reads:

“(d) for consequential damage arising out of causes having remote and indirect connection with rail transport; but not the actual loss arising out of fall in market value”.

This has been explained to you. What is meant is a particular market *Sukravari market* or *Sanivari market*. If that is all right, then I suppose we can proceed to the next point.

**Shri Murarka:** Our submission is that the expression ‘particular market’ like Holi or Diwali may be added there for clarification. Otherwise all claims will be disputed.

**Shri Sharma:** In the case which the President was explaining, the claim was passed for payment on a 50 per cent basis, by the junior officer. When it went to the senior officer he said: “This is fall in market. I won’t pay” . . .

**Shri Aggarwal:** It is only 10 days back that it has been rejected.

**Mr. Chairman:** Mistake in interpretation will have to be more or less rectified in the light of experiences by bringing out cases of this type. You have been given an assurance in categorical terms in regard to this point. I suggest that the framers might look into this and the Committee will also look into this and see whether any change is necessary in the wording.

Your last point seems to be on section 77 of the principal Act.

**Shri Sinhasan Singh:** That is not within the purview of this Committee because there is no amendment to that section as such.

**Shri N. R. Ghosh:** It is not in the Bill.

**Mr. Chairman:** Still if there is any important point, we can point it out.

**Shri Liladhar Kotoki:** The whole section 77 has been put in the new Bill in the form of clause 78B which deals with notification of claims to refunds of overcharges and to compensation for losses.

**Mr. Chairman:** You want to make the period indefinite; you do not want to keep six months?

**Shri Aggarwal:** For example, I may prefer a claim and because of a minor clerical mistake in it, it may be rejected. We feel that there should be some machinery for condoning that clerical mistake. Very often I may not be aware at all of the existence of the mistake. If it is pointed out to me within a short period I can correct it. But if the administration sits on it, or they do not give any reply, there is no chance of my correcting it.

**Mr. Chairman:** It would always be within the competence of the authorities to look into genuine cases.

**Shri N. R. Ghosh:** There is some substance in what they say. Very often what happens is that the authorities sit on cases, and by the time a mistake is brought to notice of the person concerned, the period of limitation comes in and it becomes very difficult to get remedy in a court of law.

**Mr. Chairman:** We shall bear in mind what you have pointed out and see what could be done to safeguard the interest of genuine complaints.

**Shri Sharma:** Moreover, the period of six months should be counted from the date of delivery of the consignment and not from the date of booking of the consignment.

**Shri N. R. Ghosh:** It may not be always possible.

**Mr. Chairman:** I thank you for your kind cooperation. I hope that the Bill as it emerges will give satisfaction to you as well as to others to as large an extent as possible.

*(The witnesses then withdrew)*

The Committee then adjourned

---

---

**PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF  
BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED AT THE PARLIA-  
MENTARY WING OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.**

---

---