

LOK SABHA

**JOINT COMMITTEE
ON
THE RAILWAYS BILL, 1986**

EVIDENCE



**LOK SABHA SECRETARIAT
NEW DELHI**

January, 1989/Pousa 1910 (Saka)

Price : Rs. 26.00

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LOK SABHA SECRETARIAT

CORRIGENDA

to the record of evidence tendered before
the Joint Committee on the Railways
Bill, 1986

- Page 1, line 15, for 'Shri K. M. PATEL Read
'Shri H. M. PATEL'.
- Page 3 Col. 1 :
line 15 for 'or' read 'for'
line 6 from bottom for 'have' read 'has'
- Page 6, Col. 1 line 3 for 's' read 'is'
- Page 7, Col. 2:
line 41, for 'no' read 'note'.
line 45 for 'no' read 'note'.
- Page 13, Col. 2, line 8 from bottom for 'soght'
read 'sought'
- Page 22, Col. 1, line 18 for 'weighbroghe'
read 'weighbridge'
- Page 24, Col. 1, line 18 for 'Shri P. N. SUKAL'
read 'Shri P. N. SUKUL'.
- Page 25, Col. 1, line 37 for 'dueress' read
'duress'.
- Page 29, Col. 2, line 8 delete 'to'.
- Page 30, Col. 2, line 9 from bottom for 'shoul'
read 'should'.
- Page 34, Col. 2, line 4 for 'clas' read 'class'.
- Page 40, Col. 1, line 40 for 'gve' read 'give'.
- Page 41, Col. 2, line 25 for 'D. K. Kanthuria'
read 'D. K. Kantharia'.
- Page 43, Col. 2, line 20 for 'ae' read 'are'
- Page 44, Col. 2, line 29 for 'progmatic' read
'pragmatic'
- Page 45, Col. 1, line 14 for 'or' read 'for'
- Page 46, Col. 1, line 24 for 'surate with the
offences and the pres' read 'dingly'.
We ~~are~~ not going to pro'

P. T. O.

- Page 48, line 21 for 'Mahathwada' read 'Marathwada'.
- Page 53, Col. 2, line 4 from bottom for 'ern' read 'cer'.
- Page 56, Col. 1, line 15, for 'ths' read 'This'
- Page 63, Col. 2:
- (i) line 7 for 'sugested' read 'suggested'.
 - (ii) line 42 for 'judiary' read 'judiciary'.
- page 71, Col. 2 :
- (i) line 6-7 delete 'regarding Clause 167 (4),
instead of Rs. 100 it should be Rs. 500'.
 - (ii) line 11 for 'find' read 'fine'.
 - (iii) line 20 for 'find' read 'fine'.
- Page 80, Col. 2, line 11 for 'conjection' read 'congestion'.
- Page 81, Col. 2, line 16 for 'conjection' read 'congestion'.
- Page 83, Col. 2, line 6 for 'negligency' read 'negligently'
- Page 86, line 13 for 'Shri ahendra Singh' read
'Shri Mahendra Singh'.
- Page 88 Col. 1, line 21 for 'wil' read 'will'.
- Page 94, Col. 1, line 4 for 'be' read 'the'.
- Page 102, Col. 2, line 2 for 'enquire' read enquiry'.
- Page 103, Col. 1 :
- (i) line 6 for 'means' read 'mean'
 - (ii) line 3 from bottom, for 'breake' read 'brake'.
- Page 103, Col. 2, line 3 from bottom for 'break'
read 'brake'.
- Page 111, Col. 2, line 25 for 'realises' read 'realise'.
- Page 112, Col. 1, line 7 for 'convenienc' read
'convenience'.
- Page 114, Col. 2, line 5 for 'plce' read 'place'.
- Page 120, Col. 2, line 4, from bottom delete 'memo'.

JOINT COMMITTEE ON THE RAILWAYS BILL, 1966

COMPOSITION OF THE COMMITTEE

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Ataur Rahman
- *4. Shri Jagdish Awasthi
5. Shri Banwari Lal Bairwa
6. Dr. Krupasindhu Bhoi
7. Shri Narayan Choubey
8. Shri V. Kishore Chandra S. Deo
9. Shri Tarun Kanti Ghosh
10. Shri Janak Raj Gupta
11. Shri Harpal Singh
12. Shri Haren Bhumij
13. Shri Jujhar Singh
14. Shri Gurudas Kamat
15. Shri P. Kolandaivelu
16. Shri P. R. Kumaramangalam
17. Prof. P. J. Kurien
18. Shri Mahendra Singh
19. Shri Ram Pyare Panika
20. Shri H. M. Patel
21. Shri Aziz Qureshi
22. Shri K. H. Ranganath
23. Shri Sri Hari Rao
24. Shri D. N. Reddy
25. Gen. R. S. Sparrow
26. Shri K. D. Sultanpuri
27. Shri Tariq Anwar
28. Dr. C. P. Thakur
29. Shri Bal Ram Singh Yadav
30. Shri Madhavrao Scindia

*Appointed *w.e.f.* 2-3-1968 *vice* Shri Jaidoop Singh died.

(ii)

Rajya Sabha

31. Shri Pawan Kumar Bansal
- £32. Shri Murlidhar Chandrakant Bhandare
33. Shri Kamalendu Bhattacharjee
- @34. Chowdhary Ram Sewak
35. Dr. Bapu Kaldate
36. Shri Satya Prakash Malaviya
37. Shri Mirza Irshadbaig
38. Shri Suresh Pachouri
39. Shri V. Ramanathan
40. Shri Deba Prasad Ray
- £41. Shri Sukomal Sen
- £42. Shrimati Pratibha Singh
43. Shri P. N. Sukul
44. Shri Parvathaneni Upendra
45. Shri Atal Behari Vajpayee

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Deputy Secretary*
3. Shri Swarn Singh—*Officer on Special Duty.*

LEGISLATIVE COUNSELS

1. Shri S. Ramaiah—*Secretary*
2. Shri K. L. Mohanpuria—*Joint Secretary and Legislative Counsel.*
3. Shri Z. S. Negi—*Assistant Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (Traffic Commercial)*
2. Shri S. K. Malik—*Joint Director (RAR).*

£ Sarvashri Murlidhar Chandrakant Bhandare, Sukomal Sen and Shrimati Pratibha Singh ceased to be members of the Committee w.e.f. 2-4-1988. Reappointed w.e.f. 11-5-1988.

@ Appointed w.e.f. 11-5-1988 vice Shri S.B. Ramesh Babu retired.

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986

Witnesses Examined

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	(i) Shri Pratap Narain Executive Director		
	(ii) Shri V.K. Sikand		
2.	All India Railwaymen's Federation, New Delhi	6-5-1987	12
	<i>Spokesmen</i>		
	(i) Shri Uraomal Purohit President		
	(ii) Shri J.B. Chaubey General Secretary		
	(iii) Shri Rakhai Das Gupta Zonal Secretary		
3.	Cement Manufacturer's Association, New Delhi	27-5-1987	20
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	(ii) Shri D.C. Mohanty Chief Manager		
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	(ii) Shri Navin F. Khanderia, Hony. Secretary.		
	(iii) Shri Mahash V. Gandhi, Member.		
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8.	Western Railways Suburban Passengers Study Group, Bombay.	26-6-1987	58
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	(i) Shrimati Mrinal Gore, MLA		
	(ii) Shri P.B. Samant, ex-MLA		
	(iii) Shri C.B. Gandhi, Treasurer		
	(iv) Shri C.K. Vohra, Joint Secretary		
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	(ii) Shri M.D. Ranade		
	(iii) Shri Dalip Shinde		

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	(ii) Shri A.S. Awekar, Advocate		
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13.	Indian Chamber of Commerce Calcutta	10-9-1987	87
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	(i) Shri O.P. Tantia President		
	(ii) Shri D.K. Aggarwal		
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	(i) Shri P.K. Jalan, Vice President		
	(ii) Shri S.S. Swaika, Member		
	(iii) Shri V.B. Sahal, Member		
	(iv) Shri H.C. Johri Rail Transport Adviser		

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT-COMMITTEE ON THE RAILWAYS
BILL, 1986**

**Wednesday, the 6th May, 1987 from 15.00 to 17.30 hours Committee Room
No. 62, Parliament House, New Delhi.**

PRESENT

Shri Arvind Netam—Chairman

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Ataur Rahman
4. Shri Narayan Choubey
5. Shri Jujhar Singh
6. Shri P. R. Kumaramangalam
7. Shri K. M. Patel
8. Shri K. H. Ranganath
9. Shri D. N. Reddy
10. Gen. R. S. Sparrow
11. Shri C. P. Thakur

Rajya Sabha

12. Shri Pawan Kumar Bansal
13. Dr. Bapu Kaldate
14. Shri Mirza Irashadbaig
15. Shri V. Ramanathan
16. Shrimati Pratibha Singh
17. Shri P. N. Sukul

SECRETARIAT

1. Shri N. N. Mehra—*Joint Secretary.*
2. Shri R. S. Mani—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (TG)*
2. Shri J. K. Mitra—*Joint Director (RAR)*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

- Shri K. L. Mohanpuria—*Joint Secretary and Legislative Counsel.***

WITNESSES EXAMINED

I. Fertiliser Association of India, New Delhi

Spokesmen:

1. Shri Pratap Narayan, Executive Director.
2. Shri V. K. Sikand.
3. Shri H. S. Patel.

II. All India Railwaymen's Federation, New Delhi.

Spokesmen:

1. Shri Umraomal Purohit, President.
2. Shri J. P. Chaubey, General Secretary.
3. Shri Rakhil Dass Gupta, Zonal Secretary.

I. Fertiliser Association of India, New Delhi.

Spokesmen:

1. Shri Pratap Narayan, Executive Director.
2. Shri V. K. Sikand.
3. Shri H. S. Patel.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Before we start taking evidence, let us decide about fixing a date for our next meeting. We are going to have evidence from three organisations for Delhi. Today, we are going to take up two organisations. For the third one, we have to fix a date. In the last meeting, we had tentatively fixed the meeting in the last week or last day of this month. Let us decide first about the date for the next meeting. Then we can start our business slated for today.

Some members want to have it on 28th May, while some others want the meeting to be held on 28th May 1987. I hope it will be all right if we hold it on 27th May 1987 at 15.00 hrs. Is it okay?

SEVERAL HON. MEMBERS: Yes. It is all right.

MR. CHAIRMAN: The next meeting will be held on 27th May, 1987 at 3 O'clock. Now, we shall call the witnesses. Kindly you introduce yourself and your colleagues.

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Mr. Pratap Narayan and Mr. Sikand, you have furnished your memoranda and you have explained in detail also. If you want to add anything on that Memorandum or if you want to fur-

nish any extra information, you can do so now.

SHRI PRATAP NARAYAN: Thank you, Sir, very much for giving us this opportunity of appearing before you. With your permission, I would like to mention that both of us coincidentally happen to be ex-Railway officials. So, what we say now is not merely a response coming from an industry. We would be saying things with a full sense of responsibility, having worked in the Railways earlier.

When we joined the Railways about 30 years ago, we were told that Railways were the only organization which, despite being in Government, had a commercial orientation; and we were told that the basic approach of Railways was commercial, i.e. looking after the interests of the users. When this Act is being amended after nearly 100 years, we thought that the new Bill would be more responsive to the needs of the users, as compared to the original Act which came during colonial times. Unfortunately, we find that this revised proposal which is before us, does not give that indication. If anything, the indication is that it is becoming more and more authoritarian, ignoring the interests of the users. I will illustrate this with a few examples.

For example, there was a provision dealing with Railways' right to enter certain premises during emergency. But that provision had also said that the Railways Administration would do as little damage as possible in that regard. In the new relevant Article in the present Bill, this safeguard is not there. While it is true that even earlier the compensation may

not be justiciable—whatever is given by the Railways can at best be referred to the Arbitrator—the duty cast on the Railways, even during colonial days, viz. that they would do nothing more than what is just necessary, is not there now.

The earlier Section 15 related to a tree obstructing signal, which can be pulled down with the permission of a Magistrate. In the revised clause in the Bill, this provision of obtaining permission from the Magistrate is not there. Thus some of the safeguards available earlier, or not available now.

Now about the maximum and minimum rates being fixed by Government the provision time, has been deleted and thus the entire power is now with the Railway Administration. When there were company-run railways earlier, if anything against the users' interests was done, Central Government was there to protect the users. It said, earlier, that Central Government would fix the minimum and maximum rates within which the Railway Administration could fix the freight, rates etc. That provision is not there now. Earlier, the Railway Administration was a distinct one, since company railways were there. So, there was the Central Government to protect the users' interests. Users could go on appeal to the Central Government. With the nationalization of Railways there is no distinction between the Railway Administration and the Central Government. The apex body of the Railways is the Railway Board viz. the Ministry of Railways—in other words, the Central Government. Therefore, there is no protection available, if something wrong is done today. That has to be accepted by the users.

Section 87(2) of the Old Act provided says that if there is no seat in the train for which a ticket have been issued, immediate refund will be given provided it is claimed within 3 hours. There is no such corresponding provision in the corresponding clause 49(2).

Another glaring thing is this. Section 78(F) had a provision that if a consignment is booked on owner's risk, then the Railway would have the responsibility in the case of damage or loss, etc. as to how the consignment was dealt with. In the corresponding Clause 96 there is no such provision. The railway is not obliged to tell how they have dealt with it. The consignment is within the control of the railway, and the consignee will have no method of knowing how the consignment has been dealt with I do not see and how the consignee can prove misconduct on the part of the railway.

About undue preference the emphasis in concluding portion of old section 28 has now been removed in the corresponding clause 69.

Earlier in the old sections 87 to 98, certain penalties were provided for acts of omission and commission by the railway administration. If they shirked certain responsibilities, then the railway administration had to pay some money—although the amount was nominal—to the Central Government. But there was a responsibility on the railway administration—penalty—It may be argued that now because the railway and the Central Government were the same. Such penalty has no meaning but then what about obligation to the users being enforced. All these sections do not find a place in the corresponding new Act of particular significance is the omission of section 98 about failure to notify occurrence of an accident to State Government and Inspector. However, old section dealing with the penalty for the failure of the railway servants to give information in the case of accidents as envisaged in old section 103 continues in new clause 188. The point is that while railway servants will be penalised, the administration as such a distinct entity has no responsibility to do it and there is such penalty. The total approach which has been taken is that whatever obligation was there on the railways towards protecting the interest

of the users, we find singularly missing in the new Act. Some of these things may be given some consideration so that the users are also protected; otherwise, the railways will become a judge in their own cause, which I want to prevent.

Then let us take addition of Clause 41—barring jurisdiction of the court on matters within the jurisdiction of the railway tribunal. Earlier, there was no such provision, and this means it only said that the decision of the tribunal by the majority of the persons shall be final. There was no bar on any suit or action being initiated. Do I presume that even the Supreme Court decision is disallowed, which is the latest technique that has come up? Where more things are being taken out from the judicial purview. In the case of Administrative Tribunals, the Supreme Court has ruled that while a tribunal can be corresponding to a High Court. The Supreme Court jurisdiction cannot be barred. The way this Clause 41 has been framed, it would imply that even Supreme Court jurisdiction is being barred and this must be looked into.

Then Clause 57 deals with the need for communication between the railway passengers and the people in charge of the train which reads as under:

“A railway administration shall provide and maintain in every train carrying passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as may be approved by the Central Government.”

This Clause was there earlier also in Section 62. However, now a proviso has been added, saying.

“Where the railway administration is satisfied that the means of communication provided in a train are being misused, it may cause such means to be disconnected in

that train for such period as it may deem fit;

Provided further that the Central Government may specify the circumstances under which a railway administration may be exempted from providing such means of communication in any train.”

My suggestion is this is too sweeping a power and it should not be allowed as if there is misuse of the facility, it is for the Administration to prevent rather than put genuine passengers to difficulty by depriving them of a facility for use in emergency. Again in the old Act, in Schedule II, the details of “excepted articles” to be declared in respect of which extra charges are levied were given. The corresponding provision is Clause 102(3) but the schedule II has been omitted. There is no Schedule II now. And the Central Government has been authorised to notify the items under this category from time to time. Of course, even earlier, the Government had the power to amend Schedule II which would have been subject to parliamentary scrutiny. But taking away Schedule II has given too sweeping a power to the Government to merely administratively notify addition of items in which the user can be required to pay any extra charges, precluding any parliamentary scrutiny. My submission is that schedule II should be retained so that when it is amended it will be subject to parliamentary scrutiny.

I think there is another point on this. Clause 196 of the new Bill bars the jurisdiction of the civil courts for anything done or any action taken or any omission made by the railway administration or the Central Government in violation or contravention of any provision except where specifically provided. Again, this is a very sweeping provision. This means that the Railway administration can contravene any provision of this Act, or do anything and yet judicial scrutiny is barred. Earlier, such a provision

was only the Section 26 relating to traffic facilities, because provisions of traffic facilities would depend on the resources. So, it had a provision to bar jurisdiction of the civil courts. But to provide a sweeping provision at the end of the Act in respect of any violation or contravention of any provision of the Act, is too sweeping. I would submit that this is again a too sweeping provision which should not be permitted.

Some of the items are already included in our memorandum may also kindly be referred. In particular I would like to refer to clause, 61(2) which mentions that all goods are presumed to be carried at the owner's risk where no rate is specifically mentioned. If no particular rate is mentioned, the presumption should be at the railway risk rate. If there is no specific mention, then the presumption should be it is the railway risk rate and not at owner's risk rate which means that the benefit of compensation for loss damage or deterioration should not be denied in such cases without the onus for burden of proving or therefore, any misconduct shifting on the user.

SHRI PAWAN KUMAR BANSAL: If the witnesses want to say anything about any particular clause, we can discuss it in detail.

SHRI PRATAP NARAYAN: Clause 63(2) of the new Act, says:

"A railway administration shall not be responsible for the correctness of the weight, description or classification of goods or the number of packages mentioned in the railway receipt unless a certificate to that effect is recorded in the railway receipt by a railway servant authorised in this behalf."

I do not understand. If a particular description is given in the Railway Receipt, the presumption is that it is given after ascertaining the facts. I

do not see what further certificate is needed. The manner in which the work is done in the Railways is known. In the absence of the certificate the Railway administration will not accept the responsibility for the correctness of the weight, number of packages, or the description of the goods mentioned over there is indeed an extra-ordinary provision. The railway receipt is itself a document given by the railways in token of having received a consignment. Why should a further certificate be given? It is not very clear to us.

SHRI ATAUR RAHMAN: It is duplication of the efforts.

SHRI PRATAP NARAYAN: A certificate will be issued by the same person. The railway receipt is issued by a railway in respect of the goods carried by the railway and he is supposed to take the responsibility about the correctness of the information given in the railway receipt. Having another certificate regarding the correctness of the weight, etc., means that otherwise there is no responsibility of the administration, which is meaningless. Otherwise, what will happen is that in the normal way there will be rush of work and somebody forgets to record or records wrongly that certificate, the consignee or consigner will have no relief.

Clause 67 says:

"Where due to any cause beyond the control of a railway administration or due to congestion in the yard or any other operational reasons, goods are carried over a route other than the route by which such goods are booked, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route."

'Operational' reason is too wide and too sweeping. To my mind, for whatever reason—God or accident may be exempted—if there is loss or damage or deterioration, what will be the

fault of the consignee or consigner? For any operational reasons, which again is within the control of the Railways, if there is any delay or loss and to say that it is not a breach of the contract, I think, it is taking it too far and it will not be acceptable.

Clause 77 says:

"A railway administration may, on a request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed."

Then it further says:

"Provided further that no request for weighment of consignment in wagon load shall be entertained under this sub-section if,

(a) weighment is not feasible due to congestion in the yard or other operational reasons;"

Again it is too sweeping. This 'operational reason' covers everything under the sun.

The sub-clause (2) of clause 77 is more important, it says:

"Where a request for weighment is allowed by the railway administration, the consignee or the endorsee shall pay such charges as may be prescribed and the demurrage charges."

The question is that when a particular weight is mentioned, to deny him the right of weighment does not appear to be very fair. Clause 98 of the new Bill mentions about the responsibility of the Railway Administration. It says: "A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872... up to a period of seven days after the termination of transit." Earlier this period used to be 30 days but now it has been reduced to 7 days, which again is to the detriment of the users.

MR. CHAIRMAN: What is your suggestion on this point?

SHRI PRATAP NARAYAN: We feel that 30 days is a reasonable period. There is no reason to reduce it because the rates of demurrage, etc. are quite hefty. Therefore, unless there are circumstances beyond their control, I do not think people will like to keep the consignments in the Railway's custody.

Clause 104 provides for a person to claim compensation. It says: "A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration... unless a notice thereof is served by him or on his behalf.. within a period of six months from the date of entrustment of the goods." There should also be corresponding obligation on the railways that if they do not settle a claim within a particular time, there would be a remedy open for it. When a claim is rejected on any ground, there is no remedy for that. Recently a case has come to my notice where a fertiliser consignment was booked. It reached the destination after 7-8 months and was completely in a damaged condition because it was sent in an open wagon. When the claim was lodged, the railway authorities said that the six-month period was over, therefore, it could not be claimed. My submission would be that this six months period should be from the date when the consignment is offered for delivery. To say that the claim is being lodged after the expiry of six months from the date of booking, while the consignment was in the railway's possession, does not seem to be justified. So, it should be six months from the date when it is delivered to the party rather than from the date of booking of the consignment. Perhaps the intention of the Railways validly is that if you tell us in time, we will try to locate the consignment. But the other thing also is not very fair.

Only one more point I would emphasise from my old memorandum and that is about the powers of the Railway Rates Tribunal. One addition

has been made in the Railway Rates Tribunal which I pointed out earlier that the jurisdiction of any court, etc. has been barred which was not in the earlier provision. Earlier the jurisdiction of the Tribunal was barred only in respect of classification, re-classification, demurrage, wharfage, etc. Now one more clause has been added, that is, clause (d). This clause is regarding lumpsum rates. The lumpsum rates fixed by the Railways for anything cannot be challenged in the Railway Rates Tribunal. Now any lumpsum rate can be imposed and it will be outside the scrutiny of the Railway Rates Tribunal. I would submit that this should not be allowed. When this classification, re-classification etc. was provided, as I mentioned earlier, there were railway companies and if anything went wrong with them, it was confined to minimum and maximum rates. That provision has been taken away now. There are no separate companies now. So, the Central Government and the Railway Administration are synonymous. Therefore, at that time if you kept it out of the jurisdiction of the Railway Rates Tribunal, it was all right, but today to keep these things out does not seem to be justified. I must submit that things like re-classification, rationalisation of rates, etc. have already been kept outside the Parliamentary scrutiny. Earlier, a few years ago, the practice regarding any revision in rates, etc. was used to make it a part of the Budget or Supplementary demands. In such cases the issues connected with such revisions could be taken care of in Parliament. Now, unless there is increase in the basic fare, they do not come to the Parliament even during the course of the year. Therefore they don't come to the Parliament for scrutiny and it remains also outside the Railway Tribunal. But some of the rules which have been prescribed in respect of demurrage have absolutely no relevance to reality. The provision is that a rake of 40 Box or Box wagons has to be unloaded within eight hours. On the way-side where there is no platform facility, it is declared that

it is a block rake handling point. But if we go to the Station where there are no facilities rain is there, you cannot open the wagons because of down-pour. Otherwise there will be damage to the goods. When it comes in block rake, on the way side we cannot muster a thousand labour to release the rake in about 8 hours or so. This type of difficulty is there. It should also be subjected to the Railway Rates Tribunal's scrutiny apart from the scrutiny of the Parliament. Thank you. If there are any questions, we would be happy to answer.

SHRI PAWAN KUMAR BANSAL:

Though I appreciate some of the points, raised by you, there will be a very few queries which I would like to pose to you. The first is regarding Clause 2 Sub-clauses(xx) as per the Memorandum that we have with us. The suggestion made by you is that even though the consignment would continue to be in the custody and control of the Railways, the new definition in transit is grossly unfair. For instance, a man comes with one package only to the Railway Station. The booking agency finds a lot of rush in the booking counter and the railway authorities are unable to accept his package. We cannot expect the Railways to do something extra in such a case. In my opinion, it would not fall within the ambit of transit. This type of misuse can be there. But the fact remains that for most of the consignment that is brought with forwarding. No, as desired. I think we should refuse immediately. Now, I take a consignment to a Station and I give it along with the forwarding. No, and all other particulars.

SHRI PRATAP NARAYAN: Now there is a time lag, I am talking of the majority of the cases. Suppose I tender the consignment today, I give the forwarding note today, it is accepted. But the Railway receipt is issued a day or two later. If it is issued a day or two later and supposing in between some damage takes place to the consignment, what

will happen? I have no control over this. As long as the forwarding note has been given, but formal documentation has not been done, then this question comes in.

MR. CHAIRMAN: Let us hear what the Railways say.

SHRI BHANDARI: I beg to clarify in this respect. The amendment which has now been made in the Bill is to clarify as to when the consignment is accepted. At present the commencement of transit in the present Act is not at all defined. Now we have tried to clarify as to what should be considered as the time of acceptance of the consignment. There are two types of consignments one is full wagon load and the other is less than wagon load. In the case of full wagonload, the goods are brought by the consignee or and loaded by him in the wagon directly. Hence in the case of wagon load we have provided that transit will start as soon as the goods have been loaded. In the second type of case where it is less than wagon load, where loading is to be done by the Railways, we have said that the transit time will commence as soon as the Railway receipt is issued that is as soon as the forwarding note is accepted and the goods are brought into the custody of the Railways. If you leave this vague, then it will lead to litigation. So in any Act we have to precisely define it. If any friend has got a better way of defining, I would request him to do so.

SHRI PRATAP NARAYAN: The forwarding note is tendered at the time when I say, 'Here is the consignment for loading' That should be taken as the acceptance of the forwarding note. This is because you may offer a forwarding note, I may not accept it.

SHRI PAWAN KUMAR BANSAL: The other thing is regarding your representation regarding clause 98 where you have complained about the reduction of the period from 30 days to 7 days. Apparently the reason which you give is quite plausible

to me. But there is another case. There are in fact a very large number of complaints that a certain type of receipt i.e. "said to contain" is obtained by the public sector undertaking and when the goods are pilfered *en route* then nobody is held responsible. I think reduction of the period to 7 days would in fact encourage those tendencies because it is for the concerned Corporation to take away the goods at the earliest possible time. I do not know whether you are aware of that.

SHRI BHANDARI: In this respect I think Mr. Pratap Narayan is remembering the old Act.

MR. CHAIRMAN: I hope there is only one Act.

SHRI M. S. BHANDARI: I think, he is referring to the old copy of the Act. We have a copy of the amended Act. Section 77 of the Act says that it should be within a period of 7 days.

SHRI PRATAP NARAYAN: Answering your question, I, both as ex-Railway officer in-charge of commercial operation as well as CMD of a public sector company, have not been able to understand the concept of said to contain RR which has been extended to them.

SHRI PAWAN KUMAR BANSAL: I was on different point. It is about the period being limited to 7 days.

SHRI PRATAP NARAYAN: Now, it is not applicable to the siding itself. This is at the goods shed. When it comes to siding, said to contain RR is issued when railway staff were not posted to supervise loading or issue other documents. Therefore, said to contain RRs were issued at the serving goods station. This has been extended now even to the sidings, where a host of commercial staff is posted. Apart from charging freight from us, from the party, we have to incur the expenditure for the extra railway staff posted at the siding. We have to

provide residential accommodation also to them in our colonies. Carriage and wagon staff are also provided there and they have to be maintained at the cost of siding owner. Even though railway staff are provided and the cost is passed on to the siding owner, clear RR is not issued to him. When I was Commercial Superintendent at Bombay, I myself went to the siding and told the clerical staff, "You have to issue clear RR as you are paid for doing the job". It happened at Trombay Unit of FCI if the said to contain 'RR' was to be issued it could also have been done at Kurla Goods Shed. I gave instructions way back in 1967 that if the railway staff were satisfied with the loading they should issue clear RR at the siding itself where they are posted. Why are we posting staff at the cost of siding owner? It is for this purpose. If they are to come and stay and issue said to contain RR, then what is the purpose of incurring this extra cost?

SHRI NARAYAN CHOUBEY: You are talking about the siding managed by the Government sector, FCI etc. But there are many examples which have come in the Press and in Parliament. The private owners take undue advantage of the siding facilities and they make much overloading and show much less as loaded. This has been done on a number of occasions. How do you fight this menace? There are many sidings, managed and controlled by private sector. They say loading is not high. They can do much more over-loading. What is the remedy?

SHRI PRATAP NARAYAN: I am only talking of the cases of private siding or assisted siding where railway staff is posted. I am distinguishing a case where railway staff is posted by the railway to do the documentation of the railway and the cost is recovered from the siding owner.

Coming back to over-loading, today the railway recognise the whole concept of carrying capacity plus 2 or 5 tonnes. Whether you load that much

or not, it is charged on this basis. The moment you over-load, you still recover extra charges.

SHRI NARAYAN CHOUBEY: There are many instances where over-loading is done.

SHRI PRATAP NARAYAN: Punish them. There are rules covering it.

SHRI BHANDARI: Wherever adequate number of railway staff are posted for supervising loading, clear railway receipts are to be issued. We have told all private sector undertakings to provide enough staff. Some staff are provided who are meant to issue railway receipts and keep account of assignments, freight demurrage delivery etc. but not necessarily for supervising loading or accounting of bags. If one rake of fertiliser is to be supervised within a period of six to eight hours, then it requires a lot of staff. This is not found a financially viable proposition and they have not agreed to provide so many staff in these sidings. In the case of the Food Corporation of India, they have posted a number of staff at three or four places and they are getting clear railway receipts. Said to contain RR is issued only in those circumstances where loading cannot be supervised, and in my view all over the world, no railway is supervising loading of full rakes. It is the seal of the railways, which determine liability. Loading is done by the consignor and consignee. It is supervised by owners at both ends. If seals are intact, and if there is shortage found at the destination the railways accept liability even when said to the contain RR is issued. But Railways cannot accept liability for shortage from seals intact wagons. The bags can be surreptitiously removed at unloading points. The rules will have to be practical. It has to be seen whether they are viable. I would submit that it is not a universal phenomenon. It is adopted only in those cases where there is no other way out.

SHRI PAWAN KUMAR BANSAL: Sub-clause 2 of Clause 63 talks of

certificate. It should be recorded in the railway receipt when the consignor wants to send the consignment, even if it is a very small one. The other point is that the consignor or consignee would not like to come before the authorities making claims, giving evidence and resort to something which is more inconvenient for him. He will not like to take the trouble of doing all these things.

MR. CHAIRMAN: I think, we should now confine to the witness. Certainly, we will examine this issue. We will take up the matter later.

SHRI PAWAN KUMAR BANSAL: Let us be clear about that point. Further, the railway authorities may not be available when we put the question. It is better to get it clarified now.

MR. CHAIRMAN: There is no need, unless any member wants to ask any clarification.

SHRI PAWAN KUMAR BANSAL: I want a clarification.

MR. CHAIRMAN: You will ask so many questions and we cannot complete this.

SHRI PRATAP NARAYAN: Sir, I would like to submit that in cases where Railway Staff is posted it should be possible to supervise the loading of wagons etc. If my humble view is that if it is not possible to supervise the loading and unloading operations and said to contain RRs are issued, the cost of staff should not be recovered from siding owners. With your permission, I would like my colleague, who is having certain experience in this matter, to give the factually correct position. I would request him to clarify the position.

SHRI V. K. SIKAND: I would submit that the railway staff are provided only in such small number that they can issue only the RRs. They are not sufficiently larger in number to be

able to count the number of bags and issue clear RRs. So, under these circumstances, clear RRs are not issued. The implication of issuing said-to-contain RRs is that if there is any shortage at the destination, the shortage is not because of the responsibility of the Railways. The argument is clear. The Railways do not supervise the loading and unloading operations. Therefore, the Railways are not aware of what was loaded and unloaded. Therefore the responsibility is not there. Our only point is that the Railways carry the goods from the sidings. This facility has been provided for them to consolidate the traffic. The other point is that the Railways should not merely on that ground give up their responsibility of taking up any claims for shortages. Our plea, therefore, is that said-to-contain receipts should not be granted automatically. The Railways should take up the responsibility of giving clear RRs. As I told, this facility has been provided to have consolidation of traffic.

SHRI PAWAN KUMAR BANSAL:

Coming to Clause 67, it deals with the deviation of the route because of some contingencies. I will just read out the last part of the Clause, as it stands now: "The Railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route". Because of deviation of the route, you cannot claim any damage or anything. I would like you to clarify this point.

SHRI PRATAP NARAYAN: My point is that if there is any deviation of the route, consequently it is bound to be delayed in transit. It may be due to heavy rains or some track disturbances etc. the consignment may arrive late. Even though it is booked at the risk of the owners, the railways do take care, to some extent. But this, as clause stands today, will be precluded. Because longer route or diversion of the route inherently involves a longer transit period.

SHRI PAWAN KUMAR BANSAL: Suppose the train takes the right route, but somewhere en route there is an accident between two trains. For obvious reasons, the train cannot proceed and it has to take a circuitous route.

SHRI PRATAP NARAYAN: Accident is something different. I am saying that only for an act of God you should do it. It should not be done for operational reason. What is my fault in this? Why should I lose the value of my consignment? Why should I not be compensated for that? I am tendering a consignment for carriage. There is a contract. Even if there is any operational reason—over which I have no control—the responsibility has to be accepted by the Railways for damage, loss or deterioration.

SHRI PAWAN KUMAR BANSAL: About the means of communication which you referred to, I could not get the point.

SHRI PRATAP NARAYAN: On every passenger train, there is an obligation to have an alarm chain so that a passenger, if there is an emergency—suppose some luggage is lost or somebody has fallen down, something like that—can pull the chain and when the train stops, he can tell the conductor or the guard that this is the problem. That is a means of communication between passengers and the people in charge of the train, driver, conductor, guard, etc., who look after the passengers. There is an obligation to do that. But it is well known that in certain areas which are very notorious, alarm-chains are misused; maybe, students want to get down near their college or some such thing. Earlier there was a small implied provision under which the Railways were issuing notification in respect of certain areas, but the Act did not have a clear provision. So, in respect of those areas, when the chain is pulled, it will not have any effect. All that I am submitting is this. What happens to the majority of the people

who will be deprived of this facility? There may be genuine cases where people would like to use it. What I am submitting is that this will result in genuine people suffering for want of this facility. Now when you are having 22 bogies and are carrying some 2,000 passengers, anybody may have an emergency. Are you going to cut off the means of communication just like this? Misuse, no doubt, should be checked, but that should be done by taking administrative action. For the administrative action, the genuine passengers who suffer as a result should not be forgotten. That is a point I am making.

SHRI R. S. SPARROW: Mr. Chairman, besides what we have heard today by way of evidence, one has also to see other papers that have come to us. And obviously as one glances through the whole thing, there are certain aberrative type of anomalies which one has to concentrate on. The idea being to do the best we can for the convenience which concern the peace of the public. If that be so, we may make up our mind but may I say to the Railway Department that when you get all these recommendations, you may wish to consider or to correlate with what had been in the Bill. The Act that will be amended should be thoroughly worked out. What we really require is the benefit of public which is the ultimate aim of the whole exercise. You may have your arguments, we are not going to stand on one argument. The aim is very clear.

Misconduct is also there on the part of public here and there. Cheating is also there. How you smoothen it in a cogent manner in this particular Bill so that best results are achieved. With the new railway system so many things will be there. This is my submission, shall I say, the recommendation you can call it so that when they correlate and put up the whole case before you, it should be based on to get the particular result. That is the exercise we are doing at the moment.

SHRI K. H. RANGANATH: Some of these things can be taken up when the Committee is there and we can discuss it also. The Committee has got powers to suggest some amendments also.

MR. CHAIRMAN: Thank you, Shri Sikanj and Shri Prakash Narayan for coming before this Committee. Since you both are the ex-railway employees you have made very good points and suggestions and we will examine them. Thank you very much.

(The witnesses then withdrew)

**All India Railwaymen's Federation,
New Delhi.**

Spokesmen:

1. Shri Umraomal Purohit, President,
2. Shri J. P. Chaubey, General Secretary.
3. Shri Rakhaj Dass Gupta, Zonal Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I welcome you all. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. We have received the memorandum submitted by you. If you want to explain anything besides your memorandum, please do so.

SHRI UMRAOMAL PUROHIT: First of all, I thank you on behalf of my colleagues and on my own behalf for giving us a chance to say something on the subject. I would also like to thank the Government for thinking of bringing about such a Bill.

In fact it was a long pending desire of ours. We have submitted some suggestions and some propositions. In addition to that, we may say a few more things during the course of this evidence.

As for the first part, in Item No. 1, we have said that every railway administration shall provide accommodation to a passenger holding a proper pass or ticket. We know the difficulties and problems of the Railways. But this is in the context of the number of passengers to be put in each compartment. After all mentioning of certain things in the Act must have some meaning. We usually do not have anything provided in the law which has no meaning. If it is something meant only for the purpose of guidance of the Railway employees for the internal work then the administrative circular would be enough. To provide something in the Act must have some deeper meaning.

Another thing which is more related to the workers is Chapter 14 Clause 135(b). We want this Clause may be deleted. The railway workers' working has been classified, namely, those who are governed by the Factories Act and the rest are classified as continuous 'essential intermittent' and excluded. In the case of 'essential intermittent' this matter was discussed in Justice Mianbhaj Tribunal. They recommended that this 'essential intermittent' classification of the working hours of the railwaymen should be discontinued in course of time. This recommendation was made 14 years back. The Tribunal was appointed in 1969. The Tribunal submitted its award in the year 1972 and on 1-8-1974 this award was made applicable. This particular portion of the award where they have recommended that this particular classification should be done away with our submission is that while undertaking the revision of the Indian Railways' Act it is high time that this particular classification of 'essential intermittent' should be done away with.

So, this is the submission as far as Essentially Intermittent classification is concerned. This may kindly be considered.

Among the types of classification in the railways, one is the continuous workers who work in the shift continuously for 54 hours a week. Another is those who are in general terms we can say, working 12 hours a day. The prescribed time-limit mentioned is 75 hours in a week on duty. So, that classification was discussed in the Tribunal. The Tribunal ultimately in the award mentioned that it should gradually be done away with. Our submission is that more than 14 years have elapsed since this recommendation was made. It is time this classification is done away with.

SHRI PAWAN KUMAR BANSAL:
I would like to know which categories of employees fall in this.

SHRI UMRAOMAL PUROHIT:
Pointsman, waterman, some electrical staff, then at some places some carriage staff. This you will find in almost all the departments. Why particularly it was discussed at that time was because this is more an abuse. Ultimately people make representations resulting into a long battle amongst the workers and the management at various points. This was discussed at length in the arbitration by Justice Mlabhoy.

We would very strongly urge that a very serious view should be taken of this "Excluded" classification mentioned in Clause 135(C). It reads:

"A railway servant is said to be excluded if he belongs to any one of the following categories, namely,..."

We come to the categories. First is the railway servant employed in a confidential capacity. Another is armed guards. The third relates to the staff of railway schools impart-

ing technical training or academic education. This excluded classification means that there are no work-hours for them. The excluded classification in a very blunt language means that they are excluded from the working hours to be laid down. There are no working hour prescribed for them. They are supposed to be on duty all the 24 hours. There can be no question of any overtime for them. There can be no question of any other thing for them. They are to be on duty for all the twenty-four hours.

First of all, I would like to take you to clause 135(C) of the Bill, which states:

"the employment of a railway servant is said to be 'excluded' if he belongs to any of the following categories, namely:"

Then, kindly see (iv) and (v), which state:

"(iv) such categories of Group D staff as may be prescribed"
and (v) says:

"such staff as may be specified as supervisory under the rules."

Now, the Group D staff—earlier they were known class IV staff—would be on duty for all the twenty-four hours without any overtime.

It is something which is unimaginable. That situation did exist in the past, when Justice Mianbhai looked into this and by a specific award he said that they should be put on duty for 12 hours and no more. All these categories have been brought under "essentially intermittent". Now that power is sought to be taken by saying—as may be prescribed. And this matter will start again. Our humble submission is that this matter should be checked at this stage only. This particular Class-IV category we have set right and up to this date nobody exists amongst the Class-IV

employees as far as excluded staff is concerned. Now, we should not go back.

Sir, I wish to bring to your notice one very interesting point. If you read sub-clause (iv), it says:

"Such categories of Group 'D' staff as may be prescribed."

While sub-clause (v) says:

"Such staff as may be specified as Supervisory under Rule".

Now, in the case of Supervisory staff where the word specified has been used, what we doubt and apprehend is that in case of supervisory staff earlier the position was that for those of the supervisory staff who had to be taken as excluded staff, there used to be a sort of agreement with us and then the matter used to be sent to the Labour Ministry. No particular category could be considered as excluded unless the Ministry of Labour approved that.

Now, this word specified, if it has not brought anything particular, that is a different matter. Otherwise, it may be that the Railway Ministry itself takes upon the power and say, as far as the authority to prescribe and specify is concerned, it is we who will do it. That will be the most dangerous thing, if it happened. This is the position as far as the word 'prescribed' and 'specified' are concerned. In case of the supervisory staff also, the point is that there has to be a very serious care to be taken because our past experience is very bad. Whatever needs to be done should be done at the time of formation of law.

Then Sir, in the same clause, the staff of the railway school imparting technical training or academic education, why should they be excluded at all one cannot understand. But can that be a justification to say that technical schools which we are running, there will be no rests, no timings? There can always be some timing; there has

to be some sort of discipline. To say that it should be excluded, I think to such statements and the power of this wide nature, one has to give a serious thought to it.

In fact, Justice Mirbhai has very strongly expressed his views about this matter. As far as this 24 hours duty is concerned, in the case of supervisory staff, i.e. those who have no fixed duty hours, they can come and go according to the requirements and accordingly adjust their duty hours. Say for example, he may come for two hours in the morning and two hours in the evening and for the rest of the time, sitting in his bungalow he can dispose of the files, etc. But now we feel that passing such laws in a sweeping manner is not good.

SHRI R. S. SPARROW: What is the idea behind this 24 hours duty? According to you, what would have been the reasons to specify certain categories for 24 hour duty?

SHRI UMAROMAL PUROHIT: Sir, now I feel that the time has come when we should not have such categories at all. There is no reason whatsoever. But the idea perhaps was that people like a Station Superintendent at the Station cannot have regular timing or eight hours duty. He may go to the station and attend to the working when there would be a bunch of trains coming at a particular time. In the same way in evening and late at night also, he can go to the station when a number of trains arrive or depart. That must have been the reason for fixing this 24 hour duty.

SHRI R. S. SPARROW: The working of the Department of Railways is akin to the working of the Armed Forces to some extent. That is, the nature of work requires the persons to remain alert all the time. In the Armed Forces also officers of JCO class and certain other rank holders are considered to be on duty for 24 hours. It is not as though they work

all the 24 hours. Supposing a man is on 6 hour or 8 hour duty, it may mean that in certain categories you may have to have four or three shifts which mean three or four people for the same job. Instead, if a person is deemed to be on duty for 24 hours, he can attend to the work according to the requirements, which means, he need not be physically present all the time in the office. In the Railway Department also, the same may have been the case. What I am suggesting is that there should be some via media so that nobody is put to any disadvantage and there will be effective functioning. I suggest that you may deliberate on all these points and then come to a conclusion.

SHRI UMRAOMAL PUROHIT: That exactly was the idea. The only thing which I want to point out is that it is when we are discussing issues relating to railway officers. Railway officers are there. Here, the persons whom we are discussing are the persons who belong to Classes III and IV—non-gazetted cadre. My first submission is that, as far as Class IV is concerned, it has already been done away with. Now, this should not be brought in. As far as Class III is concerned, this may be there in few cases. But in any case this should not apply to those staff who are working on shift duties. There, my contention is that at least, a safeguard should be provided to those persons who have exhausted shift duty hours.

MR. CHAIRMAN: Now, let us come to Clause 137.

SHRI UMRAOMAL PUROHIT: In this Clause, the time should have been specified. Here, it is mentioned and I quote:

"A railway servant whose employment is continuous shall not be employed for more than 48 hours a week, provided that if he is required to do preparatory and/or complementary work he shall not

be employed for more than 54 hours a week."

This is something which is not clear: More than 54 hours a week on an average in any month, that needs a little clarification. How this average worked out?

MR. CHAIRMAN: You have expressed your doubts and we will clarify it.

SHRI UMRAOMAL PUROHIT: Here in Clauses 137(3) and 137(4), it is mentioned and I quote:

"A Railway servant whose employment is intensive shall not be employed for more than 42 hours a week. Provided that if he is required to do preparatory work and/or complementary work he shall not be employed for more than 45 hours a week."

"Provided that where such exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he shall be paid over-time at double the ordinary rate of pay for the excess hours of work."

In the first Clause, they have said and I quote:

"Since the essential intermittent classification has been recommended to be abolished this provision is not required."

They will respectfully work for 75, 54 and 45 hours. In sub-Section 4, if they are asked to work more than that, they will be paid over-time at double the ordinary rate of pay for the excess hours of work. They have been asked to do in some cases. This paragraph starts by saying that they will be paid overtime for extra work done, at the rate of 1½ times. But today they are getting more than that. We are shocked to learn this. Under the recent Award, they are getting double the rate. But here it has

been mentioned as 1½ times. I would like to clarify this by saying that Justice Miabhoy's Award had referred to two types of working. In the first case, the roster is for 72 hours, but they can go up to 75 hours, if necessary; but not in all cases. Likewise in other cases, 54 hours of continuous work has been provided. Continuous work per day is for eight hours. In six days it comes to 48 hours. To provide for taking over and making over time, it has been mentioned as 54 hours. So, Justice Miabhoy had talked about roster hours. What has now been prescribed needs to be corrected. This Miabhoy Award has been accepted, orders issued and implemented. People are getting the amount under this Award from 1-8-1974.

Now I come to clause 138(1). Please see our memorandum on this. The existing provision is for 30 hours. It says it shall not be less than 30 hours. In the old Act, under Section 71-D sub-section (8), this has been provided, whereas under the new Bill, the provision is for 24 hours. I think things have not been properly linked.

Now about Clause 138(2), sub-section (ii).

Now the Central Government has prescribed less than what has been prescribed above. Now this clause, if it is for some temporary nature, one can understand. Then you kindly go through the clause below this clause. It has never been heard anywhere. This is something for a permanent nature. This clause should be completely deleted this clause should not exist at all, because when we propose deletion of this clause, then also simultaneously or the consequential effect would be on Section 141, sub-section 2. Then (f) regarding railway servants has to go along with that.

I should have said this earlier, but in this context, I think this has to be kept in mind. I would like to

submit that railway employees are Central Government employees, no doubt they are. But the railway employees are industrial workers. Railway is an industry and its employees should be taken as industrial workers. We should not lose sight of that fact. In this context, the world over the position has been the reduction of the working hours. I was there on behalf of the workers in the last meeting of the Inland Transport Committee of ILO. There was a demand for working hours in the railway to be reduced to, say, almost 35 hours. Some of our friends from Canada said, "What are you talking nonsense; they are already below that?" So also is the position with regard to classification. That is the position the world over. In the Inland Transport Committee Report of 1979, they have dealt with all the countries. They are thinking of 30 hours or something below that.

So, keeping that in view it is not just a city servant of the Government only, it has to be from the point of view of the industrial workers. Of course, the whole exercise has to be related to from the point of view that the railways have to move round the clock. And Railways have to function round the clock; that has to be kept in mind. But keeping that in mind the status of the railway employees as industrial workers should not be lost sight of. If this is kept in mind, many of the points which I have pointed out will be covered in that proposition.

This is some thing in respect of certain omissions or commissions on the part of the railway employees for some negligence, particularly dealing with operating work. Our submission in this connection is that a little harsh view has been taken, vide page 57, last paragraph of Clause 183, which says:

"Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the

judgment of the court, such punishment shall not be less than imprisonment for a term of six months and a fine of five hundred rupees."

These punishments have been prescribed under, Section 181, and also 183. Our submission is that the maximum punishment prescribed is understandable, minimum punishment not prescribed, because after all in the working some mistake might be committed by somebody. Prescription of only the minimum penalty of imprisonment I think would be too harsh. We are equally anxious to see that the working is safe. We are equally anxious to see that no mistake is committed. The only submission of ours is that for that purpose the ways and means must be rather different. Our submission is that the method we should evolve is to see how those can be best effected, how those things can be done and the Ministry of Railways should take interest in order to study those things and generally, with the labour and management they should find the ways and means to attend to those things. But for this, the provision is there and we only look at it from the point of view of punishment. It should be very corrective punishment. This is my submission. Anyway, it would be in a very bad taste. If the things do not happen, that is sufficient.

Then, though it is not mentioned here in the earlier part, I would just like to draw the attention to page 60, Section 201, it is a big paragraph. It deals with taking over of accommodation or anything with the employee, if he is dismissed or removed. This provides also, by implication that if an employee is dismissed or removed then his house can be evicted by the administration by making an application to the District Magistrate and by his sending the police. First of all in case of dismissal or removal there is already a law Public Premises Eviction Act, which can be used and

the situation can be taken care of as far as the building is concerned, particularly the housing accommodation. Everybody is taken care of under the Public Premises Eviction Act. But the most surprising thing here is that the first sentence itself says, "If a railway servant is discharged from service or is suspended, or dies or absconds or absents himself...". If a man is suspended and then you will go to the magistrate, and the magistrate will call for the police! I just cannot understand. When one is suspended we do not just stop the relations with him.

SHRI PAWAN KUMAR BANSAL: Consequent to suspension, in my view he has to return the keys, papers and all that.

SHRI UMRAOMAL PUROHIT: I would suggest that as far as housing part is concerned, that should be completely taken away from here. And that should be left to be pursued under the Public Premises Eviction Act. Same power or judicial authority has been given under this Act. They can be dealt with it under that.

MR. CHAIRMAN: Suspension is not a final judgment.

SHRI UMRAOMAL PUROHIT: Pending the inquiry somebody is suspended. You have to serve a charge-sheet and then to investigate. The relationship of the employer and the employee is not cut off.

SHRI PAWAN KUMAR BANSAL: It also concerns the office, goods, keys and others.

SHRI UMRAOMAL PUROHIT: That is so. But I am talking about the house or the dwelling unit.

SHRI ATAUR RAHMAN: The dereliction of duty clause was there, under that, this provision has been brought.

SHRI UMRAOMAL PUROHIT: You remove it. And after removing, everything can be done.

These are the important things on which we want to say. These are not related to putting on the notice-board the printed time-tables and the passenger fares. I was just trying to point out that in Clause 47 it is provided [on page 16 under Chapter VII, in sub-section (i) and (ii)] that 'the list of fares from such station to every place for which card tickets are ordinarily issued to passenger, at that station' should be there.

I can understand that the fares to some important stations may be given. Otherwise printing of these fares and doing all which is not done. I am only looking at it from the practical point of view that. The Act should not provide things which are not normally done. Otherwise, we make fun of ourselves. That is what I am suggesting from the practical point of view. After all 7000 stations are there

all over the country and if we have to provide a list of the stations showing the fares from that station to all the stations, it takes lot of time, and they have also to be exhibited means it will be difficult. If it is printed and pasted somewhere, nobody can see it. Nobody can see it even with the magnifying glass. So for name's sake it is done. First of all, printing of it is a national waste. If nowhere it is done, then why should we have a clause like this? This may be prevalent in 1890 but today it is not there. My submission is that we should provide such things in the law which are possible and which can be done.

MR. CHAIRMAN: Mr. Purohit and your colleagues, we are thankful to you for coming before the Committee. You have made very valuable suggestions. We will certainly keep them in mind when we examine the Railway Ministry.

(The Committee then adjourned)

Record of Evidence Tendered before the Joint Committee
on the Railway Bill, 1986

Wednesday, the 27th May, 1987 from 15.00 to 16.00 hours, Committee Room
'B', Parliament House Annex, New Delhi.

PRESENT

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Banwari Lal Bairwa
4. Shri Haren Bhumij
5. Shri Jujhar Singh
6. Shri P. Kolandaivelu
7. Shri P. R. Kumaramangalam
8. Shri H. M. Patel
9. Shri Aziz Qureshi
10. Shri K. H. Ranganath
11. Gen. R. S. Sparrow
12. Shri K. D. Sultanpuri
13. Dr. C. P. Thakur

Rajya Sabha

14. Shri Pawan Kumar Bansal
15. Shri Murlidhar Chandrakant Bhandare
16. Shri Kamalendu Bhattacharjee
17. Dr. Bapu Kaldote
18. Shri Satya Prakash Malaviya
19. Shri V. Ramaswami
20. Shri Daba Prasad Ray
21. Shri Sukomal Sen
22. Shrimati Pratibha Singh
23. Shri P. N. Sukul

SECRETARIES

1. Shri K. C. Rastogi—*Joint Secretary.*
2. Shri R. S. Mani—*Senior Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (EG).*
2. Shri J. K. Mitra—*Joint Director (RAR).*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

Shri J. L. Mohanpuria—*Joint Secretary and Legislative Counsel.*

WITNESSES EXAMINED

Cement Manufacturer's Association, New Delhi.

Spokesmen:

1. Shri Y. S. Trehan, Senior Manager.
2. Shri O. C. Mohanty, Chief Manager.

(The witnesses were called in and the took their seats).

MR. CHAIRMAN: First of all, let us decide about the venue of our next meeting. We have received memoranda from four organisations from Bombay, Pune, Aurangabad, Ahmedabad, etc. Shall we have our venue at Bombay first? Then we can think of having the next venue at Calcutta. Is it okay?

SEVERAL HON. MEMBERS: Yes.

MR. CHAIRMAN: So, it is decided to hold the next meeting at Bombay from 24 to 27 June 1987. We may call all the concerned people to come to Bombay itself so that we need not waste time in going around.

Now we will start our business chalked out for today. Today we are going to examine officials from the Cement Manufacturers Association, New Delhi. You may please introduce yourselves before the Committee.

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Before we proceed, you may give a brief review. You need not repeat all what you have stated in your communication.

SHRI Y. N. TREHAN: First, allow me to express my regret for coming late. I will not take much time and I want to restrict our observations only to two points on movement of goods traffic and responsibility of the railways. These have already been dealt with in our memoranda. I would like to reiterate some salient features.

I take up Clause 63(2) first. It will be a welcome feature to have an endorsement on the railway receipt about description, weight and number of packages, etc. But there is a possibility of there being some difference in information provided by the consignee in the forwarding note and the information on the basis of which the railway staff may like to endorse the certification. Hence, before such certification is recorded, it may be advisable if the consigner is told about what the railway staff is going to do. That will avoid a lot of inconvenience or dispute between the consigner and the railways.

Secondly, I would like to suggest that there should be a provision to issue the receipt on the same day the goods are accepted by the railways for despatch. Some law should be made in this regard. Normally, the railway receipt is prepared two or three days after the acceptance of the goods and there are even instances when the railway receipts have been despatched even after a month. The very purpose of this certification will be completely lost if such delays continue to occur. My submission is that this may be provided in the law so that the railways are bound to ensure that the railway

receipt is issued as soon as the goods are received.

Now I invite your kind attention to Clause 64, sub-clauses 5 and 6. The provisions contained in these clauses are good and the railways are welcome to do the verification as to the correctness of the declaration made in the forwarding note. But there is always a possibility that due to delay, goods may suffer some deterioration while in the railways' custody. The present law provides compensation to the consigner in case the goods suffer any setback when they are in the custody of the railways. I submit that this may be provided in the new law also so that compensation is paid. The consigner should not suffer for the loss which occurred during the time the goods are in the custody of the railways. Of course, if there is any discrepancy, the consigner should be penalised and we are not opposed to it.

Now I come to Clause 67, according to which goods can be carried by a route other than the booked route, when situations arise for reasons beyond the control of the railways. This is a clause by which the Railways become too powerful and they may use the authority to the detriment of customer under this all-embracing clause. When there is some accident, carrying the goods by some other route is all right. Congestion on a route is something very difficult to define. Then, who is responsible for the congestion. I say that most of the time, the congestion is due to erratic working on the part of the railways. Congestion arises because of improper management or if I may be permitted to say, inefficiency in management and for that the customer should not suffer. The delay in the arrival of goods will result in serious repercussions on the market conditions due to which the customer may have to pay heavily. There is another aspect. The railways want to give legal clothing to diversions due to capacity problems which are in vogue at present under the

Rationalisation Scheme. Under the rationalization scheme, Railways provide for movement of traffic by a longer route, i.e. longer than the normal route. When this is done, freight is charged on the basis of the longer route. It is perfectly all right. By all means it can be done; but then, the goods should be carried by the longer route. We have seen that in 75% of the cases under the rationalization scheme, Railways charge by the longer route, but move goods by the shorter one. In such cases, Railways should refund the amount which becomes due, as a difference between the freight for the two routes. So far, we have found that the Railways repudiate claims on this count. This is unfair. Ministry of Railways may kindly note this, and the Committee may also exercise their good offices, to include this in the law, so that persons who pay higher freight, are entitled, as a matter of right, to the refund which is due to them in case goods charged by longer route are actually moved by a shorter route.

Now about clause 71.

SHRI P. N. SUKUL: Why don't you pay for the shorter route?

SHRI TREHAN: The Railway Receipt is made accordingly, and we have to pay.

SHRI PAWAN KUMAR BANSAL: There is a provision in the Bill, as such.

SHRI TREHAN: There is a separate order of Railway Board. They have said that under this rationalization scheme, movement of goods will be done by the easier routes, where capacity problems do not exist. But most of the time, goods are moved by the shorter route.

SHRI P. N. SUKUL: For example, for going to Varanasi from here, there are four routes, but the fare is the same i.e. for the passengers. The

fare chargeable from the passengers is by the shortest route. If it is good for the passengers, why not for freight also?

SHRI BASUDEB ACHARIA: The position is not the same everywhere.

SHRI TREHAN: Now about clause 71. This is a very controversial clause, regarding overloading of wagons. I will submit the case of coal movement. Coal is moved from the coleries where the loading is done by the colliery staff, under the supervision of Railway staff. If the wagon is excess loaded, it is just allowed to move, and the Railway Receipt is prepared on the basis of the weight on the weighbridge, which is sometimes very much in excess of the permissible carrying capacity of the wagon. The rules at present provide for penalty freight. The Bill also lays emphasis more on punitive action, which Railways contemplate, than on corrective action. The overloaded wagon is a safety hazard. It can cause an accident, and endanger public safety. In the Railways, the general rule in respect of traffic is this: It is incumbent on the Railways to ensure that nothing is done which can create conditions which might endanger the safety of traffic, or of passengers. But so far as movement of over-loaded wagons is concerned, nobody is worried at the loading point. They are allowed to move. When it reaches the destination, the consumer, who may be situated about a thousand or hundreds of Kms. away, is required to pay the penalty freight, which is prohibitive. It was five times. Now it has been reduced to three times. It is still very high. Let there be a reorientation of this clause, to place a greater emphasis on corrective action, rather than on punishment. The corrective action will be the installation of weigh-bridges at the coal loading points along with arrangements to reduce the excess weight. Coal India and the Railways are not prepared to do this. Let this Committee make it

incumbent under the provisions of this Bill, to provide weighbridges at coal loading points, so that wagons are not over-loaded; and when they are over-loaded, the excess is removed expeditiously on the spot. I leave this to you, i.e. to decide this matter in the interests of safety. The wagons should be weighed, and the pay load should be restricted to the permissible carrying capacity.

Now about punishment. Persons who are responsible for loading wagons and supervising loading, should be punished, and not the fellow who is sitting 2,000 Kms. away. This needs a radical orientation of the Act.

SHRI PAWAN KUMAR BANSAL: What is the average capacity of a wagon?

SHRI TREHAN: A box wagon carrying coal carries normally about 58 tonnes.

SHRI PAWAN KUMAR BANSAL: If it is over-loaded say upto 70 tonnes, will the consignee not know that the wagon has 70 tonnes? The consignee also receives the benefit.

SHRI TREHAN: The consignee is not at all responsible for overloading it. Why should he pay the penalty? Secondly, we have received a number of railway receipts which show the contents as being 68 or 72 tonnes, in other words the permissible carrying capacity is being exceeded by 15 to 20 per cent. This just cannot happen. I suspect that there is a racket going on. The ACC's cement works received railway receipts showing 68—72 tonnes per box wagon i.e. 10 tonnes to 14 tonnes in excess of the permissible carrying capacity. Such excess loading is incredible. A Box Wagon cannot hold this much coal. We carried out test checks at Surainour near Chandigarh volumetric measurement method was adopted to ascertain each wagon's pay load. Difference between the railway receipt

weight into volumetric measurement weight was seen to be 10—15 tonnes. It is accepted that the weighbridge weight and volumetric measurement weight can never be the same. Some difference is bound to be there but not to the extent, we found it at Surajpur. We suspect a collusion between the colliery staff and the railway staff. Railway Receipts show fictitious weight. I will put it from the angle of national statistics under this collusion the collieries are able to show a higher production than what they are able to produce, and realize the cost of coal which they had never produced. The Railways charge and show higher tonnage for the coal which is never transported. The consumer at the other end pays cost of the coal which is never processed, and pays freight and penalty freight for coal never transported.

SHRI P. N. SUKUL: That excess weight was allowed to cover subsequent pilferages.

SHRI Y. N. TREHAN: Kindly see that it is not done. The consumer at the other end is suffering.

SHRI PAWAN KUMAR BANSAL: This has become a practice.

SHRI Y. N. TREHAN: There are weigh-bridges en routes where the wagons are required to be weighed. But since the coal rakes run through, they are never stopped at weigh-bridge stations. This clause to weigh wagons at intermediate points remain only in name: it is not implemented. You may ask the railway to tell how many wagons were weighed at intermediate points. The reply will be 'nil'.

SHRI M. C. RHANDARE: But how to make them do it.

SHRI Y. N. TREHAN: There are two situations. Some places load full coal rakes. Each one of these places should have its own weigh-bridge. In other cases coal wagons loaded in different

collieries are collected at a central point for formation into coal rakes. In such cases central points should have weigh-bridges. In both the cases there should be arrangements to reduce the excess load. Consumers representatives are at times present at the loading point to oversee loading. However, in some of the cases, destinations for the rake is fixed after the rake reaches the despatch yard. Therefore the presence of consumer representative at the loading point is not of much consequence the right to check any consignment when it reaches the destination. When we go to Clause 77 we will find that the railways extend an a bridged right of re-weighment to the customer. It is a bridged by delegating authority to the local officials to refuse to the re-weighment when in their opinion the condition of a yard is bad or there is some other difficulty. The local officials may not like to do re-weighment. There is always a chance to say that there is a congestion in the yard. The congestion in the yard is a term which is very unambiguous. It may arise because the staff has not come or shunting engine is not available or due number of trains have not left. All sorts of difficulties in the railway yard will be there because facilities available in these yards are always less than the traffic coming. So, some procedure has got to be found to satisfy the customer, who finds his wagon having been tampered with while under railway custody. When there is a visible sign of a wagon having been tampered with and we are satisfied that it has been tampered with there should be a provision for re-weighment at the destination station.

DR. BAPU KALDATE: Can you suggest some concrete measures so that they have no right to say no?

SHRI Y. N. TREHAN: When there is a definite visible indication that it is tampered to the extent of 50 per cent, provision should be there for re-weighment. To solve a dispute

between a customer and the railway, there are some local panches available who can certify, yes, we have seen it. You can ask for a deposit of Rs. 200 to Rs. 500. If the customer's point is found to be valid, the amount should be refunded; if not, then it can be forfeited to great frivolous requests out.

SHRI PAWAN KUMAR BANSAL: In the case of major consignments, will it be possible to have weigh bridges all over the country?

SHRI Y. N. TREHAN: Wherever it is possible, you have them. All big goods terminals have the weigh bridges.

SHRI P. N. SUKAL: Where facilities are not available the question of having weigh bridges does not arise. If the facilities are there, then it should be open to both the parties—railways as well as the consignee. Where a consignee feels that it is under weight, the consignee should have an opportunity to get it reweighed. Otherwise, the ends of justice will not be met.

SHRI Y. N. TREHAN: Then sub-clause 2 of Clause 77 provides for demurrage. This again is going to be a great hardship on the customer. If the complaint is found correct, and the wagon has been delayed then the law may kindly provide that the demurrage will not be borne by the customer.

SHRI BAPU KALDATE: The option lies with them at the moment. If they do not want to re-weigh, they cannot even if you lodge a protest or a complaint.

SHRI SUKOMAL SEN: The point is whether you want the option to lie with you also.

SHRI MOHANTY: The option may lie as much with the consignee as with railways.

SHRI Y. N. TREHAN: If the demurrage is to be raised, then the law

should provide that the demurrage is raised only if the customer's complaint is found to be incorrect. If the complaint is correct then there is no question of raising the demurrage.

SHRI BAPU KALDATE: There is no question of demurrage. The freight should be revised.

SHRI Y. N. TREHAN: Clause 91 mentions the question of claim. Claim is a sore point with the business community. The railways want to have the right to refuse claims arising as a result of an act of God, act of war, acts of public enemies, and the like.

MR. CHAIRMAN: This is not given in the memorandum.

PROF. K. V. THOMAS: It should be defined.

SHRI Y. N. TREHAN: Here in case of loss due to natural calamities and floods (acts of God) and similarly loss due to acts of public enemies. It is a total loss so far as the customer is concerned. Whenever there is some natural or other calamity, we always read it in the papers about help given by Government. The Railways may not be allowed to wash off their hands completely. Why should the brunt of the loss be borne by the customer alone? This is my submission. This clause may be modified. The railway should share the loss with the customer.

Under Sub-clause (i) railway want powers to repudiate claims due to unforeseen risk. The unforeseen risk has not been defined anywhere. In business, risk is an essential feature. The Railways are a Commercial organisation. They should have the ability to shoulder the risk. Therefore unforeseen risk be deleted as a reason for repudiating claims.

Secondly when fire and explosions occur within the railway premises, the cause of the fire should be ascertained. The cause of the explosion should be ascertained. Railways are responsible to ensure

safety of their premises. If fire explosion occurs someone failed to protect the premises. Thus if the Railways are responsible then the claim should be paid.

Then again, there is a controversial clause,—Clause 93. Now in this case the consignment is despatched in open wagons or defective wagons. This consignment is damaged, railways do not entertain claims and the consignee suffers loss. This is very unfair. The responsibility of the consumer or manufacturer is only till the consignment is loaded in the wagon. The supply of covered wagons is very limited. Due to priority being given to food grain movement or fertilizer movement the wagons for cement are not available. Then a feeler is sent from the railways whether we want to load it in open wagons. That means, if we do not load, we have to reduce our production. But if we load it we have to face the risk. The Railways tell us that only open wagons are available and if we want to load, we may load, otherwise not. If I wait for covereds, then the supplies will not reach the customers. Cement availability is reduced and consequently there is a price hike. Also our cement factories work round the clock. If we stop production it will take a few weeks for the cement mills to start production again. Thus loading of Box Wagon is carried out and or duress.

Recently, we carried out a survey and the report has been attached to the memorandum. In case of some factories which despatched cement to Calcutta area the damage suffered in a period of six months came to Rs. 29 lakhs. It is a very high loss. Why should the Railways not share the loss? The industry loads open wagons in order to help the national economy. We do not put our claim on the wagons which are being used for carrying foodgrains.

Now coming to Clause 94, it is again about loss due to destruction, damage

or deterioration due to delay or detention while being carried. My submission here is that the Railways may be responsible in many cases where detention/delays occurred because of either inefficiency on somebody's part or delay in clearing the wagons. Customers should not suffer. The reasons for delays are ambiguous. Railways should not be allowed to cover their inefficiencies behind such legislative measure.

The next point is about Clause 102. They say that if the goods are to be moved, the value of the goods should be declared. I would like to submit that it may be difficult to apply this to value of goods like cement, coal, etc. If the percentage value is fixed at five per cent on the cement rake consignment worth Rupees Fifteen lakhs, it comes to a very big amount. It is a highly abnormal charge and totally unjustified. There does not appear to be any justification for levy of percentage charge on bulk coal wagons and cement rakes, because no extra precautions are taken by the Railways.

I come to Clauses 104 and 105. Here, they say that the claim for refund of overcharges should be lodged with the Railway to which payment is originally made. It is a difficult task. The present procedure is an admirable one. The claim can be put at any point either at the loading point or at the destination or at the intermediate points where the damage may have occurred and the Railways are bound to process the claims. This procedure be continued. It will be an impossible task to lodge claims at the point where the payment was made and then follow up for realisation, in view of distances involved. Further, the law may provide some action against Railways in case they do not settle the claims on account of their inefficiencies within a prescribed time limit. In this connection, I will quote a very pertinent incident. Three years ago, three coal rakes of ACC were made over by the Railway to some other parties. The

Railways never informed the ACC where the consignments have gone. We lodged the claim. Three years have passed and we are yet to receive about fifty per cent of the claim amount. It has been clearly established that the Railways intercepted the coal rake, diverted one to the Panki Power House near Kanpur and another to some other Cement factory. They realised the money from them. The railways made part payment and are still dragging their feet to pay us the balance fifty per cent of the claim amount. Therefore the law should provide that whenever the Railways realise the money by diverting consignment to some other parties, they should be duty bound to inform the original consignee and to compensate him after realising the amount from the party to whom the consignment is diverted by the Railways. These are my submissions. It is a very nice

Bill. However it needs reorientation as I found that there are very few clauses which will help the economy to develop.

SHRI AZIZ QURESHI: During loading or unloading the consignment, does it cause any pollution? The cement dust is scattered and causes pollution.

SHRI Y. N. TREHAN: I would like to submit that it is better environmental experts may be asked to give a reply to this question.

MR. CHAIRMAN: Now we have to attend another programme at 4 o'clock. I thank Shri Y. N. Trehan and others for having given their valuable suggestions before the Committee.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT-COMMITTEE ON THE RAILWAYS

Thursday, the 25th June, 1967 from 11.00 to 13.00 hours and again from 15.00 to 18.00 hours in Committee Room, Old Building, General Manager, Central Railway's Office, Bombay V.T.

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Banwari Lal Bairwa
3. Shri Jujhar Singh
4. Shri H. M. Patel
5. Shri Aziz Qureshi
6. Shri K. H. Ranganath
7. Shri Sri Hari Rao
8. Gen. R. S. Sparrow
9. Shri K. D. Sultanpuri

Rajya Sabha

10. Shri Pawan Kumar Bansal
11. Shri Murlidhar Chandrakant Bhandare
12. Shri Kamalendu Bhattacharjee
13. Shri Mirza Irshadbaig
14. Shri P. N. Sukul

SECRETARIAT

Shri G. S. Bhasin—*Chief Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (TC)*
2. Shri J. K. Mitra—*Joint Director (RAR)*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

Shri K. L. Mohanpuria—*Joint Secretary & Legislative Counsel.*

WITNESSES EXAMINED

I. Indian Merchant's Chamber, Bombay.

Spokesmen:

1. Shri Dhirubhai G. Kapadia.
2. Shri Vasant Kumar Devji.
3. Shri Harish Thacker.
4. Shri Shasi Kant Padhya.

II. The Passengers and Traffic Staff Association, Bombay.

Spokesmen

1. Shri D. K. Kantharia, *Hon. Secretary.*

2. Shri Navin F. Khanderia, Hon. Secretary.
3. Shri Mahesh V. Gandhi, Member.

III. Gujarat Chamber of Commerce, Ahmedabad

Spokesmen:

1. Shri Deepak Navantlal, President.
2. Shri Gautam V. Shah, Ex-President.
3. Shri Girish P. Dani, Hon. Secretary.
4. Shri I. N. Kania, Secretary General.

I. Indian Merchants Chamber, Bombay.

Spokesmen:

1. Shri Dhirubhai G. Kapadia.
2. Shri Vasant Kumar Devji.
3. Shri Harish Thacker.
4. Shri Shashi Kant Padhya.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Hon. Members and Shri Devji: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

It gives me great pleasure to welcome you to this sitting of the Joint Committee on the Railways Bill 1986. As you know, this Bill seeks to consolidate and amend the Law relating to Railways in a comprehensive manner with a view to incorporate a large number of changes that have occurred in the Railway system ever since the enactment of Railways Act 1890.

In view of the importance of the subject, the Bill has been referred to the Joint Committee of both the Houses for detailed scrutiny. Before formulating their recommendations.

the Committee generally invites comments/suggestions from experts and representatives of special interest affected by the measures before them. With this end in view, written memoranda were called for. The memorandum received from your organisation has already been circulated to the members of the Committee.

At this sitting, we will have the opportunity of hearing you in person. I hope you will give us the benefit of your valuable suggestions and comments to enable us to present an objective and useful report on the subject to the Parliament.

Here, I should like to bring to your notice that the evidence tendered before this Committee is treated as public and is liable to be published. In case it is desired that any part of the evidence may be treated as confidential you may kindly let us know. But I may point out that the evidence to be treated as confidential is also liable to be made available to the subject to the Parliament.

I may also add that the proceedings before the Committee are to be treated as confidential, and it shall not be permissible for anyone to communicate directly or indirectly to the Press any information regarding the proceedings before the Report of the Committee has been presented to Parliament.

Before we start you may kindly introduce your colleagues to the Committee.

SHRI VASANT KUMAR DEVJI,
CHAIRMAN, IMC, BOMBAY; Hon'ble

Shri Arvind Netam, other distinguished Members of the Committee and Friends:

It is indeed our proud privilege to appear before this august body for submitting our evidence based on our memorandum to the Committee on Railway Bill 1986.

We are indeed very happy that the Government of India has thought it fit to appoint this high-powered Committee and ascertain the views of its users before the Bill becomes an Act. This Bill is an attempt to replace the old Act of 1890 which according to us had lost its significance in view of transport revolutions that have taken place in last four decades in this country and also the aspirations for customer-oriented service of its users. We are sure that this Committee will look into the various aspects of the Bill and submit its recommendations based on the evidence given by the users' organisations who would be appearing before this august body during the session.

We are highly obliged that your good selves have given us the opportunity to appear before you first to clarify the points raised by us in the said memorandum and we would consider it a proud privilege to answer any questions which you may feel like asking. I once again thank you all for providing this opportunity to us.

CHAIRMAN: Do you want to raise any point besides what you have submitted in your detailed memorandum?

SHRI VASANT KUMAR DEVJI: On page 3 of the memorandum, regarding Role of Railway Rates Tribunal, we understand that it will be represented by Government people. We would like to tell you that Trade Passengers' Organisation should also be given representation in this body so that they can also give their views. Since they are in the same

business, they can give better views about this.

CHAIRMAN: You mean, they should be represented as Members of the Tribunal.

SHRI VASANT KUMAR DEVJI: Yes, Sir.

SHRI PAVAN KUMAR BANSAL: If we want to clarify on the observations made by the witness, we may be permitted to question the witness at that very point without waiting for him to conclude.

SHRI M. C. BHANDARE: I think the Tribunal decides about the complaints. Would it be admissible to have them on the adjudicating body?

SHRI VASANT KUMAR DEVJI: Sir, as the passengers as well as the trade body are represented in this, we can give our views from a date prior to the date of filing of the complaint in order to overcome hardships likely to be experienced in certain cases.

SHRI H. M. PATEL: The written memorandum makes a different point about the rates tribunal. The powers of the tribunal are sought to be restricted by Sections 34 and 35 only to hearing and deciding of complaints pertaining to the provisions of Section 68 which debars the Railways from giving undue or undesirable preference to any particular person. That is the point that you wish to represent. You are saying that if the Railways is prevented from going into the question of classification etc., then it is a big handicap. That is what you are submitting. Are you maintaining that?

SHRI SHASHI KANT PADHYA: What we want to convey through this particular representation is that the Railway Rates Tribunal should have the authority to go into these classifications and other matters also.

SHRI P. K. BANSAL: My question relates to the first part of your submission. When you seek representation for the various associations, for a moment if we take that such a proposition is to be accepted, what do you suggest as the mode of selection for representation?

SHRI SHASHI KANT PADHYA: I think big organisations or chambers like the Indian Merchants' Chamber, All India Foodgrain Dealer Association—because foodgrain is used by people for transportation through railways in large scale. Similarly cement also is transported through railways on large scale. If you can take one or two user organisations, that will help us.

SHRI P. N. SUKUL: You want that the trade and passenger associations should be represented. You are aware that on the proposed tribunal only two members besides the Chairman would be there. The Chairman should be the one who is eligible for appointment as a Supreme Court or a High Court judge. As regards the other two members also, they should have certain qualifications. For example, he should have the special knowledge of the commercial, industrial and economic conditions and the other member should, in the opinion of the Central Government, have special knowledge and experience of the commercial working of the Railways. But the representatives of the two organisations that you are suggesting may not necessarily have any of these two kinds of knowledge or experience. That will defeat the very purpose of the Bill. What is your comment?

SHRI SHASHI KANT PADHYA: That is why we would like to suggest that trade bodies should also be associated, so that their knowledge and experience can also be utilised.

SHRI P. N. SUKUL: Does it mean that the number of members on the tribunal should be increased?

SHRI VASANT KUMAR DEWJI: Yes Sir. In the composition of the tribunal, these organisations should also be represented.

SHRI SHASHI KANT PADHYA: Our next point is on the Railway Receipt. Today what we get from the Railways is not a clear RR. The clause "said to contain" absolves the Railways of their responsibility and they can reject any of our claim under dispute.

श्री हरीश ठक्कर : कारवायिन नोट के हिसाब से रेलवे रिसीट बनायी जाती है। बगैर सुपरविजन और पोलीमन के ही क्लेम रिकांड होते हैं। भेजने वाले के पास कोई टेक्नीकल प्राम्बी नहीं होता जिससे वह पता कर सके कि बाटर टाइड बैनन है या नहीं।

श्री एचन कुमार बंसल : पानी के कारण या बारीश की वजह से डेमेज हो जाए तो असग बात है।

श्री हरीश ठक्कर : माल की कंडीशन क्या होती है, इसका सुपरविजन रेलवे के द्वारा होना चाहिए।

बिर्जा इरवाइज बंग : वैसे प्रोविजन तो है कि सुपरवाइजर उसको चैक करे और में समझता हूँ, उनके कहने का अर्थ यह है कि सुपरवाइजर की ड्यूटी स्पेसिफाई कर दी जाए। सुपरवाइजर की ड्यूटी को ज्यादा परफेक्ट बनाया जाए।

श्री हरीश ठक्कर : रेलवे रिसीट ज्यादा विलयर होनी चाहिए।

SHRI DHIRUBHAI KAPADIA: The RR should be very clear.

SHRI H. M. PATEL: The Railways may please explain as to why it is difficult for them to accede to this. Why is the Railway Administration not responsible for the correctness of the dispute of claims?

SHRI M. S. BHANDARI (Ministry of Railways): The present

practice is that when a small consignment consisting of a few packages is offered, we count the packages and wherever necessary we weigh them and mention clearly the same on the RR. But in the case of a full train, it is just not physically possible for anybody to supervise the loading or counting of each bag. If we have to do it, we will have to employ one Goods Clerk for each wagon which means an impossible proposition. I think it is almost an impracticable idea. Nowhere in the world a clear RR is issued for bulk goods. As regards liability, it is governed on the basis of the seal on the wagon. If the seal is intact, obviously there is no theft but if the seal is interfered with, then there is theft on the way. So, I am of the view that apart from the additional cost that it will entail on account of the additional staff which the Railways will employ, I think, the present system is more practical. This is the only practical solution to the problem.

SHRI PAWAN KUMAR BANSAL: I would like to know from Mr. Bhandari whether the seals which are affixed at the various railway stations are different for each railway station.

SHRI BHANDARI, RAILWAY BOARD: The seals which are affixed at different railway stations are different at each railway station. If any big organisation wants to affix its seal they can do so.

SHRI P. N. SUKUL: I would like to know whether there is any scope for pilferage even when the seal is found intact.

SHRI M. S. BHANDARI (Ministry of Railways): It cannot be completely ruled out but such cases are very very rare.

SHRI H. M. PATEL: Mr. Chairman, we agree that there are certain types of consignment, where it is difficult to certify but there is another group where you can certify and

for that there should be a provision in the Act itself.

SHRI PAWAN KUMAR BANSAL: We can lay down broad categories.

MR. CHAIRMAN: We will discuss this point amongst ourselves.

SHRI R. S. SPARROW: Is there any difficulty from workability point of view and can there be a workable via media to overcome this difficulty? I know under the Japanese Railway System these types of packages are dealt with separately by specialised hands. Once a receipt is given then under their own arrangement they take the goods to the loading side and in each wagon an individual travels to make it certain that no such pilferage takes place. I know it will involve manpower and expenditure but can we think of such a workable via media? This point has been stressed by so many earlier witnesses also.

MR. CHAIRMAN: Let us go to the next point.

SHRI VASANT KUMAR DEWJI: We would like that there should be a new format for the Railway Receipt.

SHRI M. S. BHANDARI (Ministry of Railways): The format of the Railway Receipt can be decided only after the Bill is passed.

श्री हरीश चक्रर : मेरे हिसाब से "सिड टू कंटेन" लिखना ठीक नहीं होगा। बरसात के सीजन में जैसे सीमेंट लोड हुआ, रास्ते में नीच गया तो उससे वजन बढ़ जाता है। एक्सेलेस बेट करके पैमस्टी चार्ज करते हैं, मेरे हिसाब से वह ठीक नहीं है।

समापति ज़होबब : आपके कहने का मतलब यह है कि बरसात की वजह से वजन बढ़ जाए तो वह पैमलाइज नहीं करना चाहिए।

SHRI M. S. BHANDARI (Ministry of Railways): As far as cement

is concerned, it is not possible because lot of dust is there at the factory site when the loading takes place. There is a tolerance limit up to which generally we do not charge.

MR. CHAIRMAN: What are your views about Clause 71?

SHRI SHASHI KANT PADHYA: What we want is this type of extra weight should not be charged beyond what has been declared at the time of weighing.

SHRI VASANT KUMAR DEVJI: There is a liability of railways for wrong delivery. It is mentioned that under section 78, the railway administration—

“shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that the endorsement on the railway receipt is forged or other defective.”

I think the person who is delivering the goods should take the precaution that it is not given to any wrong person. I think this provision should not be there. The delivery of the goods must be given to the person who is entitled.

SHRI PAWAN KUMAR BANSAL: I can understand where the employees of the railways do forgery. But we have to see cases where the railways hand over the goods considering the person, who is collecting the goods, to be your man.

SHRI DHIRUBHAI G. KAPADIA: For one reason that is legitimate. But you cannot just say that the railways will not accept their responsibility. We will be at a loss.

SHRI P. N. SUKUL: Anybody else can have the RR. If you cannot keep it properly, it is your fault.

SHRI DHIRUBHAI G. KAPADIA: RR is not a bearer cheque. It has to be endorsed.

SHRI P. N. SUKUL: The person who receives the RR, he is given the consignment. It means he is your agent.

SHRI MURLIDHAR GHANDRAKANT BHANDARE: There are cases of wrong delivery which the witness has in mind. The point raised by hon. Member Shri Bansal is a separate issue because in law there would not be a liability if there is a fraud. The person who has committed the fraud will be responsible. Where the consignor has done, the railways will not be liable. If the fraud is by the booking clerk or any other such person, in that case the railways would be liable. I would like to know what are the cases of wrong delivery which you have in mind.

SHRI VASANT KUMAR DEVJI: I think it is in the case of small consignments. It is not possible for big consignments.

SHRI PAWAN KUMAR BANSAL: Out of the two points which Mr. Bhandare referred to, the first one is covered by this clause 78. The second one, he rightly said, need not be brought in here. That would be the general provision.

MR. CHAIRMAN: What is the difficulty you are having in mind?

SHRI M. S. BHANDARI (Ministry of Railways): RR is a negotiable instrument. It is only to protect the railways against forgery.

MR. CHAIRMAN: That's right. Now next point.

SHRI DHIRUBHAI G. KAPADIA: Sir, I would like to deal with imprisonment for without ticket travel on page 9 of our memorandum.

The proposed punishment is too harsh and drastic and totally unjustified. If such a passenger is prepared to pay the exact fare plus fine, he should not be harassed at all. Sorry to say that it is a draconian

measure that is proposed in this Bill. The present Act is all right. Let us consider a situation when a person is in a hurry and he has to catch a train and he cannot buy a ticket due to paucity of time. He is prepared to pay a fine. Then he should not be harassed.

MR. CHAIRMAN: We should maintain that.

SHRI AZIZ QURESHI: You mean for Bombay local trains or for all the trains.

SHRI VASANT KUMAR DEVJI: For all the trains.

SHRI K. BHATTACHARJEE: I think, you have not travelled by Tip-sukhia Mail where passengers who book their seats in advance are literally thrown out and some other passengers come and take their seats. What will happen to such passengers?

SHRI DHIRUBHAI G. KAPADIA: That is beyond us.

SHRI M. C. BHANDARE: Harshness and penal provisions have been emphasised in almost every memorandum. I remember when I was a college student, I came in a hurry once to the Terminal Railway Station and bought a ticket for Dadar. But the clerk gave ticket up to Grant Trunk Road only. I also did not notice. It was a genuine mistake on both sides. Luckily Shri Gore was there to receive me.

SHRI SHASHIKANT PADHYA: If there is imprisonment clause, then the staff can be questioned.

SHRI M. S. BHANDARI (Ministry of Railways): There are two clauses. There is no intention to harass genuine case. In the first clause, when there is no intention to defend no imprisonment is prescribed there, only a penalty is prescribed to the extent of excess fare equivalent to the double fare.

SHRI DHIRUBHAI G. KAPADIA: That provision is existing now. Where is the need for such harsh measure?

SHRI DHIRUBHAI G. KAPADIA: Regarding Transfer of reserve seats/berths, extraordinary powers are sought to be given to railway servant which would increase malpractices and corruption.

SHRI M. C. BHANDARE: Under what section?

SHRI DHIRUBHAI G. KAPADIA: Under Section 51. The present Act seems to be quite all right. I have only to make a request that this provision should not be there in the new Bill.

SHRI M. C. BHANDARE: Why?

SHRI DHIRUBHAI G. KAPADIA: Because extraordinary powers are sought to be given to the railways.

SHRI P. K. BANSAL: There are two parts of it. One is: "Provided that nothing contained in this section shall prevent mutual transfer of a seat or berth by passengers travelling by the same train." The second part says: "provided further that a railway servant authorised in this behalf may permit change of names of a passenger having reserved a seat or berth subject to such circumstances as may be prescribed." I think your fear as such are understandable. They can be taken care of by framing rules. I think, care would be taken in framing the rules.

SHRI M. S. BHANDARI (Ministry of Railways): This proviso has been added to help genuine passengers. We have permitted change of name under certain circumstances. For instance, if a father is to go and in the last minute, for some emergency, he sends his son. In such a case, we have given powers to our supervisors to change the names. Secondly suppose a Deputy Secretary has got

berth reserved for himself and he ask his Under Secretary to go in place of him. It is only to meet such situations which are to be mentioned in the rules "as prescribed."

SHRI M. C. BHANDARE: In old days, if four people were to go to hill station, they got concession of half rate. And if at the last minute, one out of those four just dropped himself and replaced by another person, in such cases who should be given power?

SHRI SHASHIKANT PADHYA: These powers should be vested in high authorities.

SHRI VASANT KUMAR DEVJI: Power to change should not be given to Ticket Collectors. It should be given to high reservation officer.

SHRI P. K. BANSAL: It should be given to the supervisors who travel on the train.

SHRI DHIRUBHAI KAPADIA: Government servants are given passes to travel some days or weeks in advance. And in the last minute they cancel the ticket. In such cases, it becomes difficult for genuine passengers to travel.

SHRI SHASHIKANT PADHYA: Railway employees are given passes and last minute they cancel their seats/berths because they are not supposed to pay the cancellation charges.

SHRI AZIZ QURESHI: What is wrong in that?

SHRI SHASHIKANT PADHYA: Cancellation fees should also be charged from them.

SHRI DHIRUBHAI KAPADIA: Regarding maintenance of coaches, it is noticed that compartments are not properly cleaned and maintained. Toilets must be kept clean. Even the compartments of First Class are neglected; toilets in First Class are in no

way different from those in II Class. Now the whole system has been changed. They should be properly looked after. Fans in II Class should be made working satisfactorily.

My submission with regard to water is that this is not an amenity but a necessity of life. Clean drinking water must be made available at all railway stations on different sections.

Regarding suburban trains, in the proposed Bill the suburban railways is totally ignored. This is the mainstay of the people in the four metropolitan cities. Therefore it is suggested that special suburban zones should be formed. The boggies in the suburban trains are very dirty and stinking. There are no checkers at the sub-stations and TTEs dare not enter the compartments during the peak hours. More trains should be introduced on suburban sections and more ticket windows should be opened which would discourage the ticketless travelling a great deal. Some of the platforms are misused by vagrants openly.

I would also like to refer to the statement of Objects and Reasons. To rationalise various provisions of the old Act, the statement of Objects and Reasons is indeed very laudable. While they are aimed at making travelling comfortable for genuine passengers, they have failed to take note of the need for providing minimum railway amenities and safety measures to the passengers, who are the backbone of our Railway system. In the proposed Bill there is no mention about such amenities. Therefore, I humbly suggest that a detailed chapter devoted to the passenger amenities should be incorporated in the Bill.

I would like to say a few words about the role of Consultative Committees. The various consultative committees appointed by the Railway Ministry from time to time have re-

ceived a raw deal at the hands of the administration. It is generally appreciated that such committees provide a forum for discussing the difficulties and problems experienced by the travelling public and trade in a studied, free and frank manner. Unfortunately, however, they are not taken seriously. The members, who are in advisory capacity only, are just taken for granted and they have no authority whatsoever. There is no due follow-up action also. It is, therefore, respectfully suggested that these committees should be accorded statutory status and their functions should be well defined to make them really effective.

MR. CHAIRMAN: Please send a note in detail about all your suggestions. We thank you very much for your valuable suggestions. We will certainly keep them in mind.

SHRI VASANT KUMAR DEVJI: Thank you Sir. We will send a detailed note.

(The Witness then withdrew)

II. The Passengers and Traffic Relief Association, Bombay.

Spokesmen:

Shri D. K. Kantharia, Hon. Secretary.

Shri Navin F. Khanderia, Hon. Secretary.

Shri Mahesh Gandhi, Executive Member

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Let us start. Mr. Kantharia I welcome you and your colleagues to this sitting of the Joint Committee. I have gone through the memorandum which you have submitted and I must appreciate the efforts that you have put in. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to

be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I would request you to highlight the important points before the Members of the Committee ask the questions.

SHRI D. K. KANTHARIA: Sir, ours is the oldest organisation in India. We will be completing 75 years in 1980. Our organisation was started by Shri Morarji Gokaldas, a Shipping Magnate.

The first important point we would like to emphasise is about the definition on page 3 (23 lumpsum rate). The definition of the words 'lumpsum' and 'mutually agreed across the table' may lead to so many things. I think a clear-cut definition should be provided for. To avoid discrimination between two parties and to eliminate corruption we should have a definite definition.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: What amendment would you like to suggest?

SHRI D. K. KANTHARIA: We have suggested that 'lumpsum rate' means the rate fixed by the Government for bulk carriages of goods and for any service in relation to such carriage. For the same commodity the rate should be fixed in advance by the Government. Some clear definition should be there.

SHRI BHANDARI, RLY. BOARD: Today the rates are fixed for each commodity and they are applicable to all customers. Now this takes care of the quantitative aspect and not the qualitative aspect, namely, if a person wants his goods to be carried at a higher speed and also in bulk. This is to make the railways more market-oriented and also to get the traffic

diverted from road to rail. This is a new provision which has been made in the Act giving powers to railway administration that they can quote the "lump sum rate", which is not necessarily the tariff rate, with certain conditions and with certain extra services which may have to be provided by them qualitatively and quantitatively. Today, the road transport is not bound by any law and the result is that at places where it suits them, they charge lower rates and where it does not suit them, they charge more. The railways are no longer a monopoly.

Therefore, the intention here is that they should have the powers, say, with the General Manager so that we can enter into agreements with big customers for bulk carriage of goods.

MR. CHAIRMAN: Now we may take up the next point.

SHRI D. K. KANTHARIA: On page 2 of our submission, clause 15(2)(b) is optional. The old Act provision is that if the State Government says that if a project can be taken, in that case, they (railways) should take it up. While in this they are not liable:

15(2)(b) "save as hereinafter in this Chapter provided, no railway administration shall be liable to execute any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years."

If the State Government wants that something should be done, in that case, it should be accepted. That's why we have suggested that the old provision should continue.

SHRI MURLIDHAR CHANDRAKANT, BHANDARE: Why is this change made?

SHRI BHANDARI, RAILWAYS: There is legal obligation to provide certain accommodation works like crossings, bridges, culverts. Now that is done at the instance of the State Government, that is whatever State

Government wants or whatever the railways themselves feel necessary to provide certain facilities to the people living nearby. What this clause says is that this liability will be limited to a period of 10 years after the construction of the railway line which means that within ten years, the railways are under the obligation to do so. After 10 years, the railways will not provide this facility free-of-charge. If it is still required, it can be given. But then the financial arrangement will be different because this liability cannot be taken indefinitely. For developments which take place after 10 years, the railways cannot be asked to compensate.

SHRI D. K. KANTHARIA: Unnecessarily there will be litigation between the Central Government and the State Governments. Let us be very specific wherever it is possible. Now we are amending the Act in toto. We thought ten years as a reasonable period. India is a developing country. There is no reason as to why we should not accept this suggestion.

Then clause 16, sub-clause (1). We have suggested:

"The expenses shall be shared equally between the railways and the other concerned party."

Let us be specific.

SHRI MAHESH GANDHI: There are encroachments adjoining the railway lines. Who will house them and who will bear the cost of those people? That's why we are bringing home this point.

MR. CHAIRMAN: We will consider. You may take up the next point.

SHRI D. K. KANTHARIA: Now we come to Chapter VI—clause 28(1) regarding power to fix rates.

As far as our organisation is concerned, we do not agree in the sense

that it is fixed from time to time. When the railway budget comes, the Government should fix the rate for one year. Everybody knows it will lead to so many things if you go on changing the rates every now and then. We always insist that we should know in advance. When any change has to be made, it should be for a specified period.

SHRI H. M. PATEL: Will it not be a short period? Every year it may change. Surely it is desirable that ordinarily the rate should be fixed for a longer period.

GEN. R. S. SPARROW: It won't be very practicable.

SHRI N. F. KHANDERIA: We want a fixed period. Instead of one budgeting period, it could be two or three budgeting periods.

SHRI H. M. PATEL: It does not mean that just for fun they will change the rate. It will be done if there are circumstances, or necessities for making a change. Is it desirable really to give a definite period? You can say that the rates shall not be changed for a period of one year.

SHRI D. K. KANTHARIA: That is why our suggestion is that it should be from Budget to Budget. If there is inflation, and if any change is required then, we can wait for the next budget.

SHRI P. K. BANSAL: You cannot really wait for the next budget. Suppose, there is steep hike in the international price of diesel immediately after Budget is presented in Parliament. Won't it be desirable for the rates to be enhanced?

SHRI D. K. KANTHARIA: This burden can be taken up by the Government because Railway is the utility service.

SHRI P. N. SUKUL: One year is a reasonable period.

SHRI D. K. KANTHARIA: In clause 30, we would like to add sub-clause '(e)' after sub-clause '(d)':

"All the above rates shall be same for alike traffic or services and shall be non-discriminatory."

SHRI P. K. BANSAL: It has to be non-discriminatory. But you don't make a provision like that.

SHRI M. C. BHANDARE: It is implied in that.

SHRI D. K. KANTHARIA: Regarding Clause 31 (2), we would like to suggest that Trade and Passengers' Organisation should have a representation on this Tribunal. Because they are the two main organisations who are for the commuters and for the trade. That is why we have suggested it.

CHAIRMAN: We will look into this.

SHRI D. K. KANTHARIA: Regarding lump sum rates it has been omitted in Clause 34. A sub-clause (d) should be inserted in Clause 34 as: "has shown a favour in fixing lump sum rates." It should be within the scope of the Tribunal to look into this discrimination.

SHRI M. C. BHANDARE: It is a very important thing.

SHRI D. K. KANTHARIA: If there is scope, it should be within the limit of Tribunal.

As regards Clause 41, the Tribunal is the supreme authority. Here we should apply law of natural justice. If there is something, then it should be subject to appeal in the Supreme Court.

SHRI MAHESH GANDHI: There should be a provision for appeal in the Supreme Court.

SHRI D. K. KANTHARIA: Regarding Clause 43 on revision of decisions given by the Tribunal: when you make a revision it should be after giving due notice to all concerned ori-

ginal parties. It is because they should be given an opportunity of being heard.

SHRI P. K. BANSAL: You can take it that we will be going through this.

SHRI M. C. BHANDARE: We will give you time even in the afternoon.

SHRI N. F. KHANDERIA: Regarding Clause 48(1), I have a small request to make. There is no provision for putting kilometers in the ticket. So, my request is that on every ticket, kilometers should be mentioned so that the rates charged can be calculated.

SHRI D. K. KANTHARIA: Regarding Clause 50: The question of refund is very important. We request you to give a specific statutory provision when the full refund will be given. We should know clearly when we would be getting the full refund. We have suggested 48 hours. It should be fixed.

SHRI M. S. BHANDARI (Ministry of Railways): Rules have been framed. (Interruptions).

SHRI P. K. BANSAL: What is the period for full refund?

SHRI M. S. BHANDARI (Ministry of Railways): There are two types of cases. Firstly, the cancellation is very very nominal, if the ticket is before 72 hours, thereafter it is 50 per cent. This is the present rule.

SHRI P. K. BANSAL: Can we not have it amended?

SHRI M. S. BHANDARI (Ministry of RAILWAYS): The problem was that touts etc., tried to corner the seats and in last minute they used to get refund. So, it is only to check that malpractice. If they corner the seats, and if they are not able to sell tickets we want them to suffer.

SHRI D. K. KANTHARIA: We have asked for full refund. When I am entitled for full refund, time must be fixed.

SHRI P. K. BANSAL: Won't you want that something is deducted by the administration for the services rendered?

SHRI D. K. KANTHARIA: When rules are made, we suggest that the period be fixed for two days or three days, for full refund. There are two provisos for Clause 51. We want that the second proviso should be deleted.

SHRI M. C. BHANDARE: Then what happens?

SHRI D. K. KANTHARIA: We suggest that this power should not be given to TTEs. Mutual adjustments as per first proviso should be between two parties concerned and we find no role for TTEs in this regard.

SHRI M. C. BHANDARE: Suppose you want to go to a place and on that day you cannot go and you ask your brother or son to go. What should be done in such a case?

SHRI D. K. KANTHARIA: As a law it should not be permitted.

SHRI P. K. BANSAL: I would give another example. There are two partners of a firm. One wants to go from Bombay to Delhi for some business purpose; but he gets busy with some other business in Bombay and asks his partner to travel. What do you suggest in this case?

SHRI D. K. KANTHARIA: In such circumstances, they should give two names. There has to be a provision for this purpose.

SHRI M. C. BHANDARE: I think the clause itself takes care of your suggestion because it says "as may be prescribed". Suppose someone in a family is seriously ill who has to travel. Can't he ask another member of the family to do the journey on his behalf?

SHRI N. F. KHANDERIA: You know very well what we are trying to avoid. If some seriousness of the situation is there, there is emergency quota in the Railway Board.

CHAIRMAN: We go to the next point. **Shri D. K. Kantharia:** At the end of sub-clause (2) of Clause 53 we propose to add "In such case/s no extra charge, or penalty shall be recovered". We want that the public should not be made to suffer.

In Clause 58 we have asked for the omission of sub clause 2(d) which is connected with circumstances.

SHRI MAHESH GANDHI: Regarding the carriage of goods, I want to make a submission which is not mentioned in our memorandum here. Railway Receipt is a negotiable instrument. It has got to be more effective than what it is at present. When we see the RR from the economic point of view, it does not become so viable as an effective negotiable instrument for banking purposes. The format of the RR is so drawn that "loading not supervised", "said to contain" clauses are inserted; with the result when some dispute arises, both the consigner and the consignee are affected. We request that the format of the RR should be so drawn as to carry all these points. It should be made more specific. The expression "said to contain" is very vague and it should be removed.

SHRI D. K. KANTHARIA: For Clause 64, sub-clause (6) we suggest an addition. In order to avoid any wrongful harassment of innocent parties, a person shall be punishable only if the statement made by him is false. So we suggest at the end of the sub-clause (6) the following addition:

"provided only if the statement given under sub-clause (1) is proved to be false".

We suggest one more addition for Clause 67, at the end of the clause. The words, "However, in such cases

the railway administration shall not be entitled to claim or charge any excess fare or freight on these grounds", may be added at the end of Clause 67.

Clause 68 is also very important. In this case we want that the old clause should be retained. No body should be made an exception to that rule.

For Clause 77 our comment is that if a reweighment is found to be justified, no charges should be levied on the public.

SHRI D. K. KANTHARIA: Clauses 81 & 82—We have asked for more time. Instead of one week it should be two weeks.

Clause 87 sub-clause (3)—Likewise here also we want instead of one week, it should be two weeks.

In Clause 87 we want to add one more sub-clause (iv) whereby the consignee and the consignor should also be informed.

Clause 88—This also concerns extension of time. Instead of one week it should be two weeks.

Clause 91—Here we want to know what is meant by 'public enemy'. There should be a proper definition. We should specify it.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: I give you an example. We often indulge in agitations and thereby some railway property gets destroyed. The idea is that in that case you cannot hold the Railways responsible and liable.

SHRI D. K. KANTHARIA: It would be better if we define it.

Clause 93—It is a very very important Clause from our point of view. We are going towards 21st century. My point is why should we provide for supply of

defective wagons in the statute itself. We would like this to be removed from the statute.

SHRI BHANDARI, RLY. Board: It is not our intention that we will load in damaged wagons but the position is that we are not able to supply covered wagons at all places. There may be some traders who would like to say, "Do not give us covered wagons but provide us with the open wagons, if possible."

SHRI D. K. KANTHARIA: We do not want you to put it as a statutory provision. Then you will be only providing defective wagons and selling new wagons to some foreign countries.

MR. CHAIRMAN: We have understood your point. We will discuss it amongst ourselves.

SHRI D. K. KANTHARIA: You may provide for it under the rules or exceptions but do not make it a statutory provision to supply defective wagons.

Clause 94—We want old Clause 76 should be retained.

Clause 97(2) (b)—Now the onus has been put on the public. We request that the facts should be recorded by the railway servant.

Clause 104(1)—Here also we have asked for extension of time.

Clause 122 sub-clause (1)—we would like that the accidents both at the manned and unmanned crossings should be specified. We would like it to be specifically mentioned.

Clause 122 (2)—We have suggested that the limit in respect of fatal accidents should be enhanced. The limit should be enhanced to Rs. 2 lakh.

Now clause 122. In Maharashtra, hit funds were free. Now they say that one-third will be deducted.

After sub-clause (3) of clause 122, we have suggested a new sub-clause (4):

"(4) The amount so paid as compensation shall be tax free."

This is a real need of time. Otherwise the word "compensation" has no meaning at all.

MR. CHAIRMAN: We would consider that.

SHRI D. K. KANTHARIA: After sub-clause (4) of clause 125, we have suggested the following new sub-clause (5):

"(5) The payment of the amount of full and final compensation shall be made to the claimant within a period not exceeding 180 days from the date of accident."

Please consider that.

Now we come to chapter XV regarding "penalties and Offences", page 16 of our memorandum.

Almost all the penalties are accompanied by fine as well as imprisonment. In our opinion, if fine is paid, then, both should not be imposed simultaneously.

Sir clause 151: Definition of 'intoxication' should be in consonance with the IPC. It has not been defined. If the drunk fellow disturbs somebody or causes nuisance or annoyance, then only it should be treated as intoxication. Similarly if somebody is smoking, I request him and he stops it, it should not be taken as offence. If somebody wants to take undue advantage of that, it can be taken.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: One fellow comes in and just sleeps in the train in the state of intoxication.

SHRI D. K. KANTHARIA: It is better to finally decide on this point.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: The "annoyance" is important.

SHRI MAHESH GANDHI: Our stress is on annoyance and disturbance point, and if other passengers object.

SHRI D. K. KANTHARIA: Now coming to last chapter "Miscellaneous" we would like to add clause (3) after clause 193(2):

"(3) The railway administration may for the purpose of better co-ordination between themselves and its "users" constitute at different levels various users' consultative committees and give due consideration to its views while taking decisions on matters connected with train scheduling, passengers facilities, amenities and safety."

They should be made a part of the statute itself and vested with more powers. Otherwise, it is of no use of making any consultative committee. After consultation if no effect is there. That's why we have suggested this.

Finally, a 'Note' may be added after clause 210:

"The draft rules shall be placed before the National Railway Users' and Zonal Railway Users' Consultative Committees for their comments before the draft rules are laid before both the Houses of Parliament with above comments."

SHRI BHANDARI, RAILWAYS: What is the object of this? If there are suggestions, we can consider at any stage.

SHRI D. K. KANTHARIA: Public opinion is sought indirectly. The rules are published in the Gazette. Statutory provision will give a good helping hand.

SHRI P. N. SUKUL: In that case, you can approach the Members of Parliament.

SHRI M. C. BHANDARE: What I would request you that draft rules should be circulated, otherwise it cannot be approved.

SHRI K. H. RANGANATH: Rules are published for objections/suggestions.

SHRI M. C. BHANDARE: Whether we incorporate it or not it should be circulated among members.

SHRI D. K. KANTHARIA: It should be circulated so that they can give their comments.

SHRI MAHESH GANDHI: The passenger amenities which were there in the old Act, probably, the entire chapter has been removed.

SHRI BHANDARI (Joint Secretary): The chapter has not been removed. The clauses regarding carriage of passengers and carriage of goods have been retained in two separate chapters.

CHAIRMAN: Anything more.

We thank D. K. Kanthuria, Shri Khanderia and Shri Gandhi. As I said, you have done very good home work.

Once again, I thank you.

(Witnesses then withdrew)

III. Gujarat Chamber of Commerce, Ahmedabad.

Spokesmen:

1. Shri Deepak Navnitlal, President
2. Shri Gautam V. Shah, Ex-President.
3. Shri G. P. Dani, Hony. Secretary.
4. Shri I. N. Kania, Secretary General.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: I would welcome you all to this sitting of the Committee. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

We have received your memorandum. I will request you to offer your comments in brief, if any.

SHRI DEEPAK NAVNITLAL: At the outset I am thankful to the Hon. Members of Parliament for according us an opportunity to place our views on the Committee. We have already sent the memorandum and I propose to highlight some of the salient points.

First of all, we wonder how such an important Bill is silent on the facilities and amenities of the passengers. We only see in the Bill how a passenger is to be treated if he does something wrong or creates some problems. We feel that Railway being a service unit a long big chapter should have been provided for the facilities and amenities of the passengers that the Railways are obliged to give them.

Secondly we feel that in the new Bill wide powers are given to the Railway administration. We have already dealt with this point in our memorandum. We feel that Section 68 grants wide and arbitrary powers to the Railways.

SHRI P. K. BANSAL: Would you kindly elaborate it? What do you want to convey?

SHRI DEEPAK NAVNITLAL: This section is good in as much as it de-

bars railways from giving any undue or undesirable preference to anybody. However, the existing Act covered passengers as well as parcel traffic whereas the present Bill is not very sure about the powers.

SHRI P. K. BANSAL: What was your experience regarding the working of the Section 28 in the existing Act and what you apprehend would happen when the new Bill is enacted? Because the words "Railways Administration" has also been omitted besides other things in the new clause.

SHRI DEEPAK NAVNITLAL: We feel that there should be a chapter for the facilities and amenities to the passengers. We feel that the railway administration has been empowered with wide powers. For example, powers of penalty and prosecution in the matter of enforcing discipline on passengers etc. on railways; auction of goods not cleared within seven days of its reaching destination without giving any notice at notified stations. Seven days, in our opinion, are far too less. We feel that it should at least be one month and that is what we have suggested in our memorandum also. The other powers of the railway administration are; Railway Board's orders are unquestionable in view of restriction of jurisdiction of RRT in examining violation of section 68 which debars railways from giving undue or unreasonable preference: Responsibility of Railway in case of RR under Section 63 is circumscribed. Here the point is that "said to contain" is mentioned in the RR. Because of this getting the claim become more and more difficult. By and large the qualified Railway Receipts are being issued. That would create more problems. Then there is provision for punitive charges for over-loading and no responsibility for under-loading. At the time when the goods are received the punitive charges are there for over-loading but when it is under-loaded no relief is given to the consignee.

The power to measure the consignment under Clauses 67 and 68 is at the sweet will of the Railways. There is also no liability on the Railways for wrong delivery under Clause 78. We feel this is not proper.

MR. CHAIRMAN: What would you like to suggest?

SHRI GAUTAM V. SHAI: Railways should be held responsible in case of wrong delivery.

SHRI P. N. SUKUL: Supposing you lose the RR and somebody finds it and takes the delivery then why should the Railways be held responsible?

SHRI GAUTAM V. SHAI: Along with the RR there are other formalities and connected documents.

SHRI P. N. SUKUL: I give you an example. Supposing you have purchased a railway ticket and you lose it. Now somebody else produces the ticket and takes the berth meant for you. Now in that case why should the Railway be penalised for that? Production of RR is the main thing. Same is the case with the railway ticket.

SHRI DEEPAK NAVANITLAL: The point we have in mind is that supposing a forged document is presented and based on that forged document the delivery of the goods is obtained. Now here the railways should not be absolved of their responsibility.

SHRI BHANDARI, RLY. BOARD: The scope of this Section is very much limited. You should not think we are there to cheat anybody. The Railways want to protect itself. The Railway Receipt is a negotiable instrument. It can be passed from one hand to another hand. Railways have no control to whom the RR has been endorsed, and if a wrong endorsement is made on the RR then the Railways should not be held respon-

sible. This is to protect those types of cases. The intention is not to protect railway staff who may join hands with somebody and give wrong delivery.

MR. CHAIRMAN: Let us go to the next point.

SHRI DEEPAK NAVANITLAL: Our next point is that the Railways have been absolved of the responsibility for the loss and damage caused to the goods on account of delay in transit unless it is proved by the customer that it has been caused due to negligence by the Railways. Supposing perishable goods are being transferred from one place to another and because of detention of the train for one reason or the other the goods are spoiled in that case the railways are totally absolved of the responsibility. We feel this is not right. Further it is provided that the customer has to prove this. It is very difficult for an individual to prove that it is because of the negligence of the Railways.

SHRI PAWAN KUMAR BANSAL: Supposing there is an occasion when a train carrying perishable goods has to take a longer route because of an accident on the regular route?

SHRI DEEPAK NAVANITLAL: In such cases it is understandable but supposing for one reason or the other the wagons are kept at the siding and the goods get damaged. In that case the Railway should be held responsible.

SHRI BHANDARI, RLY. BOARD: Here it is for the Railways to prove that the delay has not taken place on account of their negligence.

SHRI GAUTAM VIMALBHAI: The burden of proof is shifted on the customer.

SHRI PAWAN KUMAR BANSAL: In clause 94 the onus is on the railway administration only.

SHRI KAMALENDU BHATTACHARJEE: The railway administration comes up with very good reasons that there was something beyond their control.

MR. CHAIRMAN: We will discuss this later.

SHRI DEEPAK NAVANITLAL: Sir, under section 98, the railways will be liable only if it is proved that loss or damage, etc., was caused due to negligence. Shifting the burden of proof on the claimant is not at all justified as it will be extremely difficult for me to find out the negligence or misconduct of the railways or its servants. The fact that the goods have not arrived or not arrived in time is itself a proof a negligence or misconduct. It is for the railways to defend and not for the consignee to prove the charge.

Sir, here the onus is on the consignee. That is one thing which we object to.

Sir, I would like to point out that in Gujarat we are bringing coal from Madhya Pradesh and West Bengal collieries. As a routine we are getting 15 per cent shortages. We have represented a number of times to the authorities, including Ministers, Secretaries, in the railway department as well as the Coal India. The fact is that we are not getting the coal.

SHRI PAWAN KUMAR BANSAL: Have you gone into the causes of the shortages. There could be more than one causes.

SHRI DEEPAK NAVANITLAL: Coal India is supplying the coal. They are preparing the RR of 57 tonnes. When we receive the material at Ahmedabad or at different places we are receiving somewhat 50 tonnes. In the process, we have to pay for the coal to the extent of 57 tonnes as well as the freight. We have to pay for the coal which has not been carried by the Railways—7.8 tonnes.

Since it was at owner's risk, that's why I took this point regarding the coal we are receiving.

SHRI M. S. BHANDARI (Ministry of Railways): Coal is booked at the owner's risk. Normally we do not allow reweighment in such cases.

SHRI H. M. PATEL: Why not allowed?

SHRI M. S. BHANDARI (Ministry of Railways): First of all, it must be weighed at the time of loading, then only on re-weighment the shortage could be known. Weighment is to be done by Coal India at the loading point. If they do not do it there, then every train has to be detained and delayed for weighment at intermediate points.

SHRI H. M. PATEL: Both are public sector enterprises.

SHRI DEEPAK NAVANITLAL: These are two wings of the Government. Unnecessarily we are sandwiched for nothing.

GEN. R. S. SPARROW: An important question has come up for discussion at different spots and something has to be done in pragmatic terms to understand the gravity of this particular question.

It may be a shortage of weighing machine; it may be a question of not taking responsibility at the time when you are loading coal. The point is, discrepancies and difficulties are there in actual terms. So, I suggest, we will have to go deep into that. Whatever may be done if it can be done through the Act, it is good. But if it is not done through the Act, what else can we recommend on this?

SHRI DEEPAK NAVANITLAL: Sir, formerly, the Coal India used to say that this particular wagon is able to contain 58 tonnes subsequently, it was reduced to 54 tonnes then again it has been enhanced to 57 tonnes. Now, the same wagon was able to

contain 58 tonnes, then it was 54 tonnes and now it is 57 tonnes. We fail to understand how could this happen?

Another point of clarification is that suppose if we pay 20 per cent more, in that case will railways give us re-weighment refund?

SHRI PAWAN KUMAR BANSAL: You mean, you have no option in this case as far as carriage of coal is concerned.

SHRI DEEPAK NAVANITLAL: If we are given option, we would certainly opt or it.

MR. CHAIRMAN: You better send us a separate note on this.

SHRI P. N. SUKUL: Owner's risk means consignee's risk or consignor's risk, what do you say?

SHRI M. S. BHANDARI: (Ministry of Railways):

SHRI DEEPAK NAVANITLAL: Gujarat Electricity Board has filed a case for the coal through Ahmedabad Electricity Company. They are the largest users of coal and hence they are the highest affected party. This problem is certainly of a high gravity. We will certainly send the note.

SHRI H. M. PATEL: If anything more you want to add, you may do that

SHRI DEEPAK NAVANITLAL: There is another point regarding notice for claims for compensation before the suit is filed. In this new Bill, the new section requires a notice to be served for a claim and a suit against railway can be filed only if a notice under this section is served earlier. Thus claim on mere letter addressed to the railways will not work. This change will obviously result in rejection of claims on such grounds. Moreover, the refund has to be sought only from the railways to which payments has been made which will create enormous problems. It would have been more convenient to trade and industry and perhaps also to the railways to retain the old pro-

vision under which refund could be claimed for the forwarding or destination railways or the railways from which loss occurred.

SHRI PAWAN KUMAR BANSAL: Which is the corresponding section in the existing Act?

SHRI M. S. BHANDARI (Jt. Secretary): Provision of giving notice to the railways before filing of a suit is an age-old provision. It has a very useful purpose. We do not want everyone to rush to the court. But he has just to tell the railways that he had not received the goods. By and large, in every claim we try to settle the case without making the party go to the court. So, this is a very useful provision. If you read sub-clause (2) of clause 104, it says:

"Any information demanded or enquiry made in writing from or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a claim for compensation."

If you write a letter it is a good notice.

SHRI DEEPAK NAVANITLAL: If is simple notice then it is all right. What we thought was a legal kind of notice.

Another point is Railway Rates Tribunal. We feel powers with the Railway Rates Tribunal has been curtailed in this new Bill by extending bar on jurisdiction to lumpsum rates. This will enable the railways to grant undue preference to certain clauses. In fact, jurisdiction of the railway rates tribunal needs to be extended to classification or re-classification done by the railway board and should be extended to fixation of rates and conditions attached to wharfage and demurrage. All the judiciary powers may be given to the Railway Rates Tribunal.

SHRI AZIZ QURESHI: What do you mean by judiciary powers?

SHRI I. N. KANIA: What we want is judicious approach to the problem.

SHRI M. C. BHANDARE: What is the meaning of "expressly provided in this Act" as permitted in the new Bill? What are these areas where suit is permitted?

SHRI M. C. BHANDARI (Jt. Secretary): Specific provisions have been made in different chapters providing for remedy for all the consequences. In addition to that, this clause has also been added.

SHRI M. C. BHANDARE: Please circulate a note on the detailed remedies stating what are the legal remedies provided in this Bill.

SHRI DEEPAK NAVANITLAL: I would like to dwell on Sections 142 to 147. We feel that the penalties and punishments should be commensurate with the offences and the prescription should also be made accordsurate with the offences and the protect the ticketless travellers or persons who reserve punishments. At the same time we want that the ticketless traveller be punished only for the offence that he has committed. You have mentioned a fine of Rs. 250/- and imprisonment upto six months. The minimum imprisonment is one month. Rs. 250/- fine is understandable; but imprisonment is impracticable. It would be even difficult to implement it.

SHRI PAWAN KUMAR BANSAL: it may be a little harsh also.

SHRI DEEPAK NAVANITLAL: Millions of people are travelling everyday in trains. It would be difficult to attach a large number of ticketless travellers and to put them behind bars. If we really mean business and try to implement it, we will have to have only prisons all over.

SHRI PAWAN KUMAR BANSAL: The word 'minimum' should go. While awarding a sentence for an offence the courts would decide under what circumstance it has been committed.

SHRI DEEPAK NAVANITLAL: We also suggest that the word 'and' should go too.

The Bill further provides that there could be arrests without warrant in the case of travelling without ticket or valid pass or entering a carriage from wrong side or entering a carriage when the train is in motion or travelling on the roof tops. Here we feel that the punishment proposed is a bit too harsh. Nobody wants to travel on the roof tops. We have to accept the fact of life that it is not by will that one risks his life by travelling on the roof tops. We also feel that catching persons who get into the train while the train is in motion or catching the passengers who stand at the gate is not practicable especially with regard to the sub-urban travellers. We may provide for all these things in the Bill, that is a separate issue; but the actual implementation would be very very difficult.

Our last point is with regard to Section 196 barring of jurisdiction of civil courts. The jurisdiction of civil courts has been barred for proceedings in respect of certain actions or emissions of the Central Government or the Railway Administration. Such a denial is unwarranted, uncalled for because it is against the principle of natural justice.

On behalf of the Chambers of Commerce and on my own behalf I am extremely thankful to the Hon. Members of Parliament. As desired by you, we will send you the note on the coal problem in particular. We once again stress on the passengers' facilities and amenities which is totally absent in the proposed Bill.

MR. CHAIRMAN: Thank you. We will certainly keep your suggestions in mind when we discuss the Bill in detail.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE RAILWAY
BILL, 1986

Friday, the 26th June, 1987 from 1100 to 1330 hours and again 1500 to 1600
hours in Committee Room, Old Building, General Manager, Central Railways
Office, Bombay V.T.

PRESENT

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Banwari Lal Bairwa
4. Shri Janak Raj Gupta
5. Shri Jujhar Singh
6. Shri P. Kolandaivelu
7. Shri H. M. Patel
8. Shri Aziz Qureshi
9. Shri K. H. Ranganath
10. Shri Sri Hari Rao
11. Gen. R. S. Sparrow
12. Shri K. D. Sultanpuri

Rajya Sabh

13. Shri Pawan Kumar Bansal
14. Shri Murlidhar Chandrakant Bhandare
15. Shri Kamalendu Battacharjee
16. Shri Mirza Irshadbaig
17. Shrimati Pratibha Singh
18. Shri P. N. Sukul

SECRETARIAT

Shri G. S. Bhasin—*Chief Legislative Committee Officer.*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (TC)*
2. Shri J. K. Mitra—*Joint Director (PAR)*

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

Shri K. L. Mohanpuria—*Joint Secretary and Legislative Counsel.*

WITNESSES EXAMINED**I. Consumer Education Research Centre, Ahmedabad***Spokesmen:*

1. Shri Manubhai Shah
2. Shri Augusthy Thomas

II. Western Railway Suburban Passengers Study Group, Bombay.*Spokesmen:*

1. Shrimati Mrinal Gore, MLA
2. Shri P. B. Samant, ex-MLA
3. Shri C. B. Gandhi, Treasurer
4. Shri C. K. Vora, Joint Secretary

III. (a) Maharashtra Chamber of Commerce, Bombay*Spokesmen:*

1. Shri Arvind Deshpande
2. Shri M. D. Ranade
3. Shri Dalip Shinde

(b) Nasik District Association, Nasik.*Spokesmen:*

1. Shri Dalip Salvekar, Secretary
2. Shri Mukand Waray, Member

IV. Mahathwad Janata Vikas Parishad, Aurangabad*Spokesmen:*

1. Shri G. R. Rege
2. Shri Pratap Borde

I. Consumer Education Research Centre, Ahmedabad

Spokesmen:

1. Shri Manubhai Shah
2. Shri Augusthy Thomas

(The witnesses were called in and they took their seat)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Let us start. Mr. Manubhai Shah, I welcome you to this sitting of the Committee and, I hope, you will give benefit of your valuable suggestions to enable us to present an objective report to the Parliament on the subject.

PROF. MANUBHAI SHAH: Sir, at the outset we want to express our happiness that this building where we are meeting has completed 100 years only four days ago and this building is one of the most beautiful piece of architecture in Bombay. We would also like to thank the Lok Sabha Secretariat that even though we were late in making our submissions yet you were kind enough to accommodate us.

As regards our Organisation we are a citizens group set-up in 1978. We have 15 full-time salaried professionals. We have the biggest library on consumer books in the country. We get more than 125 journals from

all over the world. We have set-up a computer and we will be getting another computer by the end of the year. We run an internship programme to provide training to consumer activists. In this internship programme people from within as well as outside the country are there as participants.

As regards tools and techniques we use consumer research, legal research, media, parliamentary processes and advocacy before the administration as and when required. As regards parliamentary process we had represented before Mr. Sukul in respect of non-implementation of Hire Purchase Bill, as Chairman of Rajya Sabha Petitions Committee. We have full faith and confidence in parliamentary processes and, therefore, we have not only chosen to submit a memorandum but also to appear in person.

Sir, we began with a meagre corpus of Rs. 250 and today we are spending Rs. 12 lakh a year on consumer protection.

We want to put major focus as a consumer group that all the monopolies—whether in the private or public sector—by and large tend to be authoritarian and, therefore, there is need for public accountability of public utility which happens to be in the monopoly sector. Railways are also in the monopoly sector. Before we talk about the accountability we are grateful to you and to your colleagues

gues for having given to the country in last December 1986 a law called Consumer Protection Act, 1986 and it is for the first time that a quick remedy has been provided for consumer grievances. It is your commitment as Parliament of this country to protect consumers that we are inclined to make the submissions for public accountability of a public utility. You were equally concerned for the first time in the country so as to confer statutory powers on voluntary registered organisations. Formerly under Prevention of Food Adulteration Act only a Food Inspector could lodge a case but, now statutory powers have been conferred on voluntary consumer organisations. Likewise you were kind enough to pass Environment Protection Act in 1986. All these measures taken by the Parliament of India give us a feeling that the consumer's concern is at your heart.

Having said this we would like to submit that the Indian Railways are probably the largest public utility service in the country. Indian Railways are a huge public utility service having 61661 kms.; the originating cargo traffic is 261.4 million tonnes; there are 3380 million tonnes of originating passengers and 228.7 billion passenger kms. So, this is the size of operation of the Indian Railways. If one looks at the magnitude or enormity or size of the operation, a single individual consumer is likely to be forgotten neglected or even humiliated.

It has a capital investment of Rs. 9,500 crores and the total strength of about 1.7 million people. Its motive power consists of diesel, electrical and steam locomotives in a large number. So also the coaching staff. This is only to convey that with such a huge monopoly, let not an individual consumer be forgotten or neglected.

Now I am on page 6 of my note, Sir. The session of the Parliament

in December 1986 had recognised what the late President John Kennedy of USA had declared in 1962 as a Consumer Rights Bill. Those rights are no more theoretical or philosophical. They have become statutory rights under the Consumer Protection Act, 1986. Those rights are:

- (i) Right to safety to life and property;
- (ii) Right to information;
- (iii) Right to choose;
- (iv) Right to be heard;
- (v) Right to redressal; and
- (vi) Right to education.

A question might arise why I am referring to all this. I am making submission on the provisions of the Railway Bill, 1986, in the context of the aforesaid rights being given a remedy to concretise them. They will then, in our opinion, achieve the effective public accountability of Indian Railways to the Indian consumers.

Now, safety being a matter of paramount concern, we would like to spend some time on the safety of the consumers, also the concept of safety that the Railways has and the concept of safety that we want to advance before you, Sir, for your kind consideration.

Before I do so, I would like to refer to a writ petition which was filed by Dr. P. Nulla Thampy Thera against the Union of India and the Indian Railways. Though he was a medical doctor from Kerala, he was a representative of the community in highlighting the problems of the Indian railway consumers and what was happening at the other end, namely, the railway administration. Sir, we have reproduced a paragraph summarising his grievances from the judgment.

"Particular reference has been made to the unmanned level crossings, increasing human error as a contributing factor to accidents, non-allocation of adequate funds for improvements, improper utilisation

of the assets and facilities, inefficiency in the administration at different levels, prevalence and increase of indiscipline, frequency of thefts, robberies and murders of passengers, ineffective checking and supervisory system, want of replacement of equipment and repairs to bridges as also non-provision of adequate facilities to passengers."

It needs a heart searching by Indian railways as to whether what Dr. P. Nulla Thampy Thera said in his petition of 1981 appears to be equally valid even today or even probably worse. The judgment of the Supreme Court is reported on page 7 of my note from page 74 onwards at S.C. of AIR 1984, Volume 71. It was mentioned by the Railways itself that as on 1st June 1982, there were as many as 27,233 unmanned railway crossings on the railways. Now this is important. As you know, Sir, the accidents take place at the railway level crossings when they are not manned. That's why I am referring to that.

MR. CHAIRMAN: Let us discuss the Bill.

PROF. MANUBHAI SHAH: I thought that if the gravity is first brought out, probably our suggestions might carry more weight.

SHRI PAWAN KUMAR BANSAL: We will appreciate if you tell us specific provisions. Ultimately we have to suggest the amendments to the draft Bill.

PROF. MANUBHAI SHAH: Sir, on page 9, you will find the number of accidents both in terms of persons killed, seriously injured and with minor injuries. The railways take pride in telling the people that rail accidents are comparatively lower than the road accidents in the country. Fine. What we want to highlight is that the prevention of the accidents with the railway users itself needs re-examination. This is where the question of provisions of the Bill will become relevant. Railway regards

accidents as only those occurrences like: (i) collision; (ii) derailment of trains; (iii) accidents at railway crossings; and (iv) fire in the coaches of the trains. Now this concept itself is inadequate and incomplete. If this concept is not widened, then many passengers who get killed or sustain injuries will not be able to claim any relief whatsoever.

Not only that, I request you to take preventive measures for ensuring the safety of passengers. Sir, let us say a bonafide passenger is walking on the railway premises. Let us also say that there is an open manhole and the passenger gets into it and dies. Now from the railways point of view this is not an accident because it is not derailment of trains, it is not a collision of trains, it is not a fire and it is not a railway level crossing accident. I am not talking of trespassers. I am talking of bonafide passengers who walk on the platforms. Thus, the consumer tends to suffer very heavily unless this concept is reoriented.

Now let us take other situations like theft burglary, murders in the train. Then what is the position of the passengers? Then take a situation where the compartments are heavily overcrowded and in our country—unlike in the foreign countries—the doors don't get closed. As the doors of the compartments are open and because of the heavy crowding, passengers get thrown from the carriage itself on the railway track. From the railways point of view, it is not an accident because the passenger dying does not fall under any one of the four categories. Like this a couple of people die at least on the Bombay suburban railway every day. Therefore the whole idea is to emphasise on the very concept of the accident which the railways define as accident and which should otherwise be treated an accident as such.

Now take the problems of health hazards especially for those who use railway for long distance. Short

distance journeys can be performed by other modes. But in trains of long distance, if drinking water is not hygienic, if they are denied sanitary facilities in the coaches, if they are denied lighting in coaches, and if they are denied protection, is it not a question of safety or security? Health hazards arise and affect the consumers or the passengers because of absence or inadequacy of the basic facilities which the railways must provide especially when they are carrying passengers for 10, 20, 30 hours or more. Therefore the whole concept of safety, the whole concept of accident needs to be totally reoriented. Railways must be required to provide adequate facilities both in terms of basic needs as well as security arrangement. Unless and until this is done, nothing can be done. Railways may feel very happy by producing statistical information to Parliament.

SHRI PAWAN KUMAR BANSAL: The provisions of Railway Bill which is before us do not exclude the operation of Consumer Protection Act. And therefore, the duty of the Railways to look after the passengers and give them their due would be covered by that Act. You cannot say the acts like murder etc., be termed as consumer protection. This cannot be covered by the term 'accident' either. As far as other things are concerned like provision of potable water, lighting proper seating and sanitation, all these things will be covered by the provisions of the Consumer Protection Act.

SHRI H. M. PATEL: You are saying about the concept of safety. How would you amend the Bill so that your idea of accident is properly covered.

MR. CHAIRMAN: You can give us in writing in a separate note. But be very specific.

SHRI MANUBHAJ SHAH: We will send you, Sir.

SHRI H. M. PATEL: I understand you will be much more effective that way.

SHRI PAWAN KUMAR BANSAL: We appreciate your solution and we understand the gravity of the situation.

SHRI MANUBHAJ SHAH: We will do this.

SHRI PAWAN KUMAR BANSAL: Do you think the compensation that has been postulated here in this draft Bill is sufficient?

SHRI MANUBHAJ SHAH: Your impression about the Consumer Protection Act is not correct. I will explain that the Consumer Protection Act provides a remedy and the machinery. But Consumer Protection Act does not confer substantive rights on the consumers meaning thereby that we have to first establish that this is the duty of the railways. Once we establish that, only then the machinery under the Consumer Protection Act will give us relief. Substantive rights and obligations are governed by different sets of Acts like Contract Act, Sale of Goods Act, Negotiable Instruments Act etc. Once we are able to point out the forum about the Consumer Protection Act that these consumers rights are violated or infringed upon, then instead of the consumer going to the city civil court or ordinary judicial system they can go to the district forum or national commission. This is where the Consumer Protection Act plays an important role.

SHRI PAWAN KUMAR BANSAL: Certain rights are intrinsic but if we refer to page 9 of your representation it says:

"The present concept of accident does not include health hazards arising out of absence or inadequacy of pure hygienic drinking water, sanitation facilities, lightings, personal security in the sense of theft, burglary and assaults on the passengers."

This cannot be covered by the term 'accident'. At the moment, we are

referring to the principle involved in defining the term 'accident'. I think you cannot neglect this. We have received representations from other organisations asking for a chapter on passenger facilities and passenger amenities. You cannot add it in the provisions regarding accident as such.

SHRI MANUBHAI SHAH: Suppose there is a murder of a workman on the factory premises or on the residential premises. It is also covered by the word 'accident'. We would like to submit that when we are invitees on the property of the railways, you are in the status of owner of the property. We have right to be protected by the people who own the property.

SHRI M. C. BHANDARE: All hazards or risks to passengers and railway property are included in the concept of accident.

SHRI MANUBHAI SHAH: This is what we are trying to impress upon. But what is the relationship when we look from the objective angle?

SHRI PAWAN KUMAR BANSAL: You can proceed to the next point.

SHRI MANUBHAI SHAH: You have the proposed Railway Bill which has provided for Safety Commissioner. We request that instead of that there should be a Safety Commission which will have representative of consumer. This Commission should have a permanent body.

Secondly, this Bill has changed the provision from the existing Act which is now 100 years old. The present Act is that the direction or the report given by the Inspector or Commissioner of Safety will be binding on the Central Government. Whereas under the proposed Bill discretion is left to the Government.

We would like to emphasize that safety is a matter of concern and we cannot compromise so far as the safety aspect is concerned. It appears that when the recommendations are made by various committees

in this regard, somehow or the other an indifferent attitude is taken by the administration towards them. It is true even of the air accidents.

Parliamentary Committees like the Public Accounts Committee, etc., repeat the same recommendations time and again on measures to prevent and air crashes only because their earlier recommendations do not get implemented.

We suggest that instead of a Commissioner, there should be a Railway Safety Commission which should contain the representatives of consumers as such. Their recommendations should be published and implemented.

The Railways have given the compensation figures from 1980 to 1985 ranging from 45 lakhs in 1980-81 to Rs. 122 lakhs in 1984-85. Here we have a very serious recommendation to make. We are not able to understand why should there be any distinction or discrimination whatsoever between a bus passenger and a railway passenger, when they lose their lives. So far as the passenger dying in a Railway accident is concerned, the maximum compensation is only Rs. 1 lakh. Even if an appeal is made to the High Court, they cannot go beyond Rs. 1 lakh. Whereas passengers dying in road accidents—no matter whether they were travelling in a licenced vehicle or not—the compensation goes upto Rs. 5 lakhs on an average Rs. 2.5 to 3.00 lakhs. What is the distinction between a bus passenger and a rail passenger? Our suggestion is that the limit of compensation in the event of an accidental death should be completely deleted. The principles governing the decision to arrive at the amount of compensation are very well known. They are: the age of the passenger, his annual income, the life expectancy, number of the members of his family and their share of income etc. Keeping these criteria in mind, the High Courts decide the amount of compensation. We strongly recommend

the same principles to decide the amount of compensation in respect of a rail accidental death of a passenger also. I cannot see any logical reason for discriminating a bus passenger *vis-a-vis* a rail passenger.

SHRI M. S. BHANDARI (Ministry of Railways): The amount of compensation provided for in this Act is a summary compensation, it is a no fault liability. Even so, the next of kin of the deceased passenger is free to go to a court of law and claim any amount of compensation according to the status of the deceased passenger. In that case the onus of proving that the railways were negligent is on their part; because of railways negligence the accident occurred resulting in the death of the passenger concerned, lies on them. If they cannot prove that the railways were negligent, they cannot get any compensation. And they lose compensation under this Act also.

SHRI M. C. BHANDARE: I am glad that you have raised this very important issue. Ever since the Bhopal tragedy, it is engaging the attention of our countrymen about what procedure should be followed while fixing the value of a human being.

The Railways have opted for absolute liability where the victim need not prove that the railways were negligent or not. There is some substance in this. I would like to know whether or not we should have a self-contained court for this purpose. I find some cases getting settled in Lok Adalats also.

You are interested in consumer protection. I would suggest you to take up one more issue, viz., the Insurance. There are two types of policies which the Insurance Company issues—one is the comprehensive policy and the other is the third party policy. In regard to the third party policy, the liability is a little/limited. Since Insurance is also a monopolistic undertaking in our country, for any cover the liability should be unlimited

so far as a person dying in the street or in an air-conditioned car is concerned.

PROF. MANUBHAI SHAH: I shall now answer your question. I am aware of the fact and the explanation spells out that this is 'no fault liability' but look at the hardship which happens to an individual. There was a case of a widow of a young Professor of pharmacy who had come from Canada and was involved in a Railway accident. Now if the widow accepts the claim under the 'no fault liability' then she could not approach the court and make claim under the common law. So we have made a suggestion that either you delete this provision of Rs. 1 lakh or if you want to have it then there should be a provision that acceptance of compensation shall not be a further bar to claim compensation in the court for higher damages.

SHRI PAWAN KUMAR BANSAL: May I draw your attention to Clause 133(1)?

PROF. MANUBHAI SHAH: In addition to this you have to read Clause 132 (4). So assuming for the purpose of discussion that if the passenger wants to make a claim in addition to what he gets under the Railways Act let this Clause be made explicitly clear. Today a passenger just cannot go to the court when he accepts the compensation from the Railways.

SHRI BHANDARI (Railway Board): One cannot take compensation under two laws.

SHRI PAWAN KUMAR BANSAL: Mr. Chairman, I find there is some weight in the point made by Mr. Manubhai Shah.

SHRIMATI PRATIBHA SINGH: The matter of compensation to the widows and dependents of the deceased in railway accident needs re-examination in the light of what Mr. Shah has said.

MR. CHAIRMAN: We will discuss it amongst ourselves later on. Mr. Shah, what is your next point?

PROF. MANUBHAI SHAH: Sir, our next point is that there should be provision for an Appellate Claims Commissioner under the Act itself. With the arrears of court cases piling up if the appeal has to go to the High Court then there will be delay. Let there be an Appellate Claims Commissioner rather than the High Court. This will cut down enormous amount of time and expense on the part of the victim of injured. This is a specific suggestion that we want to make.

SHRI P. KOLANDAIVELU: In respect of road accidents we have got Appellate Claims Commissioner. Why you want separately and exclusively for railway accidents?

PROF. MANUBHAI SHAH: So far as motor accidents are concerned today those Tribunals are only civil courts. An appeal over the city civil court goes to the High Court. Here the Bill is providing for a departmental forum for the expeditious disposal and, therefore, we have made this suggestion. Since we are creating a departmental forum for expeditious disposal we want the appeals should lie within the department itself.

MR. CHAIRMAN: Please come to the next point.

PROF. MANUBHAI SHAH: Now we will touch 'consumers right to information'. Under the existing law the responsibility is on the Railways to disclose information regarding movement of goods, whereas in the present Bill this provision has been deleted. Can you imagine how a passenger would be able to establish negligence on the part of the Railways in respect of the goods which moved from Calcutta to Ahmedabad? It was only because of that major difficulty that from 1962 onwards this provision was introduced in section 76(F) of the Railways Act that the Railways shall:

"disclose to the consignor how the consignment was dealt throughout

the time it was in railways possession or control."

Such a salutary provision in that section must not be deleted at all. This was the difficulty faced by the community: How would anybody know about the wilful neglect or negligence on the part of the railways or railway officials? He must have a right to know what happened to his goods.

SHRI H. M. PATEL: I would like to know from Mr. Bhandari (Railway Board) as to why do you want to delete the provision which is already there in the Act to protect the interest of the consumers who send goods through railways, particularly when such an amendment was introduced in 1962 only with a view to help the consumers.

PROF. MANUBHAI SHAH: Whether it is about reservation, cancellation, delay of trains, whatever is happening passengers must be told in certain terms. So passengers can exercise their options. It must be in the railway time-table in a language understandable to the ordinary consumer and not in a language requiring a magnifying glass.

Then about the right to be heard. Sir, as you know, all the freights and fares are decided by the railways without consulting any consumers. Section 43 of the Motor Vehicles Act provides for consultation with the consumers. There is public participation in the whole process of fixation of fares and freights so far as the motor transport is concerned in respect of both passenger fares as well as cargo freights. This section 43 is applicable all over the country. In a nutshell it says that whenever anyone in public transport—it could be autorickshaw, taxi, state transport—wants to raise or revise the freight or fare, it has to go to the State Government justifying their proposal for revision. The State Government has to issue a draft notification inviting suggestions and objections from the

people within one month thereof. After these are received, then a hearing takes place. This is the democratic process where public participation and consumer consultation takes place. This is done by 13-14 States all over the country for all kinds of motor transport—auto-rickshaw, taxi as well as state transport stage carriages. Just by the stroke of a pen, all these freights and fares are revised in the railways. There is no public participation.

One might say how is it possible. This kind of system has been found working in the most capitalistic society which calls for public participation. For example, in the United States of America, for all public utilities—road transport, electricity, telephones—there is what is called Public Utilities Commission or Public Service Commission to which each public utility has to go and justify the revision of the fares of freights. The Commission has a control. This is constituted by the Government.

What I am emphasising here is whether the monopoly packed with legislative powers can decide whatever they like and whenever they like or let there be some consultation with the consumers or participation from the public.

Secondly, Sir, whatever limited jurisdiction was there with the Railway Rates Tribunal, even that is sought to be curtailed meaning that we are moving from a participatory process to an authoritarian process. The railways and the railway official have a last word. On one hand, we pass Consumer Protection Act to protect the consumers and on the other hand the same Parliament passes laws which confers more and more authority on the railway officials and takes away the rights of the consumers.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: It depends upon who advises the Government. For consumer protection, it is Minis-

try of Food and Civil Supplies. For Railways, it is another Ministry.

SHRI H. M. PATEL: I do not think it is something just to be brushed away. He wants us to modify this Bill so that a day comes when the railways will have to justify their freight before a competent body. That is a very sound suggestion and not a visionary one. It is working in the States. It is working in the case of Motor Vehicles Act and why not for the railways? If that is so, why not for the Railways?

SHRI MANUBHAI PATEL: We are thinking more and more on non-court forums. It becomes frustrating to wait for 12 years or so. On page 18 of the National Transport Policy, it is specifically said "To examine fare and freight structure of transport agencies and bring them in close conformity with real costs." Shri B. D. Pande was the Chairman of that Committee. They have made elaborate suggestions. The emphasis is that the cost should be real. There is one more thing apart from machinery is the need for some re-thinking on the metropolitan transport because 9 cities of this country put together constitute 25 per cent of the urban population of this country. Therefore, the needs of the urban transport of those big cities will have to be looked after and examined separately by what is known as Inter-modal Transport System. It means the passenger who buys a ticket, with that same ticket he can travel on railway up to a point and then on the Bus. In some of the countries like Hong Kong etc., for the urban transport they call it rapid transit. The whole idea is that the suburban traffic has to be managed very differently from our traditional railways. These railways are primarily meant for long distance travel. These railways are not meant for short distance travel. If you look at the figures of the Planning Commission, out of 3380 million originating passengers estimated for the year 1984-85, suburban passengers happen

to be 1900 million. That means more than 50 per cent of the travelling passengers are our suburban passengers. In the process, what happens is that the long distance travellers subsidise the cost of suburban travellers. Therefore, a separate model has to be evolved which will not only take care of transport problem but also on who should subsidise.

SHRI M. C. BHANDARE: Do you suggest that the suburban consumers should travel on single fare irrespective of the distance they cover?

SHRI MANUBHAI SHAH: This is working in New York. This will cut down essentially on the cost of administration. But the point is whether long distance should subsidise the short distance? I am of the opinion, that as the Bombay Suburban Railway is helping the city of Bombay industry and Bombay Government offices, the beneficiaries of this suburban railway should subsidise is like Bombay Municipal Corporation, Bombay Industrial Employers,

SHRI M. C. BHANDARE: Will you help us when there are agitations?

SHRI MANUBHAI SHAH: For that matter, whatever you do, there will be agitation. We are suggesting abolition of subsidy. The subsidy should come from other sources.

SHRI JANAK RAJ GUPTA: What are other sources?

SHRI MANUBHAI SHAH: They are beneficiaries like Bombay Industrial Employers, Bombay Municipal Corporation, State Government of Maharashtra etc. They should pay for it.

Regarding right to redressal today for loss of goods and damage to the goods, if claim is not settled between railways and the passengers then they have to go to the court for recovering loss or damage. In the

case of personnel injury there is Claims Commissioner for loss of goods and damage. There is no machinery evolved under the law. This needs to be remedied immediately. For loss of goods and damage to the goods caused by the railways, there is no provision either under the existing act or under the proposed Bill.

SHRI PAWAN KUMAR BANSAL: Please take it that we have understood what you have said.

SHRI MANUBHAI SHAH: The last point is on education. We have suggested structural changes by setting up National Transport Commission or National Railway Commission at the Centre and State Boards to deal with all modes of transport. We suggest setting up of Railway Safety Commission; next Claims and Appellate Claims Commissioner for accidental injury as well as for loss or damage to the goods. With regard to other grievances where claims are not involved, a policy has already been adopted by public sector corporations to set up consumer grievance cell. This needs to be formalised in a proper manner so that consumers know where to go when they have a grievance against the railways. About the planning and transport I concede that you are the best judges. We suggest that out of the recommendations of the National Transport Policy Committee, an institute on the lines of Indian Institute of Management be set up as an autonomous body.

This is all that we have to submit. My friend wants to say a few words.

SHRI AUGUSTHY THOMAS: We have brought out a booklet which has been circulated among all the Members. It has been brought out after we had a seminar in which people from different areas of transport have participated and this booklet contains a number of articles written out of the vast experience our people have had in this field. I request

the Members to give it a thorough reading.

We have emphasized on four or five aspects. At the moment the Railway Bill looks more like a railway protection Bill rather than the consumer protection Bill. I would like to say that that nature should change. It is a facility offered to people and the whole approach in the Act should centre around this fact, rather than trying to protect the railways. In this report we have also dealt with the pricing policy—how it has to be worked out, the quality of services, accountability aspect, etc. Kindly have a look at the report.

MR. CHAIRMAN: We have to prepare the amended Bill incorporating your suggestions, if found suitable. Please send your specific amendments to the Bill.

SHRI P. K. BANSAL: I would like to ask for a clarification. In Para 14 of your original memorandum you have said that "...Further provision should be made to the effect that the Railway shall be bound to recognise the consignee or endorsee and cannot question the title to the goods thereafter..." What does it specifically convey?

PROF. MANUBHAJ SHAH: The provision as it is contained in the Bill today, it absolves the railways of its responsibility in respect of the delivery of goods. What we are concerned is that there should be some provision in terms of responsibility on the railways to see that the goods are delivered to the right person. Otherwise like the Bearer Bond, whoever produces the Bond gets the money. What is likely to happen is that the genuine people who own the goods will stand to lose and the railways will have no liability whatsoever.

MR. CHAIRMAN: Prof. Shah and Mr. Thomas, thank you very much. You have given very good suggestions. Certainly we will keep them

in mind when we discuss the Bill in detail.

(The Witnesses then withdrew)

II—Western Railway Suburban Passenger Study Group:

Spokesmen:

1. Shri C. B. Gandhi, Treasurer.
2. Shri P. B. Samant, Ex-MLA.
3. Smt. Mrinal Gore, MLA.
4. Shri C. K. Vora, Joint Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: We welcome you to this sitting of the Committee. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and it liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI P. B. SAMANT: Sir, at the outset we take this opportunity to invite the attention of the hon. Members of the Committee to the observations made in the Constituent Assembly in the year 1949:

"The general tax-payer shall have the status of sole share-holder in Railway undertaking."

We want this observation of the Constituent Assembly be added to the Preamble of the present Bill under consideration.

Clause 3(1)—In this Clause we would like to add a few words. We invite your attention to the fact that there is an importance to the subur-

ban railway traffic which is emerging as a major transport factor in the railway system. At present 56 per cent of the total passenger traffic is covered by suburban traffic. Obviously this traffic includes the traffic of metropolitan cities and as the industrial centres which are connected by railways to suburbs are increasing very fast we feel this traffic will increase to 65 per cent of the total railway traffic within a short span of time. Here there is a compulsion on the passenger to travel from his place of residence to place of work. There is no voluntary option left to him. Now this is not the case with the other traffic where it is voluntary and people do only occasionally. So the suburban traffic has distinctive characteristics and this should be taken note of. So we want the addition of words 'including suburban zonal railways'.

श्रीमती मृणाल गोरे : जैसा कि सामन्त जी ने कहा, सिटीज में रहने वाले लोगों के ऊपर कम्पलसन है, उसके अलावा चल नहीं सकता। जिस प्रकार से ट्रेफिक चल रहा है तो जो यात्रा करने वाले लोग हैं, उनके मन में डर है कि हमारे साथ अन्याय होता है और पूरा ध्यान नहीं दिया जाता। बम्बई जैसे शहर में 44 लाख से ऊपर डेली यात्रा करने वाले लोग हैं, लेकिन उनके ऊपर पूरा ध्यान नहीं दिया जाता। सबरबन रेलवे की प्राबल्स अलग हैं।

श्री पी० बी० सामन्त : हम लोग आपको वावत देते हैं कि आप स्वयं शाम को छह बजे चलकर देख लीजिए, तब आपको मालूम हो जायेगा।

SHRI H. M. PATEL: It seems you want a separate zone. I would like to say that the suburban trains by themselves will lose and the question of subsidy will also arise. Today long-distance travellers are subsidising the suburban traffic. Once you make a separate zone then you stand out and you will lose. Now the commuters are compelled to travel because the area of earning is within the city.

SHRI P. B. SAMANT: The emergence of the suburban sector is the outcome of national planning.

SHRI H. M. PATEL: That is not so. The suburban passengers are travelling for earning their livelihood. It has nothing to do with the national planning.

SHRI P. N. SUKUL: Even before the Planning Commission was set-up the situation was like this.

SHRI P. B. SAMANT: So far as the losses are concerned we feel that the suburban railways are hardly using 1 per cent of the railway assets. The suburban railways use hardly 1.5 per cent of the total assets of the railways and total energies. The contention of the railways is that they are running in loss but it has to be examined by proper audit.

MR. CHAIRMAN: We will consider it.

SHRI P. B. SAMANT: Coming to clause 28, we prefer to substitute the original clause by another clause as under:

"28(1): The Parliament shall by law provide for fixing rates and any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and for their revision from time to time

(2): The Central Government may by an order reduce rates passed by the Parliament under clause (1) of conditions subject to which such reduced rates shall apply."

Sir, powers have been given to Income-Tax Commissioners for reduction of levy. Levies can be reduced. Once the maximum rates are fixed by Parliament, in certain situations, concessions can certainly be given by the administration by reducing the rates

We want control by the representatives of this nation over the fixing of rates in this country. For the last about 100 years, we have seen that administration has revised or fixed the rates arbitrarily. On occasions when we tried to find out whether Lok Sabha has control over fixing of rates or for their revision, we came to know from the proceedings of the Lok Sabha—when Mr. Madhu Limaya raised the issue on 7th September 1974—that the administration raises or revises the levies. There should be some check of the Parliament over these rates.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: We will see that.

SHRI P. B. SAMANT: The Speaker has categorically stated that the revision or fixing of rates need not be placed before the Parliament. Administration can do it otherwise as these are like fees. But we find that the capital assets are developed out of these rates. So, it is not merely a question of fees. There are certainly more collections than the expenditure. That's why we feel that these are not merely fees. They should have a proper control of the representatives over these things.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: We are considering very anxiously a participatory process that can be brought in. I can assure you that we are giving very very anxious consideration to this very serious but complex problem.

SHRI P. B. SAMANT: Then we take collectively clauses 58A, 58B, 58C and 58D regarding passengers' amenities. We will not stress this point much because our colleagues, who met this committee earlier, have dealt with this question in detail. We will not take Committee's time over these amendments. But we feel that they are essentially in the interest of passengers. The Committee should take a proper perspective so that the passengers have some protection.

Then we take 58E. At present, there are passengers' consultative committees at different levels—from national level to suburban passengers. It was a welcome theme. From the passengers' side, there was no opportunity to place their points before the administration prior to these committees were formed. When the overall position of the Railway Act is being examined by the Committee, we feel that these committees should be given a statutory existence. Otherwise everything will merely depend upon the whims of the administration. Before the end of the year, a committee may be dissolved and new one may be formed. There must be some sort of protection.

GEN. R. S. SPARROW: Perhaps the consultative committees may, later on, if so required, set up sub-committees depending upon the workload. Anyway we will look into this.

SHRI P. B. SAMANT: Clause 122. Compensation should be adequate

Clause 132: The time of appeal proposed in the Bill is three months. We feel it should be six months. The accident may take place in one State. Probably the passenger who met the accident may be from some other State.

SHRI BHANDARI (Jt. Secretary): Section 5 has given the power to the Commissioner of Railway Safety.

SHRI P. B. SAMANT: Clause 141 (a), (b) and (c) regarding railway protection force.

MR. CHAIRMAN: We will discuss this problem.

GEN. R. S. SPARROW: It is a good point.

SHRI P. B. SAMANT: Lastly we come to chapter 15 on penalties.

MR. CHAIRMAN: You have given a very comprehensive statement.

SHRI P. B. SAMANT: We feel the penalties are disproportionate. There

are 40 offences, some of them are new offences. If you look at those in the table you will find that the penalty or imprisonment under the old act is different from what is provided in the new Bill.

MR. CHAIRMAN: We will discuss all these details as you have given us a very detailed report.

श्रीमती मृणाल गोरे : केवल पैनेल्टी बढ़ाने से घाज की समस्या दूर नहीं होगी, इसमें धीर ढंग से सोचना होगा ।

SHRI PAWAN KUMAR BANSAL: It is a question of approach.

CHAIRMAN: Thank you very much Mr. Samant and Mrs Gore for making very valuable suggestions. We will keep in mind the valuable points given by you. Thank you very much.

(Witnesses then withdrew)

III (a) The Maharashtra Chamber of Commerce, Bombay

Spokesman:

1. Shri Arvind Deshpande
2. Shri M. D. Ranade
3. Shri Dilip Shinde

III (b) Nasik District Association, Nasik.

Spokesman.

1. Shri Dalip Salvekar, Secretary
2. Shri Mukand Waray, Member

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Now we will take up two organisations together—The Maharashtra Chamber of Commerce and Nasik District Passengers Organisation. Mr. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the

evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI ARVIND DESHPANDE: On behalf of Maharashtra Chamber of Commerce and Nasik District Passengers Organisation, I extend hearty and sincere thanks to all the respected Members of Parliament. We have suggested in short something regarding the goods section as well as the passenger section. My friend, Mr. Ranade, will now give his impressions.

SHRI M. D. RANADE: My leader has already expressed our thanks and I concur with him. When this Bill was introduced, at that time itself we had raised some points and objections. Right from the beginning we had an impression that Railways is a service industry. If it is so, then it should look to the passengers or the persons who are giving their goods in the hands of Railways in such a fashion that they are the customers. In the language of the trade or business, customer is always right as against the Bill wherein the customer is always shown as wrong. For whatever mistake he commits, he will be charged with some sort of a fine and also he is going to be penalised. Above all, the judiciary has not been given any sort of autonomy of freedom.

If you look to sections 142 to 192, all these sections try to prove that the railway is always right and if a passenger commits any mistake, here is the penalty. That means, the Railway does not want to take a passenger as a common person and as a customer.

In the Bill itself no definition has been given to the term 'Railway Administration'. Nowhere the duties of the General Managers of the Railway Board are explained. Nothing is re-

flected in the Bill about how far the Railway Ministry is going to work. We feel that there must be an exchange of thought between the customers and the administration. For that purpose alone, Consultative Committees must be there. After going through the Bill I have come to the conclusion that there is no mention of the status of the Parliamentary Consultative Committee or the Divisional and Zonal Consultative Committees. In my opinion this must be there in the Bill.

As for the amenities and facilities, no definition or regulations are mentioned. What is meant by amenity, and what would be the amenity, from the point of view of a service industry, should be mentioned. It should be the responsibility of the Railways to carry the passengers and their goods in full safety and it should be clearly spelt out by the Railways. But they don't want to say anything in this regard.

I may draw your kind attention to Section 189(2) which clearly says that the railway servant or the police officer may call to his aid any other person to effect the arrest under subsection (1). What does it mean? Suppose I am the railway servant. Can I call any *goonda* to my aid for the arrest of a passenger whom I don't like?

SHRI M. C. BHANDARE: Why do you assume that?

SHRI M. D. RANADE: There must be a specific definition for 'any other person.' He must be an authorised person. My suggestion is that blank power should not be given to the railway authorities like this.

If a railway servant commits a mistake, what is the regulation? If he commits a mistake in not informing the accident, what is the penalty? It has been provided as only Rs. 50/-, as against a passenger committing a lesser mistake being fined upto Rs. 150/- penalty. I had a chance re-

cently to travel by an express train. Right from the beginning there was no pantry car. Whom will you hold responsible for leaving the passengers to their fate. About this nothing has been mentioned in the Bill.

About the amenities also there are no rules. Even the rates which get revised so often will get published as and when the authorities want it. I would suggest that whenever any rule is revised, it should be published and there must be a counter check, which I am sure, is best made in the Parliament. It happens in Maharashtra State where if any sales-tax rule is revised, it will get published and a copy of the rule is placed on the table of the Assembly. I would suggest that merely publishing any rule does not serve the purpose. It should be placed on the Table of the House and people's reactions should be noted. But nothing has been provided. In short I would suggest that these things should be looked into from the point of view of the service industry.

SHRI DILIP SHINDE: Sir, I would like to make submissions in regard to goods services. The three basic points regarding goods transport are: Railway Receipt; Demurrage and Railway risk. As far as demurrage is concerned you get revenue but please have a look from the point of view of consignor and consignee also. Many obstacles are there. The documents are not cleared. At the time of loading and unloading also so many obstacles are created. For example, the yard is provided which is away and there is lot of inconvenience in loading and unloading. Further sometimes octroi people are on strike and it becomes difficult for loading and unloading of wagons. Therefore, some aspects in respect of demurrage should be changed especially taking into consideration the unclaimed consignments where you have given a provision of notice of seven days. Seven days is too short

a period. We would like this period to be doubled, namely, make it two weeks.

As regards format of Railway Receipt this has not been changed for quite some time and I request that you may go deep into the matter and make it so comprehensive that no discretionary power is given to the small officers in taking a decision on the railway receipts. That would go a long way in reducing corruption. In the railway receipt you should clarify all the major points.

As far as railway risk point is concerned in road transport once the goods are given to the contractor it is the responsibility of the contractor to see that the goods reach to the person for whom they are meant. Similarly, as far as Railways are concerned once the goods are given to the railways it should be the responsibility of the railways and if there is any shortage then the Railways should be held responsible.

SHRI MUKUND WARAY: Sir, I would like to draw your attention to page 2 serial No. 8 of my memorandum. This provision has not been incorporated in the Bill and we are suggesting that since carrying agents are working regularly so in the Bill itself 'carrying agent's' definition should be inserted so that their position gets legalised and there is a check on their activities.

Now, I want to draw your attention to Sr. No. 8 regarding payment of damages. In this Clause there is a bar on filing of suites. This is against the principle of natural justice. The affected person must have the right to move the court and the court may deal with the matter as they deem fit and proper. We have also suggested that compensation should be as per the Land Acquisition Act.

Now I draw your attention to serial No. 13 regarding power to classify and re-classify commodities. Now here absolute power has been given

to the railway administration. This should not be so. It should be open to the public because it is going to affect them. We have also suggested that suggestions and objections should be called for. Under Serial No. 14 we have suggested that absolute power to charge has also been given to the railway administration. This power can be used arbitrarily. So, here also objections and suggestions must be called for.

Regarding S. No. 16 of our Memorandum—constitution of the Railway Rates Tribunal—we think that sub-section 8 of section 31 totally nullifies the sub-section (3) of section 31. One must keep in mind that setting up of a tribunal is a judicial process and hence no defect in its constitution be tolerated or else the public will lose faith in these matters.

We suggest that sub-section 8 of section 31 should be deleted.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: This is a general provision in all acts wherever there is any tribunal. After four years if something happens, then it becomes very difficult. It is only to save the proceedings. It arises out of doctrine of necessity.

SHRI PAWAN KUMAR BANSAL: There may be a case when the person appointed as Chairman does not fulfil the qualification. I think we can consider this point.

SHRI M. D. RANADE: In the case of sales-tax or income-tax tribunals, there were two members—one departmental member and another from judiciary. That means some sort of a system is being maintained there.

SHRI MUKUND WARAY: Section 31 says that out of two members of the Railway Rates Tribunal, one shall be a person who, in the opinion of the Central Government, has special knowledge. This is a very vague term Government may appoint anybody and then say that he has a special

knowledge. There should be some control over it.

SHRI PAWAN KUMAR BANSAL: The defect, referred to in the Bill, as I see it, is regarding the procedural aspect of the appointments.

SHRI M. D. RANADE: We suggest one member having knowledge of trade, commerce, industry and economy of the country and another member having knowledge about the railways and one person from the judiciary. That will be a proper constitution.

Coming to S. No. 17 about matters not within the jurisdiction of the tribunal it takes away the matters regarding classification and re-classification. I have already pointed out that classification and re-classification is going to affect the public because while changing the classification, the rates are to be changed. Increased rates are to be paid. Absolute power should not be given to the Administration. In that case, the affected person must have the right to move the court. If it is brought under the purview of the tribunal, both sides can be heard and a judicial decision can be taken.

SHRI MUKUND WARAY: S. No. 18, section 41: There is a bar for civil suit in a court against the decision of the tribunal. Tribunal should not sit in final authority. In our sales-tax proceedings, a provision is there. If a question of law arises, the matter can be referred to the High Court and then to the Supreme Court. In the same manner, there should be a provision in this Act also where a question of law arises.

SHRI H. M. PATEL: This will delay matters. There will be practical difficulties.

SHRI MUKUND WARAY: I agree with you. Revenue proceedings and other proceedings are conducted. In that way, we have suggested. S. No. 19 regarding exhibition of time, we have told that at present time table consists of the information regarding

reservation. Now it has been done away with.

Regarding Section 51 on prohibition against transfer of certain tickets, wide powers have been given to ticket collector. We have suggested that:

"(a) A ticket issued in the name of a person will always be non-transferable.

(b) But a reserved berth or seat can be transferred by TT or TC attached to a bogi, if such transfer is mutually requested by the passengers and in such cases only he will have right to change the name of the passenger having reserved a seat or berth."

It should be mutual. Otherwise there will be scope for misuse.

SHRI P. N. SUKUL: It is already there.

SHRI MUKUND WARAY: It is not in the Act. Taking into consideration our present situation such powers should not be given.

Regarding S. No. 26 on Railway Receipt, my friend Shinde has earlier referred to it. I have to point out certain technicality. Now it is provided:

"A railway administration shall not be responsible for the correctness of the weight, description or classification of goods or the number of packages mentioned in the railway receipt unless a certificate to that effect is recorded in the railway receipt by a railway servant authorised in this behalf."

In this we cannot force the administration. Therefore, we have suggested that it should be obligatory on the part of the concerned persons to record it and issue the certificate. So we have suggested that a railway servant authorised in this behalf shall record the weight, description, classification of the goods and number of packages in Railway Receipt; for which railway shall be responsible.

As regards power to make rules in respect of this chapter as mentioned in So No. 25 is concerned, the conduct of railway servants is missing whereas it is existing in the old Act. The Government can incorporate this in the new Bill.

Regarding S. No. 28 on Punitive Charges, we all are aware, overloading is not allowed since it poses problems of safe transport. When one section 70, totally prohibits overloading it must not be allowed by backdoor inserting totally contrary section to it. To have a strict check a railway servant be made responsible for such acts so that he will not dare to do so. At the same time the trade should be also held responsible and a sum of unloading detention be recovered from them. Therefore, we have made this suggestion.

SHRI PAWAN KUMAR BANSAL: That Clause 71 has already been inserted. If a person contravenes a particular provision you impose upon a penalty.

SHRI MUKUND WARAY: This should be done by the administration. Otherwise this gives a way to malpractice.

SHRI P. N. SUKUL: If there is irregularity, penalty must be there.

SHRI PAWAN KUMAR BANSAL: Sub-Clause (2) which you have suggested in place of the present clause says, "A railway administration, in case of overloading of wagons, shall unload the goods." Here we have to see at what stage it will be unloaded. Somebody overloads it at a particular station. During the course of transit, at one particular place after say 300 kilometres, the administration finds that the particular wagon has been overloaded. In that case, the Bill provides for the Railways to charge for the distance the overloaded goods have been carried by them.

SHRI MUKUND WARAY: Why should the Railway servant allow it?

SHRI P. K. BANSAL: You can suggest that if the overloading has been done in connivance with the railway official, something remedial should be provided for in the Bill so that such things would be avoided in future.

SHRI P. N. SUKUL: The fact is that weighing machines are not available at every station. Even if a Government official is there, he cannot check it when weighing machines are not there.

SHRI MUKUND WARAY: According to Clause 77, we are entirely left to the mercy of the railway administration. It should not be the case. We suggest that the railway should be duty-bound to deliver the goods intact. Nothing should be left to the discretion of the railway clerks. Without exception, whenever any request is made to them for reweighment, they should reweigh it.

For clause 85(2) we want to add some more sections as follows:

(1) Rules for Railway Receipt form as required under Section 63.

(m) Rules for demurrage, wharfage and other charges.

(n) Rules of licencing to carting Agents.

(o) Rules for conduct of Railway; and

(p) Rules for packaging of goods.

SHRI P. K. BANSAL: I think the carting agents should get licences from the local authorities. There must be some rules to this effect.

SHRI MUKUND WARAY: I am told that under the present condition there is no provision. Their services are recognised; but they are not legalised.

SHRI BHANDARI. (RAILWAYS): They are not, in fact agents of the Railways. They are either the agents of the consignees or the consigners

We have given them certain facilities. Beyond this we don't think we can do much.

SHRI MUKUND WARAY: Since their existence is recognised, we have suggested that their service should be legalised.

Now, we come to Section 93. Railway is paying substantial sums for claims resulting out of handling of open vehicles *vis-a-vis* inefficient transport. All can be arrested only if use of open vehicles or vessels is cut down to a very minimum level. Again, charging of freight automatically binds railway to transport goods and deliver the goods in-tact. This is possible only when the use of open wagons is not allowed. We are aware that carrying grains in open wagons results in not only individual loss; but also in national waste. To arrest this waste we strongly feel the use of open vehicles or vessels must be prohibited.

However, in case of non-damageable goods, if a consigner accepts full responsibility, then only open wagons may be used. Again, it may happen in case of emergency, immediate delivery and transport is necessary. Then, only in such cases open wagons be used for any goods.

The concept of defective wagon is new. It will give wide powers to refuse claims and increased malpractices. Hence it must be deleted.

Clause 131 (3) talks about with the least possible delay. In our opinion it carries no meaning. Therefore, we suggest that instead of that, a clear time limit of two weeks be provided. Now please come to page 23—Serial No. 40. It is regarding punishment in respect of fraudulent travelling.

SHRI PAWAN KUMAR BANSAL: This point has been stressed by other witnesses also who have appeared before the Committee. So you may take up next point.

SHRI MUKUND WARAY: As regards Serial No. 41 we want that this provision should also be deleted and there should not be any encroachment on the powers of the judiciary.

Now please refer to Serial No. 56. It is about drunkenness on duty. This must be dealt with seriously. Our suggestion is that railway servants and public should be dealt with at par. Now the fine is proposed to be imposed and that too Rs. 50 only. There should be provision of both fine and imprisonment.

SHRI M. D. RANADE: Lastly, Sir, we would like that there should be indication of Serial No. on the ticket.

MR. CHAIRMAN: Thank you, very much.

IV—Marthwada Janata Vikas Parishad, Aurangabad.

Spokesmen:

1. Shri G. R. Rege
2. Shri Pratap Borade

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I welcome you all to this sitting of the Committee. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

We have received your Memorandum. I would request you to offer your comments in brief, if any.

SHRI G. R. REGE: Sir, as you mentioned that the matter should be treated as confidential, while narrating we will be giving little

experience particularly with the Railway Ministry.

The Railway Act, 1890 was primarily designed to serve the commercial and military interests of the British rulers of the country. With the achievement of Independence, there has been a sea-change. Now it is said that in the provisions of the Act, the Central Government should fix rates and the monetary liability for loss of goods. Offences have been treated more stringently.

A lot of development has taken place all over India. But still we find that there is an imbalance in the development of various pockets in the country. A number of areas have remained without proper development. The provision of railways should be an infrastructure from the point of development. We feel that special provisions should be taken into consideration so that there is priority for the development of the pockets which have remained backward.

Similarly, it is necessary to provide in the bill itself for the basic amenities to passengers. The railway administration must provide: drinking water, catering in trains, waiting halls, retiring rooms at important stations, chairs and stretchers for patients. In some places, for kilometres together we do not have drinking water or catering at the dinner time even to the first-class passengers. Therefore, we submit that these basic amenities should be provided in the Act.

MR. CHAIRMAN: Will you please take up clause by clause so that the Members may ask some questions to you?

SHRI PRATAP BORADE: Sir, there is our own statement of objects which our Association wanted to place before you and to prove those points. That's why it was taken up. Now we may go point by point.

SHRI G. R. REGE: Regarding Clause 61, since the option has not been emphasised, the goods shall be deemed to have been entrusted at Railway's risk rate.

SHRI H. M. PATEL: If the owner does not mention anything, does it mean that it is at Railway's risk?

SHRI G. R. REGE: If a person is aware of the situation he will certainly mention at 'owner's risk'. Otherwise, it will be at 'Railway's risk'.

SHRI H. M. PATEL: The railways should tell him that he must make a choice. The option should be exercised in every case.

SHRI M. S. BHANDARI (MINISTRY OF RAILWAYS): In the present arrangement, only in the case of a few commodities, there is one rate. There is no owner's risk in certain commodities like coal etc. It will be at Railway's risk unless risk is quoted. If it is quoted, our experience has shown that in cent per cent cases people opt for owner's risk. So in this clause, unless you tell us that it is an owner's risk, it is presumed that it is at Railway's risk. In old days before Independence, there used to be so many risk rates. When the position became chaotic in 1957, the Rate Structure Enquiry Committee was appointed and it recommended that we should have only one risk rate and railways should be liable for any loss. In 1961-62 we amended the law and the Indian Railways Act was amended by which we made it a Railways liability. Apart from the rate question, coal is such a commodity which moves in open wagon and it is very difficult to guard the open wagons. Therefore, if we have to assume higher liability, we have to charge more.

SHRI H. M. PATEL: What you have said the Committee will go into it thoroughly because the way the

development is taking place, there is no rationale behind it.

SHRI PRATAP BORADE: Regarding Clause 69 about the rates that are to be renewed by the authorities, it is said that any order made under sub-section (1) shall cease to have effect after the expiration of a period of one year from the date of such order but may, by a like order, be renewed from time to time for such period not exceeding one year at a time as may be specified in the order. Our experience is that about the rates, particularly goods carriages, there is a hike without any previous knowledge. Normally, the traders, industrialists and the people think that these changes should be applicable whenever there is budget. Our request is: it has to be done between two budgets so that we can plan for a period of 10-12 months. It has to be okeyed by Parliament. When it has to go to Parliament, Parliament will examine it properly and it will be done with due care. Otherwise there will be abrupt changes in the tariff.

SHRI G. R. REGE: Page 26 for Clause 85(4) we suggest that the railway administration's reasonable hours of working should be duly notified to the people.

SHRI P. K. BANSAL: Could you kindly elaborate your idea? How these should be notified?

SHRI G. R. REGE: The reasonable hours of the railway administration should be notified on the notice board. Otherwise the term reasonable hours would be left to the discretion of the railway people.

SHRI P. K. BANSAL: How do you think that the present provision would work to the detriment of the people?

SHRI G. R. REGE: We want that the public should know in advance all the changes which are duly notified. So, our suggestion is that in that

clause, after all reasonable hours, we would like to add 'duly notified'.

SHRI PRATAP BORADE: Normally everybody knows that complaint or suggestions books are available at all stations. But actually they are not available. The public also would not know at what time they are available. So, if it is notified that they are available from such and such a time to such and such a time, the public would demand for it and the railways also would be benefited. Similarly in the smaller stations when a person has to take goods delivery, he should know at what time the officer concerned would be available to give him the goods. It is precisely for this reason that we want it to be notified on the notice board.

SHRI BHANDARI, RAILWAYS: There has never been any dispute about the 'reasonable hours'. Normally the working hours are notified on the Board. At very small stations, there would be only one station master and all these records and the rate charts would be kept with him.

SHRI PRATAP BORADE: Clause 80, sub-clause (2) says that 'as may be prescribed'. In order to give a finality to this matter, we want to explain it as 'In such cases, claim should be settled in prescribed time'. It gives a right to the consignee once the delivery is settled and a time limit is fixed.

SHRI G. R. REGE: In Clause 101 (c) (ii) we agree to riot and civil commotion. But the rest of the terms like strike, lock-out or stoppage etc., should be deleted. We don't feel that the consignee should be put to loss because of strike, lock-out which are due to man-management.

SHRI AZIZ, QURESHI: Suppose some illegal strike or lock-out takes place. What do you suggest in that case? Should the railways lose on these counts?

SHRI G. R. REGE: We still feel that the consignee should not suffer because of bad man-management.

In Chapter 12, for Clause 111 (1) (e) we suggest that instead of the said words, it should be replaced by 'Government may notify after giving wide publicity and considering the objections if any from the passengers association or individuals'. Because, the Central Government official gazette is not read by everybody and it is necessary that this is given publicity through newspapers all over India so that the passengers association and individuals concerned may give their objections, if any.

SHRI P. K. BANSAL: Clause 111 in fact says that it is for the officer concerned to give notice of an accident to the District Magistrate etc. It is not really dealing with the rights and liabilities of the passengers or the persons who send their goods through railways. I don't really know as to what you mean by giving wide publicity to an accident. It does not straightway concern the public as such for raising objections as made out by you.

SHRI G. R. REDGE: If that was the idea then sub-clause (e) is not necessary at all.

Now I come to Clause 111(2) line 14. The word 'unnecessary' is vague and the words 'without delay' should be inserted.

SHRI PRATAP BORADE: Sir, here we would like to suggest an additional provision about the right of the user. It is difficult to get wagons in the interior areas and backward places even after making a notice of three months. So we would say as a right of the user there should be some clause which should say that if a demand is placed with a three months notice then the wagons should be made available to them or the reasons in writing should be communicated to them to avoid the problems. Sir, this problem is more acute at the small outlying stations.

Sir, we feel that this Bill deals more with the rights and privileges

of the Railways rather than the rights and privileges of the users.

SHRI H. M. PATEL: Mr. Chairman, I think it is a very reasonable point that the witness has made. At smaller places if a person wanting a wagon gives a reasonable notice then he should get a wagon within that period.

SHRI BHANDARI, Railway Board: Sir, this demand is not practical to be met. Today the policy of the Government is that Railways will cater to the bulk traffic and the roads will cover the other traffic. If we are to implement that policy and make it a law that you must provide a wagon at all the points then that will become very difficult.

SHRI H. M. PATEL: But the point is that Government wants small industrial units to be encouraged. Now at places where Government have set-up industrial estates at such places at least Railways must work out a system where within a reasonable period of time wagons are provided.

SHRI BHANDARI, Railway Board: But will the Railways be guaranteed of the traffic?

SHRI P. N. SUKUL: Then how are you going to help the backward areas? When Central Government is giving incentives to the industrialists in the backward areas then it is necessary that wagons are provided there.

MR. CHAIRMAN: We can discuss this point amongst ourselves later on.

SHRI PRATAP BORADE: For the information of the hon. Members I would like to say that it is not the question of bulk supplies. People from our areas, who are not bulk suppliers, are not able to get wagons for cement, steel and coal for months together. But the people from the developed areas because of their influence with the officers can book their

goods. The small persons have to take the chance of the roadways and pay 3-4 times the actual cost for transport. It disturbs the economy. This has caused sickness for small industries and for the young entrepreneurs. Such things should be provided for the key areas. It would help us.

SHRI G. R. REGE: Now Chapter XIII, clause 122, sub-clause (2) regarding extent of liability:

"(2) The liability of a railway administration under this section shall in no case exceed one lakh rupees in respect of any one person."

Sir, in Bombay the High Court has given Rs. 27 lakhs to one person. We cannot put the life so cheap. You may make it Rs. 10 lakhs.

SHRI KAMALENDU BHATTACHARJEE: We will discuss.

SHRI G. R. REGE: Sir, clause 124(2) says:

"(2) No application for compensation under this section shall be entertained unless it is made within three months of the occurrence of the accident but the Claims Commissioner may, on good cause shown, allow any application to be made at any time within one year of such occurrence."

Some reasonable time should be given to recover the person from the mourning shock. As three months is a short period, we have suggested 'six' months.

Now clause 125(2):

"(2) Where, on the receipt of an application made under sub-section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately,..."

Here it should be within one month of the receipt of the application. It may be made mandatory.

Then clause 129 regarding provision for medical examination of persons injured:

"129. Whenever any person is injured as a result of an accident under section 122, the Claims Commissioner may, if he considers it necessary, direct that the person injured be examined...."

The general medical suggestion is that it should be examined immediately, at least within two days. We submit that within two days he should be examined from the point of view of taking a proper decision.

Clause 131(1) says:

"A railway administration shall comply with an order for compensation forthwith by depositing the amount of the compensation with the Claims Commissioner."

In our opinion, it should be seven days.

Regarding Clause 133(3), I say it should be some reasonable time i.e. within a week after deposit. In all such cases, it will be very necessary from the railway administration's point of view and efficiency to have confidence of the people.

Clause 132(1) says:

"(1) Any person aggrieved by an order of the Claims Commissioner refusing to grant compensation, or as to the amount of compensation granted to him, may prefer an appeal to the High Court having jurisdiction in the place where the accident occurred..."

We suggest that it should be the High Court in the jurisdiction of which the aggrieved person resides.

SHRI PAWAN KUMAR BANSAL: That will lead to one difficulty. Suppose there are 10 persons injured and those 10 people belong to different States. If they were to prefer an appeal at 10 places...

SHRI PRATAP BORADE: The railways should bear the expenses. It will be impossible for a person to spend time and expenses on travel.

SHRI SUKOMAL SEN: Let the railways provide free travel.

SHRI G. R. REGE: Clause 134(2) (c);

"(c) the nature of the injuries for which compensation shall be paid and the amount of such compensation."

There should be a schedule for the nature of the injuries.

SHRI SUKOMAL SEN: Is it possible to prepare a schedule of injuries?

SHRI PRATAP BORADE: There is schedule available in the Labour Compensation Act.

SHRI BHANDARI (Jt. Secretary): There is already a schedule for compensation to be given in the case of injuries. The minimum amount fixed for smallest injury is Rs. 20,000.

SHRI G. R. REGE: On page 47 clause 143(4) regarding in case of default of payment we suggest imprisonment for a minimum period of one month.

Regarding Clause 140(b) "imprisonment for three months in case of conviction for the second or subsequent offence". It is high time that it is discouraged by deterrent punishment.

Regarding Clause 150, we submit that nuisance, indecency mentioned in the Bill is not as per the Indian Penal Code. We suggest that it should be defined clearly and it should be as per IPC.

Regarding Clause 156(2) the rules should be widely published wherever rules are being framed. It should be published in all national newspapers.

Regarding Clause 163, it should be made more stringent.

Regarding Clause 167(4), instead of Rs. 100 it should be Rs. 500 as Rs. 100 is too meagre an amount.

Regarding Clause 167(4), instead of Rs. 100 it should be Rs. 500.

Regarding Clause 180 it says:

"If any railway servant is in a state of intoxication while on duty, he shall be punishable with fine which may extend to fifty rupees and when in the performance of any duty in such state is likely to endanger the safety of any person travelling on or being upon a railway, such railway servant shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both."

We suggest that it should be very rigorous with a fine of Rs. 1000. The word 'or' should be deleted.

Regarding Clauses 181 and 182, it must be at least for two years and fine which may extend to Rs. 2000.

Regarding 182, 184, 185, 187, 188 we have suggested that railway servants will have to be treated in a more stricter manner. I need not go in detail into all these clauses. At the end I would like to make a specific point about the Consultative Committee. We want that it should be given statutory status and it should consist of only experts from various disciplines.

SHRI PRATAP BORADE: Clause 28 says that the Government may, from time to time, by general or special order fix the rates for the carriage of passengers and goods for the whole or any part of the year. We want that for this purpose there should be one tribunal which should consist of experts from the fields and their opinion should be sought as a statutory

opinion while considering the rates. It should not just be an advisory body. It should have representatives from commerce and trade.

SHRI G. R. REGE: We want that the tribunal should have three members with one High Court judge. In addition, one representative each from commerce and industry and passenger association should be there.

As regards safety of the passengers, we want that there should be both police and railway protection force. We want that instead of State police, only central government police should be there because if State police is there, they are bound by their limited jurisdiction. So, we suggest that only central government police should be deployed all over.

MR. CHAIRMAN: Thank you for giving your valuable suggestions to this Committee. We will certainly keep them in mind while we discuss the Bill.

(The witnesses then withdrew)

MR. CHAIRMAN: Before we disperse, I would like to seek your suggestions for the next tour to Calcutta.

SHRI B. L. BAIRWA: Please call a meeting in Delhi for this purpose and we will chalk out our tour programme there.

MR. CHAIRMAN: All right.

(The Committee then adjourned)

*Saturday, the 27th June, 1987 from 11.00 to 14.00 hours in Committee Room,
Old Building, General Manager, Central Railway's office, Bombay V.T.*

PRESENT

Shri Arvind Netam—Chairman

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Banwari Lal Bairwa
4. Shri Janak Raj Gupta
5. Shri Jujhar Singh
6. Shri P. Kolandaivelu
7. Shri Mahendra Singh
8. Shri H. M. Patel
9. Shri Aziz Qureshi
10. Shri K. H. Ranganath
11. Shri Sri Hari Rao
12. Shri K. D. Sultanpuri

Rajya Sabha

13. Shri Pawan Kumar Bansal
14. Shri Kamalendu Bhattacharjee
15. Dr. Bapu Kaldate
16. Shri Mirza Irshadbaig
17. Shri Sukomal Sen
18. Shrimati Pratibha Singh

SECRETARIAT

Shri G. S. Bhasin—Chief Legislative Committee Officer.

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—Executive Director (Traffic Commercial)
2. Shri J. K. Mitra—Joint Director (RAR)

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

Shri K. L. Mohanpuria—Joint Secretary and Legislative Counsel

WITNESSES EXAMINED

Siding Owners and Commercial Railway
users Association, Pune.

users Association and the Deccan Pas-
senger's Association, Pune.

Spokesmen:

1. Shri S. N. Awekar, Advocate
2. Shri A. S. Awekar, Advocate

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Let us start. Mr. Awekar, I welcome you to this sitting of the meeting of the Committee. I hope you will give us the benefit of your valuable suggestions and comments to present an objective and useful report on the subject. Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. We have received your memorandum and I appreciate the amount of labour that you have put into this. Please highlight the important points before the Members put you questions by way of clarification.

SHRI S. N. AWEKAR: We are thankful to the Chairman and the members of the Joint Committee for giving us an opportunity to express our views in respect of a very important enactment which has to be passed by the Parliament. Further, this Bill has its own importance because the Indian Railways Act which has been in force for the last 100 years is being replaced by this Bill.

After going through the Bill we find excepting Clauses 91 and 79 all the Clauses in the Bill are in favour of the Railways. I would say that the

entire Act from this point of view bestows all sorts of rights and privileges in favour of the Railways and all sorts of handicaps and disabilities on the railway users.

So far as the Bill is concerned I will highlight 9 or 10 points. They are (a) owner's risk rate; (b) defective conditions of the goods and packaging thereof before they are accepted for carrying by the railways; (c) open wagons; (d) railway receipts; (e) damage due to delay; (f) courts jurisdiction; (g) false claims and lastly the railway rates tribunal.

In my memorandum I have suggested one more point with respect to demurrage. Today I have added another point regarding consultative council and the consultative committees and some grammatical changes. There is another point regarding service of notice which is to be made on the railway administration.

Sir, at the outset I refer to Clause 96 which concerns owner's risk rate.

I would like to trace some history prior to the year 1907 as regards the owner's risk rate. The Indian Railways Act was enacted in 1890 and came into effect from 1st May 1890. Under section 72 of that Act, the railways' general responsibility was that of a "bailee" as per sections 151, 152 and 161 of the Indian Contract Act.

This law was in existence upto 1962. In 1962, the Indian Railways Act, so

far as the law regarding carriage of goods by railways concerned, was drastically changed. Under section 72(2) an exception was made to this general responsibility of the Railways. In that, it was written:

"that the railway administration shall be entitled to limit their responsibility which has been placed upon by section 72(1) if any agreement approved by the Governor-General in Council is signed by the consigner."

So, this was an exception to the general rule or the general liability of the railways as enunciated in section 72(1) of the Act. The Governor-General in Council approved about 8 to 10 forms. These forms were technically called Risk Notes 'A', 'B', 'C', 'D' etc. We are concerned with the Risk Note B which contains an 'exception' to the general responsibility in the case of goods booked at 'owner's risk rate'. This risk note B, as was in force prior to 1907, gave the Railway an absolute exemption of liability in cases in which any damage, deterioration, loss, pilferages etc. had caused to the goods during transit. I would like to refer the last 7-8 lines of this Risk Note B. (Copy attached to my memorandum marked as 'A' at the end) which are as follows:

"...from—station to—station, harmless and free from all responsibility for any loss, destruction, damage to the said consignment from any cause whatever before, during and after transit over the railway."

By virtue of the said Risk Note B, not only the Railways were exempted from all responsibilities in respect of the damage etc. caused in transit but it could claim successfully an exemption in which any of the railway servants had openly took away any such packages for himself. That was the law upto 1907. It was all right at that time because that law was brought into effect by the Britishers. There was, however, a agitation against the law contained in the Risk Note B. And

in 1907, this Risk Note was revised. An exception was created to this absolute exemption as "...except for the loss of a complete package forming part of a consignment due either to wilful neglect of the railway administration, or to theft by or to theft by or to the wilful neglect of its servants, transport agents or carriers..."

"The above exception, which was created in the Risk Note B, outwardly lightened the or reduced the absolute exemption that was available to the Railways to some extent. It was meant to enable the consignees to prove that the loss, damage etc. was the result of 'wilful neglect' on the part of the Railways or their servants and to claim successfully compensation."

I would like to say that this relief given was also imaginary because it was very difficult to prove negligence on the part of the railways when the consignee had not seen how the goods travelled, who stole it. Nothing could be known by the consignee. So, it was an impossibility. The mercantile community therefore agitated. The burden of proof against the consignee was too heavy. So a further revision was demanded to lighten this heavy burden.

Then in 1922, T. V. Seshagiri Ayyar Committee was appointed. This Committee was named as Risk Note Revision Committee. About 39 Chambers of Commerce in India submitted their memoranda before this Committee. I would like to refer to page 83 of its report wherein they observed:

"The goods remained in the hands of the railways for days and weeks and, in some cases, for months, travelled over hundreds of miles, passing over several railways and for the party to prove that the railways or the staff were neglectful wilfully or that the staff committed the theft, it would be necessary to book men along with the consignments in each case from start to finish to find out whether one of the above had happened. We do not

think anything else would enable the owners to get the necessary proof..."

This Committee gave a Report in the year 1924 and on page 3, para 15 and sub-para 2 it says: "that it is unfair to place on the consigner the burden of proof that loss is due to wilful neglect on the part of the railway administration or its servants, as it is practically impossible for him to prove this....". This Committee accepted the grievances which has been put before them by all the Chamber of Commerce and came to the conclusion that there was a necessity of reducing the burden of proof. The Committee proposed to insert in the Risk Note B of 1907 the following revised provision: "I the undersigned, do in consideration of such lower charge, agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the Railway Administration's servants, provided that in the following cases:

(a) Non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignment packed in accordance with the instructions laid down in the Tariff.

(b) Pilferage from a package or packages forming part of the said consignment properly packed as in (a) when such pilferage is pointed out to the servants of the Railway Administration on or before delivery, the Railway Administration shall be bound to disclose to the consigner how the consignment was dealt with throughout the time it was in its possession or control and, if necessary, to give evidence thereof before the consigner is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants

cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consigner." The proposed change which was subsequently incorporated in the Risk Note B proved to be a great relief. In the case of non-delivery, short delivery, and pilferages, a responsibility was thrown on the railways to disclose to the consigner how the goods were dealt with throughout the time it was in their possession or control. The risk note B as revised in 1924 was adopted by the Indian Railways (Amendment) Act, 1949 and was incorporated in sections 74C(3) and 74D which run thus:

Section 74C(3) says: "When any animal or goods are carried or are deemed to be carried at owner's risk rate, a railway administration shall not be responsible for any loss, destruction or deterioration or of damage to such goods from any cause whatsoever except upon proof that such loss, destruction, deterioration or damage was due to negligence or misconduct on the part of the railway administration or of any of its servants."

Section 74(D) says: "Burden of proving misconduct where goods carried at owner's risk rate are not delivered to the consignee or are pilfered in transit, notwithstanding contained in section 74C."

Then, again in 1961, the Indian Railways Act was drastically changed.

SHRI PAWAN KUMAR BANSAL:
What is this Section 74D?

SHRI S. N. AWEKAR: It is the later part of Risk Note B which was revised in 1924.

SHRI PAWAN KUMAR BANSAL:
I could not get clarification.

SHRI BHANDARI: (Jt. Secretary):
What Section 74D he is referring to was subsequently re-numbered and it is Section 76.

SHRI S. N. AWEKAR: The Indian Railways Act 1890 was amended by an Amending Act of 1949 which in its turn was amended by another Railways (Amendment) Act of 1961. The Section 74C(3) and Section 74 which after the amending Act of 1949 contained the provisions of the Risk Note B of 1924 were re-numbered as Section 74(3) and 76F and stood in the Act after the Act amended by the Amending Act of 1961. These Sections 74(3) and 76(F) are still in force.

Now this Clause Number 96 is the reproduction of the Section 74, sub-clause (3) of the current Bill. Now this Act has completely omitted this section 76(F). In the result we have been taken again back to the year 1907 when this section 76(F) was not in existence in Risk Note B.

By virtue of the recommendations of the T. V. Sheshagiri Rao's Revision of Risk Notes Committee, the Risk Note B was suitably revised to benefit the consignees. These provisions were ultimately incorporated in Sections 74(3) and 76(F) of the current Indian Railways Act. Unfortunately, Section 76(F), which is the most important provision in the field of the law relating owner's Risk Rate, is omitted in the Bill. In the result, we have been proposed to take back to the year 1907 law which was condemned by the Sheshagiri Rao Committee. It is surprising that the world is galloping towards the 21st Century and the Bill wants us to revert back to the 19th Century and to adopt the Britisher's most heinous law.

MR. CHAIRMAN: Should we maintain old section?

SHRI BASUDEB ACHARIA: That old section should be retained in the same form.

SHRI S. N. AWEKAR: Section 76(F) should be retained as it is because it has been working satisfactorily for the last so many years.

Regarding Clause 97, I will first read the current Section 77, Sub-section (1) of the Act of 1890.

In Clause 97, the last sentence is omitted. That is:

"except upon proof that such loss arose from the misconduct on the part of the Railway Administration's servants'.

It means that if any goods are despatched not ordinarily in defective condition, and at the time of delivery if the Railways say that according to them it was sent in defective packages, Clause 97 has given the Railways an absolute exemption and the consignee is not allowed to prove the misconduct on the part of the Railways. For example, if some bags of wheat are booked in fairly new bags and according to the Railways if it is defective—nobody actually knows what they write on the RR; it is an open secret—and during transit if the bages are cut by thieves and the contents taken away, according to the new Clause the Railways will be absolutely free and they have no liability. According to the current Act, the consignee is allowed to move the negligence on the part of the Railways. In that case the Railways is bound to compensate. But with the introduction of the new clause the right of the consignee to prove the negligence on the part of the Railways is taken away.

I have given you today the Risk Note Form B which was approved by the Governor General. It was in accordance with the recommendations made by Shri T. V. Sheshagiri Ayyar Committee.

SHRI P. K. BANSAL: I think now your point is very clear and we fully appreciate it.

SHRI BASUDEB ACHARIA: Do you want the same form to be retained?

SHRI S. N. AWEKAR: Yes Sir. On account of this mission, I would say that we have been taken back to the year 1907. I suggest that the consignee should be allowed to prove the negligence on the part of Railways.

SHRI BHANDARI (Railways)
Clause 97(2) covers your point.

SHRI S. N. AWEKAR: If it is there, I have no further comments. I would now come to the open wagons. It is on page 5 of my memorandum and Clause 93 of the Bill. The carriage of goods in open wagons was governed by risk note 'C' and this risk note 'C' is now adopted in Section 76-A. Now in Clause 93 'defective wagon' and 'wagon not fully covered' are added which is very dangerous. The existence of 'open wagons' is the natural state of affairs whereas the 'defective wagons' or 'wagons not fully covered' are the result of man-made failures. The consignor in preferring to allow his goods to be carried in open wagons, is always in a position to know the 'calculated risk' but not in the case of 'defective wagons' or 'wagons not fully covered'. The inevitable ugly effect of the permission to use 'defective' wagons etc. with a statutory approval will end in the deterioration of the repairs work by the administration.

Sir, maybe the railways will gain something as they will not have to pay the claims but as a result of this provision it has escaped their attention what a tremendous loss will be suffered by our country. I have stated on page 6 of my memorandum that in rainy seasons leaky wagons will be freely used. So, it is our submission that these two terms should be dropped from this Clause.

SHRI BHANDARI, RAILWAY BOARD: The rationale behind this addition is that previously under the existing law the consignor could only opt for an open wagon and he had no option to load in a non-watertight

wagon. Therefore, we wanted to give him the option to choose between the two and accept the responsibility. If the trade does not want it then the Railways are not going to lose. Secondly, the intention is not mechanically defective.

SHRI PAWAN KUMAR BANSAL: But the difficulty Mr. Bhandari is that in practice the subordinates take an entirely different attitude and, as such, from practical point of view it becomes rather difficult. So, we want that the loopholes should be plugged at this stage itself.

SHRI H. M. PATEL: I think the witness has made an important point and we should not ignore it. In practice there is no option left to the consignor.

SHRI PAWAN KUMAR BANSAL: Mr. Bhandari when I talk of officers taking the purport of hypertechanical and sometimes wrong view of the provisions of law, I must revert back to your interpretation of clause 97. The purport of Clause 97(1) is different from Clause 97(2). Both the clauses should have this provision of the right to prove negligence as sub-clause (2) does not cover the cases under sub-clause (1).

MR. CHAIRMAN: Your point has been well taken. You may proceed to the next point.

SHRI S. N. AWEKAR: In the same clause, one more important point to be noted is that in the old section 75-A. The last sentence is:

"...for any destruction, deterioration or damage which may arise only by reason of the goods being so carried."

Our submission is that the word "only" should not be omitted from the clause. It should be there. Suppose in the case of open wagons, the goods are stolen away by some thieves, then the railways will claim protection.

Now I refer to clause 63, sub-clause (2):

"(2) A railway administration shall not be responsible for the correctness of the weight, description or classification of goods or the number of packages mentioned in the railway receipt unless a certificate to that effect is recorded in the railway receipt by a railway servant authorised in this behalf."

Sir, a conclusion from this can be drawn that not taking weighment would be the rule and taking weighment will be an exception. The position should be reverse. Every consignment, whether small or a wagon-load consignment, must be weighed because it is necessary to find out as to what the weight of the entire train would be so that there may not be any derailment, etc. Weighment is also necessary for the purpose of ascertaining the shortage if found at the destination. But here we find that an authority is given to the railways not to weigh. That should not be the position. Every consignment must be weighed.

At present, we find that a number of wagons are not weighed. They say that the freight is charged on the carrying capacity of the wagon. If it is 56-tonne wagon, the freight charge is on the carrying capacity of 56 tonnes. If the wagon consists or 45 or 50 tonnes, they don't bother.

Another point is that they are not interested in recording the weight of the consignment. Once it makes such admission and at the destination if the goods are found to be of less weight, then responsibility for claim will lie upon the railways. So, the consignment should be weighed.

SHRI PAWAN KUMAR BANSAL: In the present position of the availability of resources, it will be just next to impossible to weigh every wagon. You have got to find some via media. I know of various mal-

practices which are indulged in now. Something hanky panky does take place on occasions. But it is difficult to have so many weigh-bridges.

SHRI S. N. AWEKAR: It is quite possible to provide weigh-bridges. They spend lakhs and crores of rupees for many an unremunerative purposes and ironically enough, they fail to provide and maintain weigh bridges. The intention behind is not an innocence but an idea to suppress the "shortagees". If expenses matter, the Railway should levy weighment charges and include them in R/Rs.

SHRI H. M. PATEL: His point is that the railway administration shall be responsible for the correctness of the weight and the number of packages forming the consignment mentioned in the Railway Receipt unless proved otherwise. It is quite fair. We will consider the difficulties of the railways also.

MR. CHAIRMAN: The point is relevant. We will discuss it.

SHRI S. N. AWEKAR: My point is that they must accept the weight of the consignment to a certain extent.

MR. CHAIRMAN: Your point is very correct. We have taken note of this.

SHRI S. N. AWEKAR: Should I refer to Rule 115 in the IRCA Goods Tariff.

MR. CHAIRMAN: No, no.

SHRI S. N. AWEKAR: Now we take Clause 63(2) regarding Railway Receipt.

SHRI PAWAN KUMAR BANSAL: It is all right provided we add proviso to it.

SHRI S. N. AWEKAR: Regarding Clause 77(1), it says:

"A railway administration may, on a request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed:

"Provided that except in cases where a railway servant authorised in this behalf considers it necessary so to do, no such weighment shall be allowed in cases of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:

Provided further that no request for weighment of consignment in wagon load shall be entertained under this sub-section, if

(a) weighment is not feasible due to congestion in the yard or other operational reasons; or

(b) in the opinion of a railway servant authorised in this behalf, circumstances exist which do not warrant such weighment."

Now as regards reweighment, it is necessary to know how much quantity the consignee receives so as to ascertain the shortage and get a certificate from the railways to the extent of shortage. In this connection, I would like to refer to Rule 118 of the Goods Tariff which is applicable to all the stations in railways.

"Railways do not undertake to weigh consignments at destination stations as a matter of course. Such weighments at destination stations can only be considered in exceptional circumstances when the condition of the consignment or package warrants this."

Our experience is that the 90 per cent of the cases, the Railways, by virtue of the above Rule 118, refuse 'reweighments' either vaguely or with reference to the wording therein the condition of the consignment

does not warrant reweighment. This is the position when 118 is merely a Rule which too is not made under any of provisions of any law or the Indian Railways Act. It cannot be imagined what the Railways would do when they would be armed with two more statutory weapons in their hands, namely to refuse reweighments for the reasons that (i) there is a conjunction in the Yard and (ii) there are operational difficulties which are incorporated in Clause 77 (1). The Rule 118 is also being legalised as this is being incorporated in the same Clause namely the 77(1) Clause. It is pertinent to note that a decision as regards the existence or non-existence of any of the said three facts and circumstances are to be taken solely by the Railway officials who are as the experience goes, are extremely interested in not bringing to the light the weighment of the consignment which is received in a 'tampered condition.' The inevitable consequence appears to be that in each every case reweighments will be refused by the Railways and too without any remedy available to the consignee. This Clause 77(1) will create a havoc in the commercial circles. Hence there is a necessity to drop it in toto.

SHRI BHANDARI (Joint Secretary): Clause 79 reads like this:

"Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railway administration shall give open delivery in such manner as may be prescribed."

Here it is mandatory which says whenever either consignment is tampered with or they are apparently in damaged condition, then the railway is open to give the open delivery. I feel if this clause 77 is read with clause 79 it will cover the deserving cases.

SHRI PAWAN KUMAR BANSAL: Could you explain the 'circumstances' under postulated Clause 77(b)? I could not understand the rationale behind it.

The rationale behind the Clause 77(1)(b) is to discourage the demands for reweighments from consignees which may not be genuine. As, however, the power to decide whether any particular "condition of the consignment" is or is not the one which can "warrant" reweighment is solely and wholly centred in the railway officials essentially and at all times is experienced to be misused. Even if Clause 79 confers on the consignee a right to get his 'tampered' consignment or 'damaged goods' delivered, what is described in Clause as 'open delivery' that right will be of no avail to him because Clause 77(1) will be a 'stumbling-block' in the way of getting an 'open delivery'. The reason is evident. Unless the goods are re-weighed before delivery, no shortage can be ascertained and if no shortage is ascertained, there would be no open delivery in its real sense. I feel, the Clause 77(1) is practically in contravention of Clause 79 and as such deserves to be completely dropped. It is needless to say that Clause 77(1) enables the Railway to turn down any request of reweighment from the consignee.

SHRI M. S. BHANDARI (Railways): Suppose there is no sign of tampering and still the consignee wants reweighment. In that case what should the Railway Administration do? Clause 77 precisely covers that and says that whenever there is a clear case of tampering, then only reweighment be resorted to.

SHRI H. M. PATEL: If there is no sign of tampering, why should a consignee want reweighment knowing well that he should pay for it?

SHRI M. S. BHANDARI (Railways): Now-a-days actually every

consignee especially of coal wants reweighment.

SHRI K. H. RANGANATH: Weighment must be made mandatory on the part of the Railways. Normally the consigner is a needy man and he allows the goods to go even when there is a loss for the State.

SHRI S. N. AWEKAR: In the beginning itself I said that we have been given two rights under Clause 81 and 79. But even those rights cannot be exercised because of this particular clause. I cannot understand how the reasons for refusal to reweigh, namely, there is confection in the yard, or, there are operational difficulties can stand to reason. Whenever any consignee finds that the goods offered to him for delivery are on the face of it, short, he is justifiably interested to get its weight recorded in order to ascertain the shortage. Why the consignee should suffer for the personal difficulties of the Railways, if there be any? Why a fault of one person cause another person to suffer? I don't think, this state of affairs is reasonable."

I now come to Clause 72. We suggest that the entire clause should be dropped. Railways accept our goods for carriage. Their responsibility continues till the goods are delivered to the consignee. They have no business to see to whom the goods belong. The status of the Railway Receipt as defined in Section 2(4) of the Sale of Goods Act, 1930 is a sufficient provision to deal with the delivery of goods. The responsibility of the Railways is only to give delivery of the goods to the person who produces the Railway Receipt to them. The ill effect of this clause is that every consigner is not the owner of the goods. There are clearing agents who transact business in their own names. If any Hudekari (Forwarding Agent) endorses a R/R as required by Clause 2(12) and hands it over to the endorsee, can it be

said that he had caused the property in the goods to pass to the endorsee when he has none initially? Certainly not. Or, if a consignee (either the owner or the agent of the consignee-owner) endorses the RR to his Hundekari and hands it over to him, can it be said that the property in the goods had been transferred to him? As a matter of fact, there is absolutely no necessity for enacting this particular clause. Everything has been going on very smoothly.

SHRI BHANDARI (Railways): As far as the Railways are concerned, they are very happy if the Railway Receipt is not made a negotiable instrument because it creates a lot of difficulties. This clause has been added purely for the benefit of the Trade. Over the year the RR has been recognised as a negotiable instrument. They sent the RR to the Bank, the Bank in turn endorses it to a third person. They sell their goods through the RR. When this is the existing practice, we are only trying to recognise this and give the benefit of it to the business community. The point which has been made is that it has been going on smoothly. Naturally, whatever practice has been developed over the years has got to be codified sometimes.

Regarding the language of the endorsement, if you simply say 'please hand over the goods to him', that does not become endorsement.

MR. CHAIRMAN: Are you convinced of the explanation given by the Railway authorities?

SHRI S. N. AWEKAR: The practice which is developed in the past from time immemorial is in consonance with Section 2(4) of the Sales of Goods Act. We still feel that it should not be made a negotiable instrument.

SHRI BHANDARI (Railways): The Railways will be too happy to do

this. But for the reasons mentioned above, this has been introduced.

Page-2 of the Bill gives the definition of endorsement. The consignee or the endorsee has to specify a person on the RR in order to pass the property. Merely saying that please hand over the goods does not become an endorsement. Now the practice is that sometimes they write to us saying that please deliver the goods to so and so. We are now trying to codify it.

SHRI S. N. AWEKAR: What is the reason for bringing this when there is absolutely no complaint in the present system. Further you are not going to get anything thereby.

MR. CHAIRMAN: We have understood your point. Please take up your next point.

SHRI S. N. AWEKAR: Now I refer to Clause 94—Delay or detention in transit. The current section 76, which is affirmatively assertive is made in Clause 94 negatively assertive without any change in substance. The change is only a mental satisfaction for the Railway that the clause 94 contains a statement as "shall not be responsible"; whereas the current Section says, "shall be responsible". The point is why—what circumstances led the Bill drafter to make this change? There is no reply to this question. Probably, this change may give a futile weapon in the hands of the Railways to frighten the railway users and achieve a misuse. I think the old Section should be retained.

Now I come to court's jurisdiction on suits to be filed—Clauses 196 and 197. It is on page 10 of my memorandum.

In the first place we find that there is no list of suits which can be filed against the Railways. This has not been specified in the Bill. As to what suits that can be entertained by

the court that list as a matter of fact must be given. No such list exists in the present Bill. If we refer to Clauses 105 and 106, we find that there is indirect mention of filing of some suits. It is mentioned that whenever there is any loss or damage then a suit can be filed in a specified court. So indirectly it has been stated here that so far as the loss etc. of the goods is concerned suits can be filed in the court where goods are booked. It is only indirectly given here but if this particular clause is to become effective, then they have to provide for an express provision. Now, if the demurrage charges are unnecessarily charged then they cannot file a suit in the court until and unless it is expressly provided for.

Secondly, railway freight charges are charged and there are certain classifications. If over-charges are paid or under-charges are claimed I have no remedy to go to the court. By putting the provisions of clause 106 in the hands of Railways, the Bill has enabled them to take of "no jurisdiction" in every suit other than the suit for compensation for the loss of damage to consignments booked by railways. The Clause would make the Railways monarchs. To give an example, a marriage party was to come from Akola to Pune. A carriage was booked. On arrival of the train it was learnt that the bogie has not been attached. Now the entire marriage party was at the station but there was no carriage. Now such a man will have no remedy, as there is no express provision to file a suit. I would say that the railways have been allowed to slap a person and the person concerned is not allowed even to cry.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Mr. Awekar has a valid point. The aggrieved party should have a course of action. We should not bar the general law.

SHRI S. N. AWEKAR: In section 197, one important thing is the phrase "in good faith". It means:

"A thing is done in good faith where it is in fact done honestly, whether it is done negligently or not."

Even if a wrong is done negligently, we find in the actual practice, the wrong-doer without any exception says "I did it honestly". The Clause 197 will encourage railway servants and railway administrations to seek protection for any wrong done by them under Clause making the railway-users' life miserable. There is nothing to show why the Courts of Justice are bound to be incompetent to challenge the wrongs done by the Railways under Clause 196 and why the negligent act on the part of the railway servants and administration cannot be called in question by the Courts of law. So, sections 196 and 197 are not at all called for.

Then clause 154 about making a false claim for compensation. There is no necessity of this particular section. If it is a false claim, there are several ways for that. Even if it is a true claim, there is a possibility that the party is likely to be harassed.

SHRI PAWAN KUMAR BANSAL: If he makes a false claim knowingly?

SHRI S. N. AWEKAR: The general law is there. He can be prosecuted if he is false. Unnecessarily it will be misused by the railway authorities.

MR. CHAIRMAN: We will look into this aspect.

SHRI S. N. AWEKAR: My next point is about demurrage charges—clause 88. Whenever any wagon is received and some shortage is suspected or is seen by the consignee, in that case the present procedure is that he makes an application to the authorities concerned to grant re-

weighment in order to ascertain the shortage. The decision is given by the divisional authorities. This decision, as per my experience, is not given or if given; it is after a fortnight. Till that time the wagon is to be kept under load. If the decision is not given by the authorities for a long time, then it is not a fault of the consignee but the consignee is asked to pay demurrage for that. Therefore, it is very essential that there must be a strong provision in the Act and I have suggested:

"A railway administration shall be entitled to recover demurrage provided it proves that the detention to the rolling stock was due to any fault or default on the part of the consignee or the endorsee or the consignor."

The railway authorities take time to give reply and for their default, I have to suffer. When I am not at fault, I am to suffer for that. The Railways can no doubt recover demurrage charges if the delay is at the instance of the consignee. But if the delay is at the instance of the Railway, why should the consignee suffer? There should be some channelising provision in the Act according to which the railways would be in a position to charge demurrage. I think today, I have circulated to you one additional suggestion. We were obliged to prepare one Memorandum in an extreme haste. A few important points escaped our attention and consideration. As back as in the year 1922 during the British Raj, it was considered necessary, and rightly so, to give the general public an adequate voice in the management of railways in India. I have been elected member of the National Railway Users' Consultative Council, a body set up by the Central Railway Zonal Advisory Committee, on 20th January, 1987. Since that time, I have been writing to the NRUC letters after letters asking the names of other colleagues, asking them when

the meeting will be held and what is the duration of the committee. So far, I have not received any reply. I had also written to the Railway Minister. So I suggest that there should be a provision made in the Act to set up a committee each at the level of national, zonal and divisional levels to have an effective representation of railway users. My submission to the Joint Committee is that the following clause should be included as Clause 206 in "Miscellaneous".

In order to secure an effective representation of railway users and to afford opportunities for consultation between the Railway Administration on one hand the railway users on the other at the national, zonal divisional levels thereof on matters relating to the services provided by the Railway Administrations and for improving the efficiency, a National Railway Users Consultative Council at the national level, Zonal Railway Users Consultative Committee at the head-quarters of Zonal Railways, one for each zone, and Divisional Headquarters of each of the Zonal Railways one for each division, shall be formed each for a specified period of not less than two years to function.

There are two or three small suggestions. In clause 105(2), it says:

"A suit against the railway administration under sub-section (1) shall be instituted only in a court having jurisdiction over the place at which the goods are entrusted for carriage or, as the case may be, over the place in which destination station lies or the loss, destruction, damage, deterioration occurs."

Instead of 'in' it should be 'at'.

There is one clause whenever any claim for compensation for the loss, destruction in delivery is to be claimed from the railway, the consignee is bound to give notice within six months from the date of the railway receipt. What generally happens is if the consignment is booked

say, on 1st January. Notice is sent by post on 29th June and the office received it on 2nd July. In that case, it is said that it was received after six months. Whereas if notice is given taking into consideration normal time required for the purpose of postal transmission, in that case, it is deemed that the notice is received in time. My suggestion is that if the notice is posted on the last day of the limitation, that should be considered as a legal notice.

MR. CHAIRMAN: I hope, you have finished your points.

SHRI S. N. AWEKAR: There is one more point. Clause 81 is meant for having a lien on the property of the consignments which are lying at the station. Clause 81 says:

"If the consigner, the consignee or the endorsee fails to pay any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into, its possession."

In this Clause 81, 'on demand' which is the most important point is omitted. That is probably to overcome the decision given by the Patna High Court.

SHRI PAWAN KUMAR BANSAL: What is this case?

SHRI S. N. AWEKAR: AIR 1965 Patna 49. 'On demand' these two words are omitted from this clause 81. These two words should be added in this case.

I am very much thankful to the Chairman and Members of the Joint Committee that they have heard me patiently.

MR. CHAIRMAN: We are also thankful to you. You have given us very valuable suggestions. Certainly we will keep in mind.

I also express on behalf of the Committee and on my behalf sincere thanks to the General Manager and his colleagues of this Western Railways and Central Railways for this good arrangement and hospitality they have bestowed. We now adjourn. Let us join for lunch.

(The Committee then adjourned)

Thursday, the 10th September, 1987 from 1100 to 1300 hours in Conference Room, Eastern Railway Headquarters, Calcutta.

PRESENT

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Ataur Rahman
4. Shri Narayan Choubey
5. Shri V. Kishore Chandra S. Deo
6. Shri Jujhar Singh
7. Shri Gurudas Kamat
8. Shri ahendra Singh
9. Shri H. M. Patel
10. Shri K. H. Ranganath
11. Shri Sri Hari Rao
12. Shri K. D. Sultanpuri

Rajya Sabha

13. Shri Pawan Kumar Bansal
14. Shri Murlidhar Chandrakant Bhandare
15. Dr. Bapu Kaldate
16. Shri Deba Prasad Ray
17. Shrimati Pratibha Singh
18. Shri P. N. Sukul
19. Shri Parvathaneni Upendra
20. Shri Atal Behari Vajpayee

SECRETARIAT

Shri K. C. Rastogi—*Joint Secretary*

Shri J. P. Ratnesh—*Senior Table Officer*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (TG)*
2. Shri J. K. Mitra—*Joint Director (RAR)*

WITNESSES EXAMINED

Indian Chamber of Commerce, Calcutta:

Spokesmen:

1. Shri O. P. Tantia
2. Shri B. K. Agarwal

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Shri Tantia and his colleagues: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

It gives me great pleasure to welcome you to this sitting of the Joint Committee on the Railways Bill, 1986. As you know, this Bill seeks to consolidate and amend the Law relating to Railways in a comprehensive manner with a view to incorporate a large number of changes that have occurred in the Railway system ever since the enactment of Railways Act, 1890.

In view of the importance of the subject, the Bill has been referred to the Joint Committee of both the Houses for detailed scrutiny. Before formulating their recommendations, the Committee generally invites comments/suggestions from experts and representatives of special interest affected by the measures before them. With this end in view, written memoranda were called for. The memorandum received from your organisation has already been circulated to the members of the Committee.

At this sitting, we will have the opportunity of hearing you in person. I hope you will give us the benefit of your valuable suggestions and

comments to enable us to present an objective and useful report on the subject to the Parliament.

Here, I should like to bring to your notice that the evidence tendered before this Committee is treated as public and is liable to be published. In case it is desired that any part of the evidence may be treated as confidential, you may kindly let us know. But I may point out that the evidence to be treated as confidential is also liable to be made available to the Members of Parliament.

I may also add that the proceedings before the Committee are to be treated as confidential, and it shall not be permissible for anyone to communicate directly or indirectly to Press any information regarding the proceedings before the Report of the Committee has been presented to Parliament.

Before we start, you may kindly introduce your colleagues to the Committee.

SHRI O. P. TANTIA: We are thankful to you for giving us an opportunity today to be present here and to take a view of what we believe is the view of the industry, specially in this sector of the country. The need to introduce such a Bill to consolidate and amend the law is certainly well understood. After all from 1890 to 1987, is almost 97 years and we also believe that no Act of Parliament without adequate discussions regarding the rights of the citizens that had been conferred on the citizens already would be successful.

For making any changes in the existing Acts or any obligations of the administrations which have already been in force for a long period, this type of discussion is necessary.

We have about 20 Clauses for which we require some changes. Out of the 20 Clauses, I believe there are five major Clauses in the Bill which require some changes. The first one is, Clause 41 which seeks a "a Bar of jurisdiction of Courts".

We believe that there should be no restriction on the bar of the superior courts. The new proviso should be considered as to whether there should be any bar.

SHRI P. UPENDRA: This Tribunal is specifically meant to expedite matters and will be headed by a senior retired judge and assisted by some experts. Now, if you again suggest that courts should have jurisdiction for appeal, don't you think the whole thing will again be opened to litigation and it will take years before the judgement is given on a particular case? This is meant only to help the people. Otherwise, it would defeat the very purpose of referring the views to the Tribunal.

SHRI O. P. TANTIA: If the user is aggrieved with what the tribunal finds, he should be permitted to go to the higher court. The user has not asked for a tribunal.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: The objection which is taken by the Chamber is because it does not apply to superior court. Today you go to a court when any party is aggrieved by the decision of the tribunal. Instead of original remedy of a suit you are getting more efficacious remedy as has been stated by my esteemed colleague Shri Upendra.

SHRI O. P. TANTIA: Clause 41 says:

'No suit shall be instituted or proceedings taken in respect of any matter which the tribunal is empowered to deal with or decide under this Chapter.'

That means court's jurisdiction is barred.

SHRI PAWAN KUMAR BANSAL: The constitutional remedy is not taken away.

SHRI P. N. SUKUL: If the tribunal is to have the power of civil court, why should there be duplication?

SHRI ATAL BEHARI VAJPAYEE: There cannot be any restriction on going to a high court or Supreme Court.

SHRI M. S. BHANDARI (Executive Director M/O Railways): In the past, appeals have gone to the Supreme Court.

SHRI ATAL BEHARI VAJPAYEE: So, your point is met.

SHRI O. P. TANTIA: Regarding Clause 71, I am a manufacturer of railway wagons. I know that if railway property is over-loaded it is going to cause injuries.

Unfortunately, most of the collieries have neither a proper loading facility nor do they have weighing system available at the collieries. At each loading point if there is a method of determining what is the weight of the goods, you can penalise any person who violates it. The consignee who is dozen miles away, he has to pay for the lapses, which is certainly not justifiable.

Similarly, Sir, weighment is done at the request of the consignee. I think, railways should provide more and more weighment facility and better loading facility.

SHRI P. N. SUKUL: Clause 196 says:

"Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding for anything done or action taken or any omission made by the Central Government or by a railway administration in violation or contravention of any provision of this Act."

Clause 197 says:

"No suit prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder."

We believe that the provisions made under these Sections are against the concept of rule of law.

SHRI PARVATHANENI UPENDRA: You are suggesting a new provision in place of this.

SHRI PAWAN KUMAR BANSAL: I would just like to say a word. I personally feel that there is some substance in what Mr. Tantia has said. This provision may tend to negate the Provisions of Consumer Protection Act.

SHRI M. S. BHANDARI (Executive Director M/O Railways): In various chapters certain provisions have been provided. For instance, where there is new construction etc., accommodation remedy has been provided.

Over and above that there should not be unnecessary litigation.

SHRI PAWAN KUMAR BANSAL: Is it specified anywhere in the Bill that such and such categories of suits can be filed in the civil courts? I came across only one provision.

SHRI M. S. BHANDARI: There is one provision in Chapter XII on page

36 of the Bill. Ad hoc Commissioner has been appointed. The question of going to Civil Court does not arise.

Clause 105 is also there. It is regarding suits for compensation for loss, etc., of goods. It says—

"Notwithstanding anything contained in any other law for the time being in force, a suit for compensation for loss, destruction, damage, deterioration or non-delivery of goods may be instituted against the railway administration on whom a notice under section 104 has been served."

Clause 34 is also there.

SHRI PAWAN KUMAR BANSAL: That is different. That is about moving the Tribunal. I think Clause 105 only takes care of it.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Clause 127 is an immunity clause. It protects Government servants. Whether the Government servant has done work in good faith or bad faith, its decision lies with the court and not with the Railway Administration.

197 is necessary. I want to separate 196 from 197. Please read 196. It says—

"Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding for anything done or action taken or any omission made by the Central Government or by a railway administration in violation or contravention of any provision of this Act."

MR. CHAIRMAN: We will discuss it when we come to clause by clause discussion and consideration.

SHRI O. P. TANTIA: I come to Clause 209 at page 13 of the Memo. The present power to make rules conferred by Section 47 of the present I.R.A. is considered sufficient to em-

power, Railway Administration to make rules consistent with the Act and should be retained.

SHRI PARVATHANENI UPENDRA: Do you say that rules conferred by Section 47 are sufficient?

SHRI O. P. TANTIA: According to us it would be sufficient.

SHRI PAWAN KUMAR BANSAL: You cannot take away the power of the Central Government to make rules generally to carry out the purpose of this Act.

SHRI M. S. BHANDARI: It can be changed only by Parliament.

श्री अटल बिहारी वाजपेयी : ऐसा कोई रूल नहीं बनाया जा सकता जो एकट की भावनाओं के खिलाफ हो ।

श्री पवन कुमार बंसल : पार्लियामेंट भी उसे रोक नहीं सकती ।

श्री अटल बिहारी वाजपेयी : इसलिए रूल बनाते समय आपको काफी विजिलेंट रहना पड़ेगा ।

श्री श्री० पी० तान्तिया : रूल बनाते समय सभी सावधानियाँ अपेक्षित हैं ।

SHRI O. P. TANTIA: I come to Clause 78. The Railway delivery Clerk should be made responsible.

SHRI ATAL BEHARI VAJPAYEE: You want to put responsibility on him.

SHRI PAWAN KUMAR BANSAL: There is a difference between the forged receipt and endorsement. If the document is forged, no right has been taken away from the user. If the R/R is in your hands and then forged or falsified in so far as endorsement is concerned, I do not think you will hold Railways responsible.

SHRI PARVATHANENI UPENDRA: How can the Railways protect themselves?

SHRI P. N. SUKUL: One should not lose the receipt. That is all.

SHRI ATAL BEHARI VAJPAYEE: Do you want to put the entire responsibility on the Railways?

SHRI O. P. TANTIA: They should be careful in not delivering the material. He knows that such and such a material is for such and such consignee. The receipt is some how taken away from somewhere or from the Postal services or by fraud. I am sure he can keep such a person to hold on.

SHRI PARVATHANENI UPENDRA: How many cases are there in a year.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: It is a negotiable instrument. The goods are given on R/R by mere endorsement. It is impossible for the Railways to know that 'A' has endorsed in favour of 'B' or vice versa. We do not have their signatures. This protection has to be given to the Railway Administration. Anybody can come forward and say these are not my signatures.

SHRI M. S. BHANDARI: If the Railway Receipt itself is forged, that is a separate issue. But if the Railway Receipt is lost by the consignee and it has been produced by someone else, then I don't think that the Goods Clerk can do anything. These types of cases are very few and far between.

SHRI O. P. TANTIA: If it is so, we won't mind.

With regard to Partial Delivery, we suggest that Clause 80(4) should be added which reads as follows:

"Partial delivery may be effected on recovery of proportionate freight for the part consignment delivered and not on the full freight as in the Railway Receipt."

Obviously, if the material is short, the freight should not be charged for the whole quantum which is certainly not delivered by the Railways.

SHRI M. S. BHANDARI (Rly. Ministry): Partial delivery can take place in two circumstances. Firstly, when a consignor books two wagons, one wagon arrives today and the other arrives after four days. It is not a case of loss. Since the entire consignment has not come together, it is called a part delivery. Secondly a consignment is partly lost or damaged. Where it is a case of damage, obviously full freight has to be paid because compensation for the loss would be claimed which includes freight also.

SHRI P. K. BANSAL: If that is the case, why don't we specify that where the Railways do not deliver full goods, they have justification to charge freight only for the part delivered and not for the whole consignment.

SHRI M. S. BHANDARI, (Rly. Ministry): At the time of claiming the delivery of goods, the quantum of loss is not decided. That question gets decided later on.

SHRI P. K. BANSAL: Suppose 50 per cent of goods are lost during transit. Where is the justification for the Railways to charge freight for all the goods in the consignment.

SHRI M. S. BHANDARI (Rly. Ministry): It can be 50 per cent and it can be 1 per cent also. That point is decided only later on. That is why we charge full freight at the time of delivery.

SHRI P. K. BANSAL: It does not impress me.

SHRI P. N. SUKUL: Unless you pay the full freight, the question of claim does not arise.

SHRI M. S. BHANDARI (Rly. Ministry): It can be a point of dispute. It is not settled at the goods clerk level. It is settled in a different forum.

SHRI O. P. TANTIA: We recommend that Clause 81(2) may be considered for deletion. Basically if it

is perishable in nature, then only an immediate sale is necessary in order to get revenue. If it is non-perishable, certainly notice should be given to the consignor before any auction is held.

SHRI P. K. BANSAL: That is in a case where something is due to the Railways. Your point is met by Clause 83.

SHRI O. P. TANTIA: Clause 83 is about disposal of perishable goods. Even here a notice should be given to the consignor or the consignee if it is practicable before it is sold out.

SHRI HASUDEB ACHARIA: Why do you want that Clause 81(2) should be deleted?

SHRI O. P. TANTIA: In our detailed memorandum we have suggested for incorporation of another procedure.

SHRI P. K. BANSAL: If you say that the whole clause should be deleted, it would create some more problems.

SHRI O. P. TANTIA: We have asked for only amending it. It can stand as amended.

SHRI P. UPENDRA: If we adopt the detailed procedure that you have suggested, do you think it is possible for the Railways to give instructions at the intervening stage where generally there will be no communication. It is very difficult for the Railways to contact either the consignor or the consignee and then take action. That would take a long time. Because Railways would be preoccupied with the restoration of track also. They may not find time to undergo all these procedures.

SHRI O. P. TANTIA: In that case would you like to consider Clause 83(1)?

It states:

"Where by reason of any flood, landslide, breach of any lines of rails, collision between trains, derailment of, or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable consignment may be diverted to prevent loss or deterioration of or damage to, such consignment, the railway administration may sell them in the manner provided in clause (a) of sub-section (2) of section 81.

(2) The railway administration shall out of the sale proceeds received under sub-section (1), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds, shall be rendered to the person entitled thereto."

SHRI M. S. BHANDARI: In such case, what is to be done? When there is interruption of traffic?

SHRI O. P. TANTIA: We have suggested that notice should be given.

SHRI M. S. BHANDARI: This is not a new clause. I do not think that Section is misused in any case.

SHRI PAWAN KUMAR BANSAL: My point is that the Railways should not be kept free for their proven negligence.

SHRI O. P. TANTIA: Clause 92(1) and (2) states:

82(1) "Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway, the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising until the wagon containing the goods has been placed at the specified point of interchange of wagons between

the siding and the railway administration, and a railway servant authorised in his behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway servant authorised in his behalf."

Here, the law should be fair, rather it should be more fair.

SHRI PAWAN KUMAR BANSAL: Could you suggest an Amendment? The wording which you have given in your Amendment is not clear.

SHRI O. P. TANTIA: We will go back and send you our suggestions in this regard. Obviously the theft has occurred with the connivance of certain people and if something has been replaced, obviously, it cannot be by the non-railway people. Our suggestion is that the consignee should not be put on a loss. Now let us go to Clause 94.

"A railway administration shall not be responsible for the loss, destruction, damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage if the railway administration proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants."

The question of just stating that 'the reasons beyond control' does not convince the user.

SHRI M. S. BHANDARI: Here the burden is on the Railways. The designer has to prove that there is a delay, thereafter the Railway has to prove that delay was without any negligence.

SHRI O. P. TANTIA: We have no method of determining all these things.

SHRI M. S. BHANDARI: I have stated that the Railways will prove the cause of delay.

SHRI PAWAN KUMAR BANSAL: If the railway are able to prove that the loss or damage caused to the goods is for a reason beyond the control of the railways, it is okay. But the fact remains that the loss is there. Would you still charge for the freights for the goods not actually delivered. In that case, you are not only unjustifiably charging the freight but also depriving him of his goods.

SHRI M. S. BHANDARI: The rate is charged for the carriage of goods. If the goods are not delivered, then the question of charging the customer does not arise.

SHRI PAWAN KUMAR BANSAL: Under Clause 94, it is stated:

"A Railway administration shall not be responsible for the loss, destruction, damage or deterioration."

I would like to know about the position in case of loss and destruction.

SHRI M. S. BHANDARI: It may take place even where the consignment has reached.

SHRI PAWAN KUMAR BANSAL: How do you interpret loss or destruction? In that case will you charge the freight. Is he entitled to get repayment or refund of the freight?

SHRI M. S. BHANDARI: No.

SHRI P. UPENDRA: From the established law something happens to the goods, then what will happen?

SHRI O. P. TANTIA: He takes the responsibility when he takes the goods.

SHRI PAWAN KUMAR BANSAL: This Clause has to be modified some how.

SHRI V. KISHORE CHANDRA S. DEO: Regarding Clause 97(1), they should check up that the goods are properly delivered.

SHRI O. P. TANTIA: In fact, they have refused.

SHRI M. S. BHANDARI (Jt. Secy, M/o Railways): Some commodities where the packing condition is compulsory, it is refused. Otherwise, we don't refuse. We only make an endorsement that packing condition has not been complied with. And I think, in almost 50 per cent of the cases, packing condition is not complied with.

SHRI O. P. TANTIA: Clause 97(1) says:

"Notwithstanding anything contained in the foregoing provisions of this Chapter, when any goods entrusted to a railway administration for carriage."

What is the relevance of it? Why do they want to retain 'Notwithstanding' when there is any other enabling section of the Act?

SHRI M. S. BHANDARI (Jt. Secy, M/o Railways): Foregoing means Clause 91 to 96. Section 91 says that it is the responsibility of the railways except in few cases. These are exceptions. Therefore, we have to say 'Notwithstanding' in relation to Section 91. If the goods were defective or suppose they were already damaged, shall we still claim for the damage to goods?

SHRI PAWAN KUMAR BANSAL: Mr. Chairman, I have a difficulty. I understand, where goods are delivered in defective condition to be Railways, complete exemption from liability is given and further, the clause, as it now stands, is different from the earlier provision, then the proviso to Clause 97(1) says that there is no option left with the person to claim that railways should be held responsible if there is negligence on the part of the railways. Now why should railways take away this right given to the private person or consumer as such, to prove the negligence of the railway personnel. I am sure, if the present provision remains as such, the railway officials would take the matter very lightly and negligence on the part of the railway officials will not be proved in the absence of the right to prove it.

SHRI M. S. BHANDARI (Jt. Secy. M/o Railways): Have you seen proviso under Section 97?

SHRI PAWAN KUMAR BANSAL: I am talking because of proviso only.

SHRI M. S. BHANDARI (Jt. Secy. M/o Railways): Proviso to Section 97(2) says:

"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."

SHRI PAWAN KUMAR BANSAL: That is right but....

SHRI M. S. BHANDARI (Jt. Secy. M/o Railways): This is the responsibility thrown on the railways.

SHRI PAWAN KUMAR BANSAL: I was referring to proviso to Section 97(1) and not the proviso to Section 97(2). I am saying that a proviso to like the one clause 97(1) should cover both Sections 97(1) and 97(2). In

fact, consciously this provision has not been added to Clause 97(1) and that is not justified. Why should the Railways be not liable for proven negligence or misconduct of their employees? It should be open for the party to prove such negligence.

SHRI O. P. TANTIA: Clause 98 is regarding the responsibility of a railway administration after termination of transit. It says:

"A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit."

Instead of seven days we want that it should be 30 days.

SHRI PAWAN KUMAR BANSAL: 30 days period would be too long a period. Because of the heavy rush, seven days is sufficient.

SHRI PARVATHANENI UPENDRA: He says that formalities cannot be completed in seven days.

SHRI PAWAN KUMAR BANSAL: Here again a proviso like that to Section 97(2) is left out. If you see Section 98(2), sweeping powers to railways have been provided even in the case of proven misconduct. It says:

"The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit"

The words in any case would absolve them even of wilful act of say, pilfering the good immediately after the expiry of the stipulated period of seven days, if for any reason the

private party is not able to take delivery thereof, within those seven days.

SHRI PARVATHANENI UPENDRA: It is not done so quickly.

SHRI PAWAN KUMAR BANSAL: When we are framing the laws, we have to visualise a situation like this.

SHRI O. P. TANTIA: We recommend that condition of seven days be retained in this case.

SHRI O. P. TANTIA: Clause 104(1).

In place of "within a period of six months from the date of entrustment of the goods" it should be "from the date when the goods were delivered to the consignee under qualified receipt in case of any damage or partial loss, etc., i.e. after the consignee becomes aware of whether any damage or partial loss has been caused to his consignment."

SHRI PAWAN KUMAR BANSAL: In that case, why not have one month only? Six months is fairly a long period that has been provided in the clause.

SHRI PARVATHANENI UPENDRA: You are taking it from the date it was found. Why have six months?

SHRI M. S. BHANDARI: A person shall not be entitled to claim compensation unless the complaint has been made within a period of six months from the date of entrustment of the goods.

SHRI PAWAN KUMAR BANSAL: There is a distinction between the words "shall be deemed to be a clean" and the words "Shall be deemed to be a notice". There is a clear a distinction. If the clauses are to remain as such, objection can be taken that no requisite notice has been given. If the matter goes to the court, it can be said that no notice has been given and any demand of information etc. under clause 104(2) is tantamount to a claim straight away.

SHRI P. N. SUKUL: Notice is required for the admittance of the claim. Here the claim is already admitted.

SHRI PAWAN KUMAR BANSAL: The words "shall not be entitled to claim compensation" occur in Clause 104(1) also. The purport of the word 'claim' occurring in two clauses i.e. 104(1) and 104(2) cannot be the same.

SHRI O. P. TANTIA: Why not 'three months from the date of notice'?

SHRI M. S. BHANDARI: Sometimes goods do not reach for one year.

SHRI P. N. SUKUL: Notice has to be given within six months. Beyond that no notice is needed. That formality is dispensed with.

SHRI PAWAN KUMAR BANSAL: The word 'Claim' in clause 104(2) should be substituted by 'notice'. That would remove any possible difficulty.

SHRI O. P. TANTIA: Clause 105 (1) & (2) Suits can be at a place from where the goods are carried.

It is suggested that the New I.R.A. should be formulated keeping an eye on the defendant's as well as the plaintiff's convenience i.e. on the basis of Section 20 C.P.C.

SHRI PAWAN KUMAR BANSAL: Section 20 C.P.C. has not been brought in here. It is a special law that we are dealing with.

SHRI M. S. BHANDARI: Goods are despatched from Panipat to Howrah. Can you file a suit anywhere you like?

SHRI O. P. TANTIA: I have made my point clear in the Memo. It is for the Committee to consider.

I come to Clauses 153 & 154.

SHRI PAWAN KUMAR BANSAL: One is the bonafide mistake and the other is that you are making a false claim deliberately. What do you suggest in the second case?

SHRI O. P. TANTIA: For that there is adequate provision in law.

SHRI PAWAN KUMAR BANSAL: Here the Government want to be very firm on something like making a false claim to cheat the Railways and is justified.

SHRI O. P. TANTIA: What would be the level of an officer who will consider that it is false?

SHRI M. S. BHANDARI: In the Railways it is usually a gazetted officer who goes deep into the matter for the purpose.

SHRI NARAYAN CHOUBEY: Many false claims are made.

SHRI O. P. TANTIA: I would request that this should be considered.

I come to clause 159. This corresponds to old clause 129.

SHRI M. S. BHANDARI: Please see old clause 129.

SHRI P. K. BANSAL: This is applicable to everybody.

SHRI M. S. BHANDARI (MINISTRY OF RAILWAYS): It is already there and it has not caused any problems so far.

SHRI O. P. TANTIA: Then what is the intention of this particular section? Acting in a rash and negligent manner is not criminal. Let us say a train has a crack that endangers the safety of a man. Is that man held responsible according to this particular section if he fails to ask the Superintendent of the Railways to set it right? I think it amounts to that if this section is enacted as it is. Is he legally bound to take this precaution?

SHRI M. S. BHANDARI (MINISTRY OF RAILWAYS): It is already there in the Act. Clause 129 of the existing Act and Clause 159 of the new Bill.

SHRI O. P. TANTIA: We have suggested in our memorandum for a statutory time limit for the finalisation of claims. I hope the Railways would take into consideration our memoran-

dum in which we have suggested some additions also.

श्री बी० के० बंसल : हमने यजर्स का इंटरस्ट भी तो संफ करना है ।

श्री पी० के० बंसल : सपोज अमपने कोई टाइम लिमिट फिक्स कर दी और उस टाइम में क्लेम सैटल नहीं हो पाया तो उस स्थिति में क्या आपने कुछ सजेसन्स दिए हैं ताकि उसी टाइम लिमिट में उसका क्लेम फाइनलाइज किया जा सके ।

श्री ओ० पी० तांती : उसके लिए बिल को फिर से रीकास्ट किया जा सकता है । यदि एक फिक्स्ड टाइम लिमिट में क्लेम सैटल नहीं होते तो उसका प्रोवीजन करना चाहिए ।

श्री पी० के० बंसल : सपोज किसी क्लेम में रेलवे तीन साल लगा देती है तो उस स्थिति में यूजर को बेट करना पड़ेगा टिल दी रेलवे गिव ए डिसीजन ।

SHRI O. P. TANTIA: We are suggesting that as the Income Tax Department has set up Claims Tribunals, Railways should also exert pressure for the expeditious settlement of claims.

SHRI M. S. BHANDARI: This is a point which has been raised by many others also. There should be some time limit. Administratively we have laid down certain targets for settlement of claims. When we talk of a claim, anybody can go to a court of law after serving notice on the Railways within two months. Now suppose (a) damage takes place and the serves the notice today, the very next day he can go to the court. Railways does not want this. Therefore, we have provided departmental claims settlement machinery for the settlement of claims in order to avoid litigations. For this purpose we try to settle the claims out of court.

SHRI P. K. BANSAL: For how long have they to wait for your decision?

SHRI M. S. BHANDARI: They need not wait for years. They can go to the court within one month also. But they should not go to a court of law within that period. They must wait till the Railways take a decision.

SHRI O. P. TANTIA: He may approach the Claims Tribunal or the Claims Commissioner if he wishes to. If he chooses to go to a court, in that case he will not go to the Tribunal. Within six months if the claims tribunal is not able to decide the claims, then he should get interest for this period.

SHRI M. S. BHANDARI: This question can be decided by the Administration.

SHRI P. K. BANSAL: We have to see whether people are entitled to claim interest on account of the administrative delay to decide a claim. For instance, now in the Land Acquisition cases they have provided for higher rate of interest on the awarded amount.

SHRI O. P. TANTIA: We have a suggestion to make with regard to higher freight on account of rationalised routes or when routes are to be closed for reason of flood, breaches, etc.

"Since the plaintiffs are not responsible for the carriage of the consignments by the longer routes under such circumstances or since the benefit of any rationalisation of the routes accrues only to the Railways, the transport users should not be penalised by way of higher freight when consignments are carried by the railways by other than the shortest route."

SHRI M. S. BHANDARI: Clause 69 covers your point.

SHRI O. P. TANTIA: As per the present rule if any consignment is to be carried by the longer route, the

consigner's written permission has to be taken.

SHRI M. S. BHANDARI: At present if anybody wants that the goods should be carried by a particular route and if that happens to be a longer route, he will have to be charged accordingly. This is a contract between the carriers and the parties.

Secondly, if the railways feel that all the goods cannot be carried by particular route in that case we issue a rationalisation order for which a Clause is already there in the present Act, and it has already been provided in the present Bill—that if it is in the public interest, then the Central Government will issue a rationalisation order by which certain goods are to be carried through a specified route. Then they will be charging by that longer routes.

SHRI O. P. TANTIA: This is what we are really bringing to your notice. In this case, the Central Government, i.e. the Ministry of Railways should consider, when a particular route is started and they carry the materials through a longer route for administrative or operating efficiency why the user is asked to pay more because he has no role in the selection of a particular route? After all it is a question of 40 miles or 100 miles here.

"Since the plaintiffs are not responsible for the carriage of the consignments by the longer routes under such circumstances or since the benefit of any rationalisation of the routes accrues only to the Railways the transport users should not be penalised by way of higher freight when consignments are carried by the railways by other than the shortest route."

SHRI M. S. BHANDARI: Under Clause 69, it is stated:

"The Central Government may, if it is of the opinion that it is necessary in the public interest so to do, by general or special order direct any railway administration—"

SHRI P. UPENDRA: For defence purpose you block a line or you divert the traffic to some other line, then what will you do?

SHRI PAWAN KUMAR BANSAL: I think, it is for the user to see whether to send the goods or not.

श्री छटल बिहारी बाजपेयी : यदि यूजर अपना सामान लॉगर रूट से भेजना मान लेता है तो इसका मतलब है कि वह ज्यादा पैसा देने को तैयार है।

श्री श्री. पी. तांती : हम भी चाहते हैं कि उसका सामान जल्दी से जल्दी भेजा जा सके और यूजर भी यही चाहता है।

श्री छटल बिहारी बाजपेयी : दूसरी ओर सेंट्रल गवर्नमेंट रूल्स बनायेगी, यदि वह किसी दूसरे को प्रियोरिटी देती है तो उस स्थिति में रेलवे को प्रतिरिक्त भार वहन करना चाहिए। जहाँ हम पब्लिक इंटर-रेस्ट की बात करते हैं वहाँ हर्डर के इंटरैस्ट का भी ध्यान रखना चाहिए।

श्री श्री. पी. तांती : रेलवे के लिए पब्लिक यूजर्स ही तो हैं।

SHRI H. M. PATEL: The higher rates which are being paid should not be excessive.

SHRI M. S. BHANDARI: For that, there should be a constant review. A gazette notification is to be issued after every six months when it is issued, it is again reviewed. It is not reviewed by any outside body, but it is reviewed at the Ministry's level.

SHRI PAWAN KUMAR BANSAL: Does it come under Subordinate Legislation?

SHRI M. S. BHANDARI: No. It does not come under Subordinate Legislation. This is not the case of a rule but this is an order which is to be notified in the gazette.

SHRI DEBA PRASAD ROY: It is noticed that when some users are allowed to carry their materials through a normal route, in that case, the users are categorised into two categories. Some users are using normal routes and some are using longer routes. I have noticed in some cases

there are discrimination.

SHRI M. S. BHANDARI: There is no question of discrimination. In order to avoid discrimination, what is normally done is that we define areas between which rationalised route will apply. Therefore, there is no question of discrimination between one user and the other user. But there is a distinction between one geographical area and another geographical area.

SHRI DEBA PRASAD ROY: It seems that the responsibility for taking the train from one place to another place lies with the user and the Railways have no role to play.

SHRI M. S. BHANDARI: He accepts to pay the freight when he issues a forwarding note. It is with his consent, we are doing it. Legally, he has to abide with it.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You have said in the first page of your memorandum about the grievances and difficulties encountered. Can you send us in detail the grievances and difficulties because they are not spelt out here?

SHRI O. P. TANTIA: Yes, Sir.

SHRI PAWAN KUMAR BANSAL: If you could specify something the clauses which you feel should be withdrawn from the Act, it will be useful.

MR. CHAIRMAN: We thank you very much for coming here and giving valuable suggestions to us. While framing the rules, we will certainly keep in mind the suggestions given by you. You please send your material.

(Witnesses then withdrew)

MR. CHAIRMAN: Now we have to take up two organisations, viz. Calcutta Chambers and the Loco Running Shed. Can we take up these two tomorrow at 10.30 A.M.? We will re-assemble tomorrow at 10.30 A.M. We now adjourn.

(The Committee then adjourned)

Friday, the 11th September, 1987 from 1100 to 1230 hours in Conference Room, Eastern Railway Headquarters, Calcutta.

PRESENT

Shri Arvind Netam—*Chairman*

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Ataur Rahman
4. Shri Narayan Choubey
5. Shri Gurudas Kamat
6. Shri Mahendra Singh
7. Shri H. M. Patel
8. Shri K. H. Ranganath
9. Shri Sri Hari Rao

Rajya Sabha

10. Shri Pawan Kumar Bansal
11. Dr. Bapu Kaldate
12. Shrimati Pratibha Singh
13. Shri P. N. Sukul
14. Shri Parvathaneni Upendra
15. Shri Atal Behari Vajpayee

SECRETARIAT

Shri K. C. Rastogi—*Joint Secretary*

Shri J. P. Ratnesh—*Senior Table Officer*

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—*Executive Director (Traffic Commercial)*
2. Shri J. K. Mitra—*Joint Director (RAR)*

WITNESS EXAMINED

All India Loco Running Staff Association, Anara:

Spokesman:

Shri S. K. Dhar—*Secretary-General*

(The witness was called in and he took his seat)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Shri Dhar, it gives me pleasure to welcome you to this sitting of the joint Committee on the Railways Bill 1986. As you know, this Bill seeks to consolidate and amend the Law relating to Railways in a comprehensive manner with a view to incorporate a large number of changes that have occurred in the Railway system ever since the enactment of Railways Act 1890.

In view of the importance of the subject, the Bill has been referred to the Joint Committee of both the Houses for detailed scrutiny. Before formulating their recommendations, the Committee generally invites comments/suggestions from experts and representatives of special interest affected by the measures before them. With this end in view, written memoranda were called for. The memorandum received from your organisation has already been circulated to the members of the Committee.

At this sitting, we will have the opportunity of hearing you in person. I hope you will give us the benefit of your valuable suggestions and comments to enable us to present an objective and useful report on the subject to the Parliament.

Here, I should like to bring to your notice that the evidence tendered before this Committee is treated as public and is liable to be published. In case it is desired that any part of the evidence may be treated as confidential, you may kindly let us know. But I may point out that the evidence to be treated as confidential is also

liable to be made available to the Members of Parliament.

I may also add that the proceedings before the Committee are to be treated as confidential, and it shall not be permissible for anyone to communicate directly or indirectly to the Press any information regarding the proceedings before the Report of the Committee has been presented to Parliament.

If you want to offer any comments, you may do so in brief and then we will take up clause by clause.

SHRI S. K. DHAR: Before submitting my comments first of all, I extend my thanks to the Joint Committee for giving us opportunity for this oral evidence on this Railways (Amendment) Bill.

We have already submitted comments on this Bill. We asked for some documents. We could not get those documents in time. We got information for oral evidence very late. To-day I have to give oral evidence alone. Others were also supposed to join me. They are not at one place. They are at different places. They could not get information as I got information late. I could not pass on the same to them. Anyway, I shall submit more information later on in writing in detail.

To-day the subjects which we are taking up are connected with our service conditions, specially the Loco Running staff. We have an arduous nature of duties and our working conditions to run the train services are difficult. We have suggested some changes in this. It would have been better had we got the comments of the Railway Board also on this Bill. It will be very beneficial to us if the total comments in detail are given to us. I am saying so because often the Railway Board does not abide by the rules which have already been framed. Their comments may come on some other basis. I am sug-

gesting so because it would be beneficial to both the parties to discuss things in detail.

Safety Commission: Section 111(2) —We have seen from our practical experience that the Safety Commissioner does not act in a neutral manner. We have also seen just after the accident the responsibility is fixed on the staff—mainly on the drivers who are directly connected with the running of the train service.

Safety Commissioners may enquire, give recommendations of suggestions. Railway Administration officers do not implement the same.

Three special Commissions were appointed—In 1962 Kunru Commission, 1968 Justice Wanchoo Commission and in 1978 Sikri Commission were appointed. If you go through the recommendations of these Committee commissions, you will find that many recommendations with regard to the safe running of the train services have not been adhered to by the Railway Administration. Naturally still many disastrous accidents are taking place because all the points that we had raised concerning the safe running of trains are not taken note of by the Railway Administration. We had considered all the causes and given our memorandum and suggestions.

In regard to the duty hours also, though I have demanded for eight hours, drivers are doing 14 to 20 hours of duty a day. At a stretch they have to perform this duty. They are doing this much duty because they are threatened by the Administration of their service. When they ask for the relief, relief is not given. There is a rule that the staff should not leave the working spot. But for how much time have they to remain at the working spot? We have put forth this question once earlier also. How much time they (the Rly. administration) will take to provide relief? At least within two hours of their asking relief they must be provided with the relief.

But relief is not given for hours together. Due to the excessive hours of duty there will be an accident. We have already referred to many accidents like this. Last year alone 18 accidents were there. Specially I referred to the accident at Gomo in the Eastern Railway. That Goods Train driver was on duty for 17 hours. He asked for the relief three times; but no relief was given. Lastly he was threatened that his dismissal orders would be issued. So he had to work for fear of dismissal and he met with a serious accident.

There must be a control on the duty hours. Regarding duty hours the classification which has been given only strengthens the hands of the Railway Administration. It classifies the Railway duty into four categories. But we had asked for only two categories—intensive and continuous. There must be limitations on the duty hours. We have already given our suggestion in regard to the limitations of duty hours that the staff members should not be forced to put in extra hours of duty. Working hours should be limited to 8 hours if half-an-hour break after four to five hours of duty is not given.

Another question is in regard to the classification. Now Rajdhani Express trains are running continuously for six to seven hours at a stretch. Rajdhani Express starts from Howrah Station and the first stop is at Dhanbad after more than four hours of running. Similarly Coramandal Express also has the first stop at Kharagpur for Engine changing. Even this has been done only after we raised some questions repeatedly. Many super-fast trains are running at a stretch for six to seven hours. According to ILO conventions also, duty hours should be classified as intensive if it exceeds six hours. It can be maximum 8 hours, and not beyond that. But now they will have to perform 9 to 10 hours duty for train departure signing in to signing off is not considered now. They are saying that from train departure to train

arrival it must be 10 hours duty. It means the detentions are being excluded and they will have to perform 16 to 18 hours duty altogether.

SHRI P. N. SUKUL: Are they paid overtime allowance?

SHRI S. K. DHAR: No. The present overtime system is that for a fortnight they have to complete 104 hours of duty. After 104 hours they will get $1\frac{1}{2}$ times overtime—that too not double. Double overtime is paid if it goes beyond 108 hours. Now once the running staff complete the company duty hours of 80 to 90 hours, they will be kept in lay-off for some time, which lead to erosion of their income.

SHRI P. N. SUKUL: A conductor in Tamil Nadu Express which runs from Madras to New Delhi puts in more than 30 hours of duty. By the same train he goes back also to Madras; but he gets no extra money.

SHRI S. K. DHAR: A conductor can do it; but a driver cannot do it.

SHRI A. B. VAJPAYEE: What about the safety councillor?

SHRI S. K. DHAR: From the staff side there must be a Councillor.

SHRI P. K. BANSAL: What functions do you suppose that a Safety Councillor should perform?

SHRI S. K. DHAR: He will have to go to every place of accident and protect the interests of the staff. We want an elected Safety Councillor division wise at least.

SHRI P. UPENDRA: Will he not be a part of the Administration?

SHRI S. K. DHAR: He may not be; but his observations must be taken into consideration.

SHRI M. S. BHANDARI (RLY. MINISTRY): We have got a safety Commissioner for a region. Whenever

there is an accident, he goes to the spot to enquire and anybody, including a staff member, can give evidence when he conducts an inquiry into the accident.

SHRI S. K. DHAR: I differ with you on this point. A Safety Commissioner does not call the staff members to give evidence when he holds an inquiry.

This is point number one. We want precautions here.

SHRI NARAYAN CHOUBE: Supposing I want to offer myself as witness. I think that depends on the Commissioner to call me to appear before them for evidence.

SHRI S. K. DHAR: Yes.

SHRI M. S. BHANDARI (Joint Secretary): A public notice is given.

SHRI S. K. DHAR: That is all right. But for giving an evidence also, he will have to take permission from the Railway official there, but they are not allowing them. Regarding safety teaching which you have just mentioned, I want to mention here that whenever we want to give our suggestions in the Safety Council Meetings also, they do not allow us. They will allow those persons who hear their dictations.

MR. CHAIRMAN: It means the Commissioner and the Counsellor are two different things.

SHRI S. K. DHAR: Yes, We want somebody should be there from the staff side.

SHRI ATAL BEHARI VAJPAYEE: The whole effort of the Council is to expose all the staff, if they have committed anything wrong.

SHRI S. K. DHAR: Yes.

SHRI ATAL BEHARI VAJPAYEE: You mean to say if an accident takes place, there must be an independent

inquiry. If certain railwaymen are involved, they are to be brought into the picture.

SHRI NARAYAN CHOUBE: So the truth has to be found out.

SHRI S. K. DHAR: What I means to say is that staff should get proper justice.

SHRI H. M. PATEL: There is some misunderstanding here. He is saying, first of all today, in the Railway Safety Council, although the invitation is extended to anybody who wants to give evidence, but necessarily, the railway staff is not permitted. Therefore, they want that there should be a Railway Safety Council from amongst the Railway staff. He should have an official position. When the Railway Safety Commissioner investigates, he need not be part of the Railway Safety organisation. He should be there as an Advisor to the Railway Safety Commissioner in an independent capacity to see that justice is done to them. That is the point.

SHRI ATAL BEHARI VAJPAYEE: You mean to say that justice is not being done at the moment.

SHRI S. K. DHAR: Yes, Sir.

SHRI P. N. SUKUL: You mean to say that some officials are involved in it.

SHRI S. K. DHAR: Yes. Whatever may be the case, lacuna in the railway system is there regarding running of the train services, etc. unsafe working conditions are imposed. They are not pinpointed by the Commissioner. On the other hand, the staff side is unnecessarily harassed and they have been punished. Say, for example, train checking system. It has been changed by the Railway Board now. Intermediate checking stations have been withdrawn. It was there previously, i.e. after 300 kms to 400 kms. Checking of brake power, checking of vacuum and all these things were there. These things

are heart of the driver. Without these things, the driver cannot ensure safe running of the trains.

The question is once he applies the brake power, he feels that it is very weak. Then he is given a memo. In that case also, proper checking is not there because the carriage staff have been withdrawn from different stations.

SHRI NARAYAN CHOUBE: The thing is that a train requires a certain amount of brake power for running.

SHRI S. K. DHAR: I can send this Committee such memo where drivers have been forced to work with less brake powers. There are many instances. Why I am telling is, from the originating stations in case of passenger service, the driver should get 100 per cent brake power. Some such system should be there because he will have to run a train with precious lives of thousands of people.

SHRI PAWAN KUMAR BANSAL: What is the permissible margin? Is it that the brake power should always be 100 per cent?

SHRI S. K. DHAR: It must be 100 per cent. If it is not 100 per cent, it must be 95 per cent.

SHRI ATAL BEHARI VAJPAYEE: What is the minimum?

SHRI S. K. DHAR: It is 95 per cent to 100 per cent. As far as freight services are concerned, the brake power must be 85 per cent. It is there on the rules of the Railways. They are violating the rules.

SHRI ATAUR REHMAN: Sometimes, the goods trains are without brake powers.

SHRI S. K. DHAR: They are running without brake van and vacuum brake power, etc., etc.

MR CHAIRMAN: They should send a detailed note on these things.

SHRI H. M. PATEL: We should not indulge in discussion now. We should understand his point clearly.

SHRI S. K. DHAR: We have discussed all the other points. Now, let us come to Section 122. If these things are done, then only the accidents will be reduced.

SHRI P. UPENDRA: In addition to compensation, you want one member from the staff side.

SHRI S. K. DHAR: Yes, Sir. Now Section 135. It is regarding regulations of hours of work.

SHRI BASUDEB ACHARIA: What is the difference between 'essential and intermittent'?

SHRI S. K. DHAR: I want to have two classifications—continuous and intensive. There, I have suggested that in the case of Continuous, the maximum duty hours should be eight hours. And in the case of Intensive, it should be six hours. In the case of Continuous and Sustained Attention, I have suggested for deletion of the Continuous Attention and its replacement by the Sustained Attention.

Regarding (b) and (c), I want it to be deleted.

SHRI PAWAN KUMAR BANSAL: How many drivers do we have in a train?

SHRI M. S. BHANDARI, (Jt. Secy., M/O Railways): One driver and one assistant driver.

SHRI S. K. DHAR: We have one driver, a foreman and a second foreman in steam. What we are opposing is single in EMU coaches, there is Deadman Handle which guarantees the stoppage of the train. If Deadman Handle is defective, there will be serious accidents. This provision was there earlier. But now it has been withdrawn. What I want to tell you is that EMU coaches are single man driven coaches which is an un-

safe one. We are fighting for a long time for one assistant driver. Now that assistant driver is withdrawn by telling that Deadman Handle is the precaution. We don't like this.

SHRI PAWAN KUMAR BANSAL: What is this 'Deadman Handle'?

SHRI S. K. DHAR: Deadman Handle means, it is connected with the manipulator which is taking the notch in the electric engine (EMU coaches). That manipulator while taking the notch must be pressed. or if it is brought to neutral the EMU will be on coasting. If it is left train will be stopped immediately. I can give you the practical demonstration.

Regarding rest also, we want that it must be 16 hours at headquarters. But now there is no system.

SHRI PAWAN KUMAR BANSAL: You mean, there should be eight hours work and then 16 hours' rest or some other system?

SHRI S. K. DHAR: Eight hours work and 16 hours rest must be there for the running staff for both Intensive and Continuous categories. Other people in the headquarters are also getting it.

SHRI P. N. SUKUL: What do you mean by Intensive?

SHRI S. K. DHAR: Intensive means sustained vigilance.

SHRI P. N. SUKUL: For example, Tamil Nadu Express leaves New Delhi and it stops at Jhansi. Whether it is Continuous or Intensive?

SHRI S. K. DHAR: Five hours or more duty without a break of half an hour must be treated as Intensive.

SHRI ATAUR REHMAN: But occasionally, you have the technical fault due to which the train is stopped. I think that is not Intensive.

SHRI S. K. DHAR: Even though he is stopped but there is no period of relaxation.

DR. BAPU KALDATE: It is more intensive.

SHRI S. K. DHAR: If the train is stopped due to technical fault, I cannot close my eyes, I will have to see the signals etc.

SHRI PAWAN KUMAR BANSAL: You mean enroute the crew should be changed?

SHRI S. K. DHAR: Link should be made to see that driver is relieved after six hours.

SHRI ATAUR REHMAN: What about foreign countries? Do they have this system?

SHRI NARAYAN CHOUBAY: How do you count the duty hours?

SHRI S. K. DHAR: Duty hours are being counted from the departure of the train when it should be counted from signing on. I have suggested for about 30 hours rest on a periodical basis. That should not be violated in any case. The railway administration is not at all interested to give it. Section 139 says that the railway servant should remain on duty. But there is no indication of how much time he has to continue after completing his duty hours. I have already suggested that within two hours his reliever must be sent after he seeks for relief. If there is emergency, in that case, he (the Labour Supervisor) must be consulted and intimated. Suppose, I have completed 8 hours duty. I have been kept in one road-side station where there is no reliever. Work has to be done till one gets his reliever. That we are objecting.

अभी तो रेलवे भगवान के नाम पर चल रही है। क्या करना है, कौन रिलीव करना है, किस को लाना है, कुछ पता नहीं।

श्री अटल बिहारी वाजपेयी : इसका मतलब यह है कि बिल में भी भगवान आया है।

श्री एस० के० धर : इसीलिए तो हमने मैनशन किया है और हम इस कमेटी के नोटिस में लाना चाहते हैं। क्योंकि प्रैक्टिकली इस तरह का कोई रूल नहीं है।

श्री अतार रहमान : आपने प्रलाम सिगनल के बारे में कुछ नहीं बताया।

श्री एस० के० धर : प्रलाम सिगनल की तो व्यवस्था ही नहीं है, वे सारी बीजे तो उठा ली गयी हैं।

SHRI DHAR: Alarm signal in coaches—actually the drivers are not getting any indication.

MR. CHAIRMAN: You can submit a detailed note on it.

SHRI H. M. PATEL: It is very important. We must hear clearly what he has to say. He says he has made many representations to the Railways and no notice has been taken of it.

SHRI DHAR: I have given many constructive suggestions to the Railways regarding the working system. We have stated that in 1986 there were 18 disastrous accidents. We are not at all happy with it. Many people have been killed.

SHRI PAWAN KUMAR BANSAL: Has there been a case where an accident took place and the driver said that he had already given a memo saying that the brakes were faulty, but still at an enquiry, the point it was not considered?

SHRI DHAR: We have given many such memos to the administration.

Tata Express accident had taken place because guard had been withdrawn. No relief was given to the crew of goods train. We had given memorandum in detail on this.

SHRI ATAL BEHARI VAJPAYEE: What is the finding of the Tribunal?

SHRI DHAR: Because there was no indication from the rear that the Vacuum was disconnected. There was no indication on the driver's box.

Tata Express, there was a serious accident. Driver lost his life along with Asstt. driver and others.

Section 139—We want that the desired relief should be given.

Section 140—I have suggested that there should be somebody from the staff side to look into the interests of the labour.

Section 141—This is connected with 140.

Section 144—I have given suggestion to add the following after the words "behalf" appearing in line No. 28 page 47—

"But not below the rank of station Master or Train guard or the Batch in charge of ticket checking inspectors or conductors."

SHRI PARVATHANENI UPENDRA: Why do you want to have this?

SHRI DHAR: Otherwise there will be big fight.

SHRI M. S. BHANDARI: That is being done.

SHRI DHAR: That is not being done. Ticket Checker cannot remove them because he is alone.

SHRI H. M. PATEL: The point is very valid. This may be kept in view. We will have discussion on this matter.

SHRI NARAYAN CHOUBEY: It is a very difficult matter. The chains are pulled.

SHRI S. K. DHAR: With regard to Section 150, my point is that if such a rule is made in the Railways Act, it will be applied unnecessarily on everybody. What I have seen now is that there is a breath-analyser test for the drivers. There may be one or two drivers who take intoxicated drinks. But it does not mean that all the drivers should be subjected to such a test. I would like to point out that the breath-analyser machines are defective ones. If somebody has taken intoxicated drinks, he would escape and somebody else who is in the habit of smoking is caught. These types of machines are also there. Secondly the doctor who conducts such a test should be a neutral one; he should not be a Railway doctor. Motivated medical certificates have been given by these doctors.

Section 191 deals with the power of the Magistrates. We want to add the following to this Section:

"Provided that all railway servants allegedly committing violation of this chapter of the Act (Chapter XV) as part of trade dispute, shall not be arrested or tried under this Act but tried under the Industrial Disputes Act, except when involved in an accident causing death".

MR. CHAIRMAN: We thank you very much for appearing before this Committee and for giving your very valuable suggestions. We would certainly keep your suggestions in mind while we take up discussion on the Bill.

SHRI P. UPENDRA: Mr. Chairman, we must call the Railway Safety Commissioner also in Bangalore.

SHRI BAPU KALDATE: Before that meeting, we must see the number of complaints that he had referred to. We must also see the functioning of the tribunals.

SHRI H. M. PATEL: In the light of what has been stated today, we would

like to have the comments of the Railways. Secondly, Railway Safety Commissioners should also be invited. After we study the note of the Railway Ministry, we should talk to them. These are very important provisions and we should ensure that the Bill incorporates everything.

MR. CHAIRMAN: That is all right. This is the right forum to make a detailed examination of all these aspects.

SHRI P. N. SUKUL: Are you an acting driver even now?

SHRI S. K. DHAR: No Sir, I have been forcefully retired by the Railway Administration.

(The witness then withdrew)

MR. CHAIRMAN: In the meantime, shall we decide about the next meeting?

SHRI H. M. PATEL: The Memorandum submitted by the Calcutta Chambers of Commerce are really a problem and I think we should invite Calcutta Chambers of Commerce.

MR. CHAIRMAN: We can invite them at Delhi.

Representative Calcutta Chambers of Commerce

SHRI P. K. JALAN—Spokesman:

(The witness was called in and he took his seat).

MR. CHAIRMAN: Would you like to give your evidence in Delhi?

SHRI P. K. JALAN: Yes, we are prepared to give our evidence at Delhi. In fact we have given a written representation that we would like to come down to Delhi. Unfortunately due to some unavoidable circumstances, my other friends could not come.

SHRI ATAL BEHARI VAJPAYEE: The *Bandh* could be avoided.

SHRI P. N. SUKUL: Mr. Chairman, they can come to Bangalore also.

SHRI P. K. JALAN: Mr. Chairman, we require a least 15 days notice.

MR. CHAIRMAN: We will fix the meeting at Delhi and examine the Calcutta Chambers of Commerce. On 9th October, we will meet in Delhi and examine Calcutta Chambers of Commerce. The venue will be Parliament House Annexe.

Thank you very much.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE RAILWAYS
BILL, 1986

Friday, the 9th October, 1987 from 15.00 to 18.00 hours in Committee Room
'C', Parliament House Annex, New Delhi.

PRESENT

Shri Arvind Netam—Chairman

MEMBERS

Lok Sabha

2. Shri Basudeb Acharia
3. Shri Ataur Rahman
4. Shri Banwari Lal Bairwa
5. Dr. Krupasindhu Bhoi
6. Shri Narayan Choubey
7. Shri V. Kishore Chandra S. Deo
8. Shri Tarun Kanti Ghosh
9. Shri Janak Raj Gupta
10. Shri Haren Bhumij
11. Shri Jujhar Singh
12. Shri Gurudas Kamat
13. Prof. P. J. Kurien
14. Shri H. M. Patel
15. Shri Aziz Qureshi
16. Shri K. H. Ranganath
17. Shri Sri Hari Rao
18. Shri K. D. Sultanpuri
19. Dr. C. P. Thakur
20. Shri Bal Ram Singh Yadav

Rajya Sabha

21. Shri Pawan Kumar Bansal
22. Shri Murlidhar Chandrakant Bhandare
23. Dr. Bapu Kaldate
24. Shri Satya Prakash Malaviya
25. Shri Mirza Irshadbaig
26. Shri S. B. Ramesh Babu
27. Shri Sukomal Sen
28. Shrimati Pratibha Singh
29. Shri P. N. Sukul
30. Shri Parvathaneni Upendra
31. Shri Atal Behari Vajpayee

SECRETARIAT

Shri O. P. Chopra—Senior Legislative Committee Officer.

REPRESENTATIVES OF THE MINISTRY OF RAILWAYS (RAILWAY BOARD)

1. Shri M. S. Bhandari—Executive Director (TG)
2. Shri S. K. Mallick—Joint Director (RAR)

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

Shri K. L. Mohnapuria—Joint Secretary and Legislative Counsel.

WITNESSES EXAMINED

Calcutta Chamber of Commerce, Calcutta

1. Shri P. K. Jalan, Vice President
2. Shri S. S. Swaika, Member
3. Shri V. B. Sahal, Member
4. Shri H. C. Johri, Rail Transport Adviser

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public, and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Shri Jalan and colleagues, it gives me great pleasure to welcome you to this sitting of the Joint Committee on the Railways Bill, 1986. In view of the importance of this subject, the Bill has been referred to the Joint Committee for detailed scrutiny. With this end in view, written memoranda were called for. The memorandum received from your organisation has already been circulated to the Members of the Committee. At this sitting we will have the opportunity of hearing you in person. I hope, you will give us the benefit of your valuable suggestions and comments to enable us to present an objective report on the subject to Parliament.

Here I would like to bring to your notice that the evidence tendered

before this Committee is treated as public and is liable to be published. In case it is desired that any part of the evidence is to be treated as confidential, it is liable to be made available to the Members of Parliament. I may also add that the proceedings before the Committee are to be treated as confidential and it shall not be permissible for anyone to convey it directly or indirectly to the press before the report of the Committee is presented to Parliament.

(INTRODUCTION)

SHRI H. C. JOHRI: My articles had come in the press much before the Chamber approached me. So they should not be considered as if now my views are only oriented for the benefit of the Chamber.

There are two basic objectives of amendment of this so called 100 years old Act. One is, several changes have taken place over the last 100 years. The other is that the nationalised railway want to do good to the users for whose benefit they now exist than the railway companies of the past.

Now, I want to discuss a few changes which have not been accommodated in the Bill at all. Take

electrification. If we see the definition of 'Railway' which existed at the time of 1890 when electrification was not known, not only railway lines were treated as railways and also the railway companies, rest houses, staff quarters, hospitals, institutes were treated as 'railway'. Several High Courts have gone on record to say that dwelling houses, hospitals, institutes cannot be considered as 'railway'. Unfortunately, for us the definition of 'railway' continue as it existed in 1890. I am more bothered about electrification. Not a word of the overhead equipment has been said in the definition.

Coming to the definition of railway servants, I personally feel that there is indeed no reason why we should define him as a railway servant. He is now a government servant. However, railway servant being what he is, the question is whether he is a public servant or not. Being in the Government department I should assume that he is as much a public servant as a servant of any other Government department. Unfortunately, we have still maintained the definition because in those days Government was different and railway companies were different and, therefore, the Act made a distinction. But with the nationalisation of the railways, the same definition continues to persist. In fact, there is hardly any reason why this should have been defined. The question again comes for certain purposes for which the 1890 Act said that a Railway servant shall be treated as a public servant. The same thing continues now. What was the purpose then? The purpose was that for certain functions he was treated as a public servant. But today we shall have to give him the protection of a public servant. There is a separate chapter in IPC which is called 'The Offences of Public Servants'. There is another chapter called, "The Protection or Authority of the Public Servants". The railway servant today continues to be a public servant only

for offences but even today he is not a public servant for purposes of authority. I take a single example. A railway officer is very frequently subjected to go for a public auction. There is a specific provision in the Indian Penal Code which grants special protection to the person conducting the auction. If all the powers could not have been incorporated to define a railway servant as a public servant, at least some of them could have been adopted.

Then, Clause 10 deals with construction and maintenance of necessary works. When the foreign companies came here for construction of railways, then naturally they had to be given protection to use India's land to divert river waters, cut mountains etc. So, several enabling and permissive clauses were provided for the railway companies. But today, when the Railways are a Government department, in my opinion, those enabling or permissive clauses are not necessary because Central Government is Central Government. Once we are laying a railway line we have got the power. The Government can use all the national resources for the purpose of constructing a railway line with the Parliament's sanction. So, in my opinion, these very many things show that perhaps the revised Bill has not been drafted with a view to take into account the changes.

Now I will tell you in chronological order what are the vital changes that occurred. In 1905, when the Railways Board Act was passed, the purpose was that Railway Board shall be delegated the powers of the Central Government by the Central Government. Today, the Railway Board, which brackets itself with Ministry of Railways, is really the Central Government itself. Therefore, there is no need of delegation of any powers to the Railway Board by the Central Government. My submission is that a separate chapter has been created in the Railways Bill for railway adminis-

tration. In this chapter, there is no mention of Railway Board, leave alone the question of repealing the Railway Board Act of 1905.

Then we come to 1921. In 1921, when the companies were earning huge profits, they were interested in expansion of railways using Indian money, making profits transferring it to the foreign land. Therefore, they wanted that the profits should be utilised in constructing more and more lines. They separated their budget from the Government budget. The same system continues today. On going through the Financial Memorandum of the Bill, I was surprised that section 52 of the 1890 Act which provided that the railway companies shall present the accounts to the Government, had to be deleted because Railways are now a Government department using the Government money. Central Government is no longer required to present its accounts to the Central Government. Parliament is supreme. We have to spend the money as the Parliament has granted. So, is it any longer necessary that a separate convention should continue? My submission is that the Bill has not taken into account such a vital factor.

Then comes 1948, after Independence, when our national Government passed the Industrial Resolution. In the Industrial Resolution it was said that the railways will no longer be built in private sector. Not a word has been said of that Resolution, which was reiterated in 1956, in our Railway Bill.

Then we come to 1950 when the railways themselves were nationalised, and to 1951 when our country got our Constitution.

SHRI PARVATHANENI UPENDRA: I think instead of going into the historical background, if you give your concrete suggestions about the Bill, that will help us more.

SHRI H. C. JOHRI: Thank you very much, Sir. If I suggest any changes, I would also like to know as to what is the total thinking of the Parliament as a whole in the matter of amending the Bill. Two or three points occur to me and accordingly we can make the suggestions. One is whether the Bill should be common-man-oriented or elite-oriented. Then alone can one suggest as to what should be the changes in the Bill. What I mean by the common-man-oriented is, for example, what should be the facilities as regards the passenger services. Today if we see the general accommodation availability in the important trains, there is hardly any accommodation worth mentioning, and if we see those coachés, then we realise what we have to do for the common man. We have trains which have all reserved accommodation. I have no quarrel. But where we have provided general accommodation for the common man, then my suggestion is that we should have some proportion of the total accommodation in the train fixed for general (unreserved) accommodation.

The second point is whether it should be railway user and railway employee-oriented or it should be railway-oriented. My submission again is that it should be both. The Bill, as the President has said and as we see it, is only one-sided. It is looking after the Railways' interest. So far as users and railway employees are concerned, the very word "convenience" of the passengers has been deleted from Clause 58(2)(a), if we compare with section 47(1)(b) of 1890 Act. Even the word "convenience of passengers" is jarring in the Bill so far as Railway point of view is concerned. 58(2)(a) of the present Bill and 47(1)(b) of the existing Act.

Please see also our President's letter. On page 2 we have given it. Please see (a) to (g). It is power to make rules. 47(1) was applicable to both passenger and goods train. Now we have separated for both and for everything else. "Convenience" has been dropped. Was it so uncomfortable? I draw your attention to Clause 16(1) of the Present Bill. We compare Clause 16(1) with Section 12 of the 1890 Act. Here we have dropped the word "commodious". This is very significant adjective for owners of land whose lands have been used for the purpose of construction of Railway line. The Act required that we must somehow accommodate those owners and give them 'commodious' accommodation. The word "commodious" has been dropped. Why? I have no knowledge. I do not know why this has been removed. It was meant for the Railway companies.

SHRI PAWAN KUMAR BANSAL: Has this Section been subject to judicial scrutiny?

SHRI JOHRI: Yes.

SHRI AZIZ QURESHI: This word has never been used.

SHRI JOHRI: If I have the view point of the Railways with me, perhaps we would have been in a position to appreciate what the Railways were to say. I have no other means to know why a particular word has been dropped. I am submitting my view point to the Committee. You kindly hear Railways and then decide whether it should have been deleted or not.

We compare Clauses 49 & 50 with Section 67(2) of the old Act. The existing Section provided that if a passenger does not get accommodation and he presents his ticket within three hours of the departure of the train, his cancellation will be done immediately and "at once" his money will be refunded. Somehow in the Bill "at once" has been dropped and Sec-

tion 50 has been brought out in which Railways have appropriated to themselves complete powers i.e. whatever they like, whenever they like, wherever they like, they will refund it. They have said "as prescribed." I can suggest amendments to the Bill.

I seek apology. The Railway Officers may feel as if I am criticising them. It is not the case.

This is a very hon. Committee. The revised Act will become a part of national history. Nobody should say that Indian Parliament made an Act which could not last for ten years because there was so much of agitation.

We compare Clause 13(1) with Section 15 and Section 9 of 1890 Act. Again, in this clause the power of the Railways is to remove anything on the Railway line causing obstruction to the view of the signal, particularly a tree, then the tree will be cut. The old Section provided when the tree will be cut, Magistrate's permission will be required and compensation will be paid to the person whom the tree belonged. Both these provisions have been dropped. The Railways have appropriated to themselves the powers—that they will remove the obstruction. They are silent on the second issue. The Act provided "protection" to the person whose property was being interfered with for the benefit of the Railways. It also provided for compensation. Unfortunately, both these clauses have been dropped and absolute powers have now been appropriated in the Bill.

There was a clause that if permission of the Central Government could not be taken, then within 72 hours you will apprise the Central Government and if the Central Government says that it is not necessary to do so, then you will stop doing so. If you compare, first of all "72 hours" have been dropped. You can continue as long as you want. Then they say "Central Government in the interest of safety"

Previous clause was in the interest of safety, obstruction had to be removed. You do with the permission of the Government. Now it has been said if the "interest of the safety" requires, you can continue to do the work. The whole thing has been so changed that the Railways are appropriating more power and the person whose property has been interfered with has been left with little protection to himself.

Then compare Section 8 with Clause 11. Here again the word 'reasonable' in proviso (1) has been dropped. When they said 'reasonable notice' will be given what was the harm in retaining that word? So, the word 'reasonable' was dropped. Then, the power of local authority was there that he could appoint a person to supervise the work. If you are changing this drainage line, electric supply line or gas line then you could give him notice. The local authorities will send their man to superintend the work. But that power with the local authority has been withdrawn. He cannot say anything now. First of all, no notice is required, secondly, he cannot send now any person to superintend the work. Then there was also an obligation on the Railways that alternative arrangements should be made during the period that they are changing the pipeline or gas line or drainage line. Now, that is also withdrawn or dropped.

Now, I come to Clause 19, I am comparing it with Section 18. Here the words 'or an inspector' have been dropped. Now, the 'inspector' in the days when Railways were controlled by company, he was a great man who was entrusted with the safety of the train running for the users for the passengers or for their goods. This organisation was called 'Inspectorate of Railways'. Now, it is called the Commissioner of Railways (Safety), that has been dropped. Really, it is a question whether the Commissioner of Railway (Safety) should have been dropped from this Section. We have a full Chapter for

Commissioner of Railway (Safety). It is in Chapter III. Several powers have been given to him so that he can ensure the interests of the public and the passengers who are using the Railways. Now, if you drop the word 'inspector' then in my opinion I think that chapter is not necessary or dropping of this word is not desirable. Now, such are the changes made in the Bill where safety of the passengers is involved, I will give you an example as to how depletion of the powers regarding the railway safety is endangering the railway safety.

Recently, you have come across several cases of collision. What has happened is that a train has left the Station 'A' and approaching Station B. In the midway somewhere that train has parted with a part of the carriages remain in the same line. Another train was allowed on the same line and that train collided with the portion of this train in the Section. The Railway Minister himself went there with the Railway Commissioner (Safety) because he was totally an independent person attached to the Ministry of Civil Aviation and if you remember that Ministry of Transport was merged and the Ministry of Civil Aviation was put in charge of this work. Now, what will happen to the Commissioner of Railways. Safety? It is not clear whether he will be able to maintain independence or not. Anyway, again the Ministry was divided. It was a separate Ministry. So, my point is that this authority has never been under the Ministry of Railways. It can be under any other Ministry. The question is that the Commissioner of Railways, Safety, was to be made independent of the Ministry of Railways. The real point is that he gave some statement. Precisely because of that the ASM and the Switchmen were made responsible and they were suspended and ultimately removed from service.

SHRI TARUN KANTI GHOSH:
How could he come to the judgement without making any enquiry?

SHRI H.C. JOHRI: I am not quarrelling over that statement. I am coming to the cause of the statement.

SHRI TARUN KANTI GHOSH: When you criticise a statement of the Minister or if you criticise a statement of the officer you have to tell us whether they made a particular statement after proper enquiry or not; otherwise you should not.

SHRI H. C. JOHRI: I have no intention of criticising the statement at all. If that is the view of the Committee, I will withdraw it.

SHRI PARVATHANENI UPENDRA: The witness has mentioned about what happened after a visit of the Railway Minister to the accident site. He is not going into details of the statement.

SHRI H. C. JOHRI. My submission is entirely different.

SHRI P. J. KURIEN: I think your point is about the independence of the Commissioner. When you said that the Commissioner went along with the Minister to the site who made a statement, it looked perhaps that you felt that the independence of the Commissioner is infringed.

SHRI H. C. JOHRI: I completely withdraw that.

PROF. P. J. KURIEN: You should not withdraw. You are free to express your opinion. Why should you withdraw?

SHRI JOHRI: If we analyse the collisions that have occurred during the course of one year, we would find that most of these collisions occurred on diesel traction. They occurred neither on electric traction nor on steam traction. It is because the diesel engine which is used has the power to regenerate vacuum much faster than it can destroy which brings the train to the stop. If the driver of the train under steam or electric traction comes to know of any danger he stops the train immediately. There

are rules provided for it. The driver will come back. Soon, the Assistant Drivers informs that the train has started and he will get down at the first place and inform the switchman. He gives the line clear. People today expect that the Commissioner of Railway safety is intelligent enough to comment on the design of the diesel engine and it is leading to these accidents. Kindly imagine the status of a switchman. What about the faults of the Administration. I gave an article in the 'Economic Times' but nothing has come out of that.

MR. CHAIRMAN: How is it relevant to this?

SHRI JOHRI: The Commissioner of Railway Safety should be given the powers to inspect the railways more frequently. Today even the Government Inspectors (Railway Inspection) have been dropped and now they are called General Managers Inspection). That means the Inspectorate of safety is reduced to nullity affecting the safety of the public and their goods. The approach of the Ministry to submit the Bill is such that so much has to be done to bring it within the four walls of the users to protect their interests. It is a huge work to be done if the Bill has to be amended to protect the users' interests.

Clause 15(3) Section 11(4):—

The State Government was to give notice of 14 days for the railways that we want you to undertake this work for us. They said 14 days notice will be given. In the Bill, it is increased to three months. There is no problem. The objection comes later. If State Government was allowed, it has the power to start the work, complete the work and charge the railway the entire cost. That also has been dropped. On the one side, you have extended the time limit to start the work. On the other hand, you have also taken away the power of the State Government to take up the work itself the railway ministry fails to start the work.

Then we come to Clause 14 and compare it with section 10. Here again, it is the approach to the Bill is important. The Old Act said that when you are constructing the railways and you are using somebody else's land or interfering with somebody else's property, you will do as little damage as possible. The word has been dropped. You can cause as much damage as you like. Railways are now Central Government.

They have full powers.

Clause 18 (1) (2) Section 14.—

Over-bridges and under-bridges are being provided on the roads so that the road traffic can move freely. A convention has grown over the years that the cost will be borne 50:50 between the State Government and the railways. But in the Clauses, instead of mentioning that such facilities will be provided and that the cost will be shared 50:50, again it is said that Railway Administration will decide. What will be the share of the State Government and what of the Ministry of Railways. If there is a difference of opinion, it will be referred to the Central Government. Who is the Central Government? Could we define the Central Government? Can we say that certain sections would be administered by the Ministry of Railways; that the Central Government would administer for certain purposes and that the Ministry holding the charge of the Commissioner of Railway (Safety) will be in charge of Chapters; 3, 5 and 12 which deal with accidents? Perhaps it could be better. In the very first line, the President has stated that the Committee has to decide about the total approach to the Bill and also fixation of the tariff. Now, I will come to the fixation to tariff. Let us now come to the memorandum which is attached to this letter. Clause 29 of the Bill is about the fixation of rates. Our suggestion is that we may add Clause 'C' and here we have suggested: "to quote for any commodity the reduced 'owner's risk' or 'Train Load' rate, but 'train load' rate shall always be quoted

wherever a person offers to load in train loads of sizes normally permitted over the relevant section". Now, my purpose of this suggestion is that there are certain normal ordinary rates, besides there are certain specially reduced rates and I have quoted only two of them—owners risk rate and train load rate, the reason being that for certain commodities, for very valid reasons, the Railway Ministry has decided that these commodities can be carried both on Railway's risk and on owner's risk. For these commodities, we will quote not only wagon load rate but we will also quote train load rate. I hope the Ministry of Railways knows it well as to what should be the basis. I will not argue in this matter any more. My quarrel is about the train load rate, whenever I approach for sanction. Of course, the Government might have been granting it. I would like to give an example. I am working as a consultant to the National Aluminium Company. I approached for train load rate for moving caustic soda because we wanted to move a full train load. Here, I would like to point out that more than one-and-a-half years had passed, nothing happened. Ultimately I approached our friend Shri Bhandare who had been very reasonable and it was with his courtesy that the matter was followed up and train load rate was granted. But I will not say that because of his presence here it was done. It is not like that. The point is as to why this procedure should be there at all. To quote an example if a person wants to move it on train load rate to a station and for which there is no provision for train load rate and if he asks the Station Superintendent for that facility, it should be granted. It should be possible. Again, another party approached me the other day for moving the iron-slag from a Steel Plant to the cement plant. There is no train load rate. But he wanted to move it in train load. Of course, we can approach the Board. I will do that. But I cannot approach Shri Bhandare each and every time. I can approach him today. But tomorrow I want to move the petroleum products and so on and so forth. It should be possible for me to do that. Here, we can propose to the advantage of both the Railways

and the User. The user should also get an opportunity of moving it on train load rate, as early as possible. Then, we have also suggested some provisos to this Clause which are: "(i) provided that during the course of a financial year, the net impact of revision or revisions of whatever nature it or they may be, shall not exceed 10 per cent of the rates last fixed". The second proviso is: "provided further the notification in the official Gazette shall give at least three weeks' time for the revised rates to take effect". The next one is: "provided further that each such Notification shall honestly represent the impact of the revision of rates in general or of a specific commodity or for particular distances or particular weight, or of any other condition."

SHRI P. UPENDRA: You want only 10 per cent increase. Not more than that.

SHRI H. C. JOHRI: Yes, not more than 10 per cent. My submission is this. In December, when the supplementary budget was presented before the Parliament an impression was given that they are merely flattering the Taper. Nobody knew as to what were the increases in rates. No MP could understand that aspect. I am sorry. It is such a technical matter that when I analysed I found that 28 per cent increase in freight-rates took place for moving coal from coal-fields to Punjab. Now, the power houses are being set up there. I am also a consultant to the U.P. State Electricity Board and also to Punjab. So, I know how it is affecting the public utility service by this rating system. When I suggest that, it is not purely for our organisation of Calcutta Chamber of Commerce, who are more private-sector oriented. I am submitting it for the benefit of the public sector whose interest is very dear to the Central Government. If we go on increasing the rates like this, what will be the impact? The point is that when the freight rates are increased, power rates will also be increased and it will also affect the railways and so on and so forth. My suggestion is that more than 10 per

cent increase should not take place in any revision.

There is one more thing. After this 28 per cent increase, within 15 days another circular goes from the Railway Board saying that they may revise them with immediate effect. The charge will be three-tonnes in excess of the carrying capacity of the wagon. Before the consignment could reach from the originating point to the destination, the charge became effective. The authorities at the destination say that the consignment has been underpaid and under the new charges he has to pay this much more. In such a situation, what I would like to request you is to kindly give sometime to the users to get accustomed to your revised rate system. I do not understand the great hurry to introduce such revised rates. If I may be permitted to say, with due apologies to our Shri Bhandare, that in October 1986, the Central Department Labour Cess was withdrawn by the legislature, I mean the Parliament. Since the Railways are the collecting agencies for the cess, they had to advise the Stations concerned as to not to collect it any more. The October 1986 order or rather the Act of Parliament, or the revised orders of the Railway Board were issued only in July 1987. By that time, the Railways issued it to the Stations, it became August 1987. In the meanwhile, from October 1986 to August 1987, we had been paying the Central Department Labour Cess. As I said already, if you are in such a hurry to implement your revised rate system, kindly give us the time—I mean to the consumers—to get accustomed to it and utilise the advantage. Probably, no amount will be due from the users also.

Then the third thing is that I have used the word 'honestly represent'. Perhaps, you might ask me why I have said so. I will just give the examples. We wanted to flatten the taper. But even at the starting point itself, the rate was increased. This point was not brought out in the memorandum. The increase was not brought out in the memorandum. That is why I say that when your increase is more than 10 per cent, kindly give us

some honest representation so that the normal layman could understand as to what is the impact of the revision in the rates.

Now, I am coming to the last Clause. The Railways may increase, if at all they feel, the rates. There may be some higher rate of increase. Our last Clause says that, if in emergencies, it becomes necessary to revise the rates in a manner that the impact exceeds or is likely to exceed 10 per cent, the Railway administration shall make a reference to the Railway Rates Tribunal under Section 37 with justification therefor and request the Tribunal to submit a report within a period not exceeding thirty days. On receipt of the report, the Central Government may take such action as it considers suitable in respect of matters referred to the Tribunal. In case the Central Government ignores any recommendation of the Tribunal and takes a different decision, the Parliament shall have to be informed of the reference made, of the Tribunal's complete report and of the final decision taken, and its approval shall have to be obtained in the Session immediately following the month in which the Tribunal has submitted its report. If no approval is obtained, the recommendations of the Tribunal shall prevail over the decision of the Central Government.

In section 30, addition of the following proviso is suggested...

SHRI ATAL BIHARI VAJPAYEE: It is all here. Why read out the whole thing?

SHRI JOHRI: All right, Sir. If there is any question, I can answer.

DR. BAPU KALDATE: Your Memorandum is here. If you want to explain certain important points, you may.

SHRI JOHRI: We have tried to give the suggestions in our Memorandum...

DR. BAPU KALDATE: Any additional point you wish to make?

SHRI JOHRI: I have no additional point to make. I will only submit that whatever suggestions we have given are only to answer the posers which we have made in the meeting at Calcutta on 10th August. Therefore, the charges are not all-embracing. In our President's letter we have said that these changes are neither to be considered complete nor are they to be considered perfect, the reason being that one change here may have repercussions in another section. Those points, while submitting the memorandum on behalf of the Chamber of Commerce, we have not given. But I, as an individual, have gone into the details of each section. Till now I have covered only upto section 60. I have still to make research as to what exactly is happening in the total Bill because I have to read the existing section and compare it word for word with this and then find out what has been deleted, what has been added, what amendment has been made. Therefore, I cannot say that either this is perfect or that the research we have made is perfect. This is only an effort. I request this Committee to consider these few suggestions which we have made. With this, I close.

SHRI H. M. PATEL: I think, you have been making your point very well, but somewhat more elaborately than what you need to. I would request you to indicate very briefly which are the points which are really very important and to which we must pay attention.

SHRI JOHRI: I have nothing more to add to what has been stated in our Memorandum.

SHRI H. M. PATEL: Most of us have not read it; we have not had time to read it. You indicate to us very briefly.

SHRI NARAYAN CHOUBEY: Also about the provision relating to Commissioner for Railway Safety.

SHRI JOHRI: If you see the last page, page 14, there we have said that the provisions of existing sections 16, 17 and 18 of the 1890 Act should be retained.

modifying Clause 19 of the Bill and also section 19(5) of the old Act should be retained in section 20 of the Bill. This, in itself, will not take us far. I would request you to go back to page 1—22 of our Memorandum. Here in section 16(1) it is stated:

“A railway administration may with the previous sanction of the Central Government, use upon a railway locomotive engine or any other motive power, and rolling stock to be drawn or propelled thereby.”

Here the railway administration could use a design of rolling stock only with the permission of the Central Government. Therefore, the railway companies could not introduce a rolling stock of its own design unless it had been checked and examined by the Commissioner for Railway Safety. That was the purpose. After independence, the safety controlling authority has been converted into Central Government. So, the power of the Commissioner for Railway Safety came back to the Ministry of Railways which is the Central Government. That means, for all purposes, the power to use any type of rolling stock is now vested in the Ministry of Railways. My submission is that the Central Government should be defined here saying that for this purpose the Central Government will mean the Ministry which is controlling the Commissioner for Railway Safety. Now, let us compare it with Clause 25 of the Bill which reads:

“A railway administration may use such rolling stock as it may consider necessary for the construction, operation and working of railway:

Provided that before using any rolling stock of a design or type different from that already running on any section of the railway, the previous sanction of the Central Government shall be obtained for such use.”

That means, the Central Government's permission is required here also but only if a type of rolling stock being used is different from that which is already in use.

Now let us examine as to who is deciding the design of the rolling stock to be used. This term 'railway administration' in the Act existed when railway companies were there. Actually the term railway administration' in the old Act referred to the railway companies but somehow we have continued to maintain that term 'railway administration' and confused it with different meanings—somewhere the railway administration becomes the Central Government, somewhere else it becomes General Manager; actually one does not know what exactly it is. Today the position is that the design of any rolling stock, whether it is a coach or wagon or locomotive, is decided by the Ministry of Railways. Why then does Clause 25 say that “a railway administration may use such rolling stock as it may consider necessary...” and then also say “provided that before using any rolling stock of a design or type different from that already running on any section of the railway, the previous sanction of the Central Government shall be obtained for such use”? It is not necessary. As I have said earlier, if the Ministry of Railways becomes the 'Central Government', then either we abolish the chapter on Commissioner for Railway Safety or we define what the Central Government is for safety purposes and give him the power to decide whether a particular locomotive is fit or not...

SHRI PAWAN KUMAR BANSAL: If you see the definition in Clause 2(31), it says that a 'railway administration' also includes a non-Government railway. For that purpose, you may have to retain that provision.

SHRI H. C. JOHRI: I do not think that there is any non-Government railway now. But the point which I was mentioning was about the design of the rolling stock. For safety purposes, the Arbiter is the Commissioner for Railway Safety. Today we are permitting over-loading of wagons for purposes of earning more and more revenue. But the point is whether the user is able to use wagon to that extent, that is, the carrying capacity plus three tonnes.

Then we come to Section 18 which says that the railway shall not be opened for

the public carriage. Only this clause is maintained in Clause 19 of the Bill whereas Section 17(1) and 16(2) are all taken away.

SHRI H. M. PATEL: Shri Johri should tell us not only what is missing but what should be done. Should we retain the old provision?

SHRI H. C. JOHRI: My submission is this should be retained. The old provision should be retained. Clauses 16, 17 and 18 should be retained. The only point is "Central Government" must be defined.

SHRI P. N. SUKUL: You cannot equate a company with the Central Government. Whenever Central Government is used, it means the concerned Ministry of Central Government. For that, you need no definition.

SHRI H. C. JOHRI: I have really submitted this.

SHRI PAWAN KUMAR BANSAL: He wants the distinction to be drawn out.

MR. CHAIRMAN: He has expressed his views. We will discuss this point when we take up clause by clause.

SHRI H. C. JOHRI: I now refer to clause 19(5). The whole section is deleted from the 1890 Act. Clause 19(5) reads like this:

"When sanction for the opening of a railway, is given subject to conditions and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Central Government."

Even now the clause says that no railway can be opened without the sanction of the Central Government.

SHRI PAWAN KUMAR BANSAL: We are referring to the sanction of the Central Government.

SHRI H. C. JOHRI: That means, Central Government has given sanction to itself.

SHRI PAWAN KUMAR BANSAL: You had said that Commissioner of Railway Safety should be granted independent authority. He should be given totally independent powers as they exist in the old Act. In fact, the maximum damage would be done by attempting to define the word Central Government in the Bill. This expression is well understood. Section 25 of the existing Act says that the Central Government always had a superior power. An Inspector was appointed only as a safety controlling authority.

SHRI H. C. JOHRI: Section 24(3) of the existing Act has also been deleted. It says that conditions shall be observed until they are withdrawn by the Central Government. We have dropped this. That means, the Commission has no meaning now. It is for the Committee to decide if it wants the Commission to retain its full power for full control over the Railway Safety, or abolish it. Central Government can do everything. This is the point which I had to make with regard to railway safety. It is for you to decide now.

MR. CHAIRMAN: Thank you Mr. Johri. Now we will adjourn for tea and we will come back again.

(The Committee re-assembled after Tea Break)

MR. CHAIRMAN: Let us start. Mr. Johri have you to say something more?

SHRI H. C. JOHRI: Yes, Sir. Now I will come to Railway Rates Tribunal powers. It is on page 1/16 of the memorandum. Before I come to this again I would request the Committee to consider whether we would like to enlarge the powers of the Railway Rates Tribunal or abolish it because in every revision of the Act even after Independence the Railway Rates Tribunal's powers are being reduced and the present Bill is a further attempt to reduce the powers.

This tribunal was created in order to provide a forum to the railway users that

if any unreasonable rate or charge is fixed by the railways then the user can approach the tribunal and the tribunal could decide whether a rate is reasonable or unreasonable. Kindly see Section 39 of the present Act and the corresponding clause 36 (2) of the Bill. The last part of the existing Act says:

"It will be the duty of the Central Government to whom any obligation is imposed by any such order to carry it out."

Now this clause has been deleted. What will the tribunal do if the Central Government refuses to carry out its order?

SHRI PAWAN KUMAR BANSAL: Supposing the Government does not accept the decision or order of the Tribunal then what is the remedy?

SHRI H. C. JOHRI: Only the Supreme Court could be, but the present Bill has said there will be a total bar.

SHRI PAWAN KUMAR BANSAL: Now please see clause 44, which enjoins upon a civil court to execute it as a decree.

SHRI JOHRI: I am now quoting the Railway Rates Tribunal's decision on this matter. Since attention has been drawn to clause 44, I will submit a case which went to that Tribunal under this very clause, with the request to it to give a directive, so that party could approach the civil court. The judgement of that Tribunal was that it was a shame for the Central Government that a party had to approach it for that purpose—these are the words used—for execution of his orders. He said that his orders were final, and they were supposed to be obeyed.

SHRI H. M. PATEL: If there is a decision of the Railway Tribunal, the Railway Board has to carry it out. If it does not do so, it is something beyond the control of anybody.

SHRI JOHRI: Clause 39 should have remained.

SHRI H. M. PATEL: Even if you do it, it makes no difference. It is binding on

the Central Government. Clause 44 does not apply here.

SHRI JOHRI: It is true.

SHRI H. M. PATEL: If the Tribunal says that such and such are the ways, then it will be for the Railways to carry them out. If Railways do not carry them out, it can be referred to Parliament. You have made a point. Merely adding those words will not add anything significant.

SHRI JOHRI: I personally feel that it should not have been deleted.

Let us now come to Section 45(2) of the 1890 Act, and do a comparison with Clause 37 of the Bill. Here again, 45(3), which is of a similar nature, has been deleted.

SHRI H. M. PATEL: If you say that you attach special importance to these points, we will go into them.

SHRI JOHRI: I only submit that the Railway Rates Tribunal's power should be expanded. Secondly, the Tribunal's composition and constitution should also change. I have suggested a certain change; e.g., there are three members today. I have said that the trade should also be represented. From the Federation of Chambers of Commerce and Industry or the Associated Chambers of Commerce and Industry, by rotation, you can have one man there.

Secondly, presently the Tribunal is sitting only at Madras. The complainants are spread all over India. I have said that the complaint should be heard at the place where the headquarters of the administration is situated. There, the Tribunal may sit until the case is disposed of, after the receipt of the rejoinder.

We have already covered safety. Again, there is no chapter either on passenger convenience or the forum where the users could represent their points of view. This was said in the Memorandum memo. which we had submitted in August at Calcutta. One chapter, in my opinion, is necessary for a forum where public can

represent its grievances. I am not using the word complaint. The Zonal Railway's informal committees, as all of us know, have not met for years, because it has not been so provided in the statute. If you make a provision in the statute, Railway Board will make it compulsory to have a sitting, e.g., every year or once in six months.

Secondly, sidings are now coming in a very big way, particularly in the case of the public sector. Railways want a huge amount of money from all public sector plants, especially thermal power plants and aluminium plants, to which I am attached as a Consultant. For running of trains from end to end, in order to improve the wagon turn round time, we want to create a yard. The train is coming from station A to station B where a plant is located. Because it is a private siding, although it is built at the cost of the site holder, we have to pay the charges. Even if the placement is made by the locomotive of the siding-holder, he is asked to pay the siding charges in addition. It means that on the one hand he is asked to bear the capital charges on the other hand also to bear the maintenance and operation charges. The Railway Rates Tribunal has power only for recurring charges. We can give them this power also.

SHRI H. M. PATEL: I agree that the consequential change in the section should be made.

SHRI JOHRI: We can make a provision that this will be the system by which this siding will be created.

SHRI H. M. PATEL: I think this point we are competent to handle. What we have provided in the Bill is something different. This is a matter of policy. You say that the sidings and their cost should be treated in a particular way.

SHRI PAWAN KUMAR BANJAL: Otherwise also, if a project with a siding is say two kms. away from the station, why should not the beneficiary pay for it?

SHRI JOHRI: There should be a separate Claims Tribunal also, besides the Railway Rates Tribunal. This suggestion

was there in our first memorandum, made at the time when the Committee had not been formed.

SHRI H. C. JOHRI: It was in the first memorandum. That is all I have to submit.

SHRI M. S. BHANDARI: I would like to inform the Committee that the Government have already decided to set up Railway Traffic Claims Tribunal and a separate Bill on the subject is likely to be introduced.

SHRI H. M. PATEL: Why have a separate Bill? There are references to claims also. It can be very much a part of it.

SHRI H. C. JOHRI: A very important point that I would like to submit is about the responsibility of railways for carriage of goods. By 1961 amendment, it was held out that it is the Railways responsibility, instead of being that of a bailee will be that of a common carrier. But exactly, same procedures are being violated in claims. There is hardly any difference made in the liabilities of the bailee and of the common carrier. Nowhere the word 'common carrier' has been used. They are continuing to say that if Railways have taken a reasonable care hence everything is the right way. When Railway Companies were there in 1879, it was said that the railways are the insurer and their liability is like that of a common carrier. Whereas now, exemptions are so many. It is all nullified. My submission is that this particular section which is dealing with the responsibility of the Railways as carriers needs to be thoroughly changed or revised so that it will be clear to everyone. Chapter No. 11 deals with this.

Another thing is that the Railways have taken the power of changing the rate when the goods arrive at the destination. You charge a certain rate at the despatching station but the rate classification has been changed at that particular despatching station. The distance is being changed; the class is being changed and the station of destination has got the full power to recheck and remeasure... When the con-

tract has been entered, nobody has the right to change the classification of goods. The Act provides with examination and determination of rate classification which can be done at the despatching station. The present Act did not give this power.

SHRI M. S. BHANDARI: Neither the old Act nor the new Bill empowers the Railways to charge higher rates after booking. The enhanced rates apply to new booking from the given date. If there has been any case, it is the case of violation but instructions are very clear that rates at the time of booking will be applicable always, and it should not be changed.

MR. CHAIRMAN: Can't we misuse this power?

SHRI H. C. JOHRI: Porbander Tata salt is continuing to be charged since 1959 till date as vacuum salt, but the destination station said that it is table salt. Table salt is charged at higher rate. Representation was made to me in 1983. I decided the case on the basis of Railway Boards decision. Some how of 1959. And now I am a victim of vigilance; even after retirement, the effects are following.

SHRI M. S. BHANDARI: It is the case of interpretation, or description of goods, whether a particular salt is a table salt, or common salt, etc.

SHRI H. C. JOHRI: The despatching station should classify and fix a certain rate and stick to it. In case of wrong delivery, the Railways should give total protection to the consigner/consignee. The word 'indemnity' has been dropped in the Railway Receipt. I shall point out that you have appointed goods clerks at the despatching station. They examine the goods and they also count them, i.e., the articles and packages but they do not write frequently. We do not have any responsibility; it is said that so many articles are contained in it, or said to contain so many articles and that clause is fully used by the Railway officer to dispose of the

claims. Well, Rlys. have no responsibility; because it is 'said to contain' R/R.

We are determining the total rate of consignment on the basis of weight. Weight is the unit by which you determine the rate. We have not provided any clause in the Bill that railways shall weigh but there is a clause that railways shall re-weigh. And there is a further clause if a consigner or a consignee wants that his consignment should be weighed, Railway administration may refuse for reasons of their own making.

SHRI H. M. PATEL: This point is very correct and I think perhaps Mr. Bhandari will agree.

SHRI M. S. BHANDARI: I can explain it again. This will have to be kept in mind before making a law. It becomes mandatory that if a wagon is not weighed, it will not be booked and it will not be despatched.

MR. CHAIRMAN: This point we can discuss later.

SHRI H. C. JOHRI: I think the Committee will excuse me; I think I have tired myself out.

MR. CHAIRMAN: Thank you, Mr. Johri. You have made very valuable suggestions and we will keep them in mind. I thank you once again for having taken trouble to come from Calcutta and attend this meeting.

SHRI H. C. JOHRI: We are grateful that you gave us an opportunity to express my views on this Bill. I am really doing research on every section.

SHRI H. M. PATEL: We have got a booklet containing various memorandum submitted by different parties. Obviously, it does not contain responses on their points. I think the Railway Administration can be asked to prepare a detailed note of the points raised by Mr. Johri.

MR. CHAIRMAN: We will certainly request them.

SHRI H. C. JOHRI: Sir, our chamber is just comparing each and every new clause with the old section to see that which should be retained and which should be amended. We will make a thorough study and submit it to you.

MR. CHAIRMAN: How much time do you require to prepare it and send it?

SHRI H. C. JOHRI: I cannot make any commitment just now.

MR. CHAIRMAN: Is one month's time sufficient?

SHRI H. C. JOHRI: Immediately I am not able to comment but I will try my best.

MR. CHAIRMAN: But please make sure that you will send sufficient number of copies.

SHRI H. M. PATEL: Try and make every effort to give within 4 weeks.

MR. CHAIRMAN: Thank you very much.

(The Committee then adjourned)

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