

Shri Nanda: Anyhow, let us go through this formality today....

Mr. Deputy-Speaker: The hon. Minister may introduce the Bill tomorrow. A correct memorandum will be given tomorrow and then the Bill would be introduced.

Mr. Deputy-Speaker: I am applying the guillotine on all the amendments.

Shri Nambiar: We are coming to the end of the Bill.

Shri Hari Vishnu Kamath (Hoshangabad): Tomorrow is Janamashtami: we can have jagaran tonight.

13.28 hrs.

RAILWAY PROPERTY (UNLAWFUL POSSESSION) BILL.—*contd.*

Clause 8.—(*Inquiry how to be made against arrested Persons*)—*contd.*

Mr. Deputy-Speaker: The House will now take up further clause-by-clause consideration of the bill to consolidate and amend the law relating to unlawful possession of railway property, as passed by Raja Sabha.

2 hours had been allotted for this Bill, but we have already taken 3 hours and 25 minutes.

Shri Nambiar (Tiruchrapalli): We were on clause 8.

Mr. Deputy-Speaker: We must pass this Bill in another five to ten minutes.

Shri Nambiar: We have not got many amendments left over. There are only about three or four amendments.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jagānātha Rao): I would request that you may fix some time by which this Bill has to be passed. We have already exceeded the time allotted by about 1½ hours.

Mr. Deputy-Speaker: We have already taken 1 hour and 25 minutes more than the time allotted. So, hon. Members should not take more than 15 minutes in all now. This Bill should be passed by 1.45 p.m.

Shri Nambiar: I will straightway come to the point....

Shri Bade (Khargone): There are many amendments. Yesterday we took some time on them. Why should revenge be taken against us on that score?

Shri Nambiar: Unfortunately for the Government, though this is a small Bill that they have brought forward, running to 8 pages, here they want to undo the fundamental rights guaranteed to all citizens under the Constitution. That is the difficulty. That is why we are breaking our heads on this. Otherwise, it would have been smooth sailing and we would have had no objection.

Clause 8 says:

"When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person".

This section says that the RPF officer shall inquire into the charges against such person. My amendment is this....

Mr. Deputy-Speaker: It has already been moved. He need not read it. It has also been circulated. He should not take more time in reading it.

Shri Nambiar: Otherwise, how can I explain it properly? For "proceed to inquire into the charge against such person", I want to substitute "hand over the case to the nearest Police officer for investigation and prosecution". The main issue here is whether the fundamental right guaranteed under art. 19 of

[Shri Nambiar]

the Constitution can be denied by a provision like this in respect of a citizen who is arrested for an offence under the Criminal Procedure Code. This offence is not outside the Criminal Procedure Code. So that person must get the benefit of the provisions available to him for defending himself. Till he is punished, he is presumed to be innocent. The Constitution provides that a person arrested under law must be produced before a magistrate within 24 hours and he must get all the benefits under the law for defending himself, including legal assistance. But here instead of being produced before a police officer or the police station, he is to be produced before the RPF officer. What is this Railway Protection Force? What is the legal remedy available for the accused to defend himself? What are the benefits that he can get under the fundamental rights of the Constitution? These things have to be clarified.

Therefore, you cannot take away the jurisdiction of the police authority and substitute it by the authority of the Railway Protection Force. The Railway Protection Force is not a force which can be vested with police authority. Hence my amendment is in order and should be accepted.

Otherwise, what will happen is this. The hon. Minister may overlook my amendment. But if the Bill is passed as it is, it is sure to face the test of legal and judicial scrutiny because it is violating the fundamental rights. Therefore, I plead in all humility that my amendment should be accepted. I am not arguing only for myself or any particular persons. I am arguing for the rights of the citizen under the Constitution. Therefore, I request the hon. Minister to kindly reconsider the matter and accept my amendment.

**Mr. Deputy-Speaker:** Shri Patil.

Shri Bade: You cannot proceed in this way. I have a point to make. Here it is

provided the RPF may arrest the man and forward him in custody to the Magistrate. But according to cl. 5, the offence is made non-cognizable. When the offence is not cognizable, he must be released on bail then and there. He cannot be kept in custody and sent to the Magistrate. How does the hon. Minister propose to solve this difficulty?

**The Minister of Railways (Shri S. K. Patil):** I have said that the hon. Members are labouring under a very grave misapprehension. This is a special procedure provided in this Bill and the RPF given these powers. These offences have been made non-cognizable so that the police does not enter the field at all. The RPF officer concerned here has to act.

So far as the fundamental rights, liberty and so on, are concerned, they will operate whether it is under one code or another. There is no mixing up here. This is a separate machinery altogether. Therefore, there is no question of producing the man before the police or the other things.

Therefore, the mistake being common, he is labouring under it at every stage, in respect of every amendment. I have nothing further to add. I oppose the amendments.

**Shri Nambiar:** The constitutional difficulty must be explained.

**Shri S. K. Patil:** Let this be thrashed out in a court of law.

**Mr. Deputy-Speaker:** I shall now put amendments Nos. 7 and 8 to the vote of the House.

*Amendments No. 7 and 8 were put and negatived.*

**Mr. Deputy-Speaker:** The question is:

“That clause 8 stand part of the Bill”

*The Lok Sabha divided:*

Division No. 33]

[13.41 hrs

## AYES

Alva, Shri A. S.	Laskar, Shri N. R.	Ranjit Singh, Shri
Aney, Dr. M. S.	Laxmi Bai, Shrimati	Rao, Shri Jaganatha
Alniki, Shri K. L.	Mahishi, Dr. Sarojini	Rattan Lal, Shri
Babunath Singh, Shri	Mali Mariyappa, Shri	Sadhu Ram, Shri
Bhargava, Shri M. B.	Manaen, Shri	Seha, Dr. S. K.
Birendra Bahadur Singh, Shri	Manjal, Shri Yamuna Prasad	Saigal, Shri A. S.
Brij Basi Lal, Shri	Maniyargauan, Shri	Samanta, Shri S. C.
Chanda, Shrinati Jyotsna	Marangi, Shri	Saraf, Shri Sham Lal
Chandak, Shri	Masuriya Din, Shri	Satyabhama Devi, Shrimati
Chandrabhan Singh, Shri	Matcharaju, Shri	Sen, Shri P. G.
Chaturvedi, Shri S. N.	Mehrotra, Shri Braj Bihari	Sham Nath, Shri
Chaudhri, Shri Chandramani Lal	Mishra, Shri Bibhuji	Sharma, Shri D. C.
Chaudhuri Shrimati Kamla	Mohanty, Shri Gokulananda	Sheo Narain, Shri
Chavan, Shri D. R.	More, Shri K. L.	Siddanarjappa, Shri
Daljit Singh, Shri	Musair, Shri G. S.	Siddhanri, Shri Jagdev Singh
Das, Shri B. K.	Naskar, Shri P. S.	Siddiah, Shri
Dwivedi, Shri M. L.	Pandey, Shri Vishwa Nath	Silheshwar Prasad, Shri
Ganapati Ram, Shri	Patil, Shri D. S.	Singh, Shri S. T.
Hanada, Shri Subodh	Patil, Shri M. B.	Singha, Shri Y. N.
Hem Raj, Shri	Patil, Shri S. K.	Sinha, Shrimati Ramduari
Iqbal Singh, Shri	Pattabhi Raman, Shri C. R.	Sinhasan Singh, Shri
Jadhav, Shri M. L.	Pratap Singh, Shri	Tiwary, Shri D. N.
Jadhav, Shri Tuishidas	Puri, Shri D. D.	Tiwary, Shri K. N.
Jha, Shri Yogendra	Rajdeo Singh, Shri	Tyagi, Shri
Jyotishi, Shri J. P.	Raju, Shri D. B.	Uikey, Shri
Kindar Lal, Shri	Ram Subhag Singh, Dr.	Verma, Shri Balgovind
Kotcki, Shri Liladhar	Rane, Shri	Virbhadra Singh, Shri
		Yadava, Shri B. P.

## NOES

Bade, Shri	Krishnapal Singh, Shri	Swamy, Shri Shivamurthy
Daji, Shri	Mate, Shri	Uiya, Shri
Deo, Shri P. K.	Nambiar, Shri	
Kamath, Shri Hari Vishnu	Pattnayak, Shri Kishen	

Shri M. N. Swamy (Ongole): I could not vote. I am for 'Noes'.

Shri Imbichibava (Ponnani): I could not vote. One vote has to be added to 'Noes'.

Mr. Deputy-Speaker: It will be recorded. The result of the division is:

Ayes: 82; Noes 10.

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9—(Power to summon persons to give evidence and produce documents).

Shri Nambiar: I beg to move:

Page 4,—

Omit lines 9 to 11. (9).

Shri Bade (Khargone): I beg to move:

(i) Page 4,—

after line 8, insert—

"Provided further that all persons so summoned under this section shall not be administered oath and shall not be asked to sign such statements." (10)

(ii) Page 4,—

for lines 9 to 11, substitute—

"(4) Every such inquiry as aforesaid, shall be deemed to be inquiry under section 162 of the Code of Criminal Procedure, 1898." (11).

Mr. Deputy-Speaker: Please be brief. I would request you to take two minutes.

**Shri Nambiar:** Clause 9 reads as under:

"(1) An officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document, or any other thing in any inquiry which such officer is making for any purposes of this Act."

He has the right to enter into an investigation and summon any person whose attendance he considers necessary either to give evidence or to produce a document.

"(2) A summons to produce documents or other things may be for the production of certain specified documents..."

What is this? An officer of the Force has the right to summon anybody, and a summons includes a summons to produce documents. Is it a judicial court? They want to give all powers to this officer as if he is a judicial authority. How is it possible:

"...specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned."

"(3) All persons, so summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908, shall be applicable to requisitions for attendance under this section.

"(4) Every such inquiry as aforesaid, shall be deemed to be a 'judicial proceeding' within the meaning of section 193 and section 228 of the Indian Penal Code."

An officer of the Railway Protection Force summons a person and he summons the production of documents, and all that he does under this clause is to be deemed to be a judicial proceeding. The police officer's action is to be considered to be judicial proceeding.

**Shri Tyagi (Dehra Dun):** Is that so?

**Shri Nambiar:** The police officer can summon a person for investigation, but a judicial enquiry must be before a magistrate or a court. A police officer summoning a person and documents to be considered a judicial proceeding under the Indian Penal Code is a fantastic law, unknown and unheard of in the history of any jurisprudence anywhere. I cannot understand the meaning of this. This is a very serious subject. Therefore, my amendment is that at least sub-clause (4) may be deleted, so that the proceedings of this officer in summoning witnesses and documents may not be termed a judicial proceeding.

**Dr. M. S. Aney (Nagpur):** I agree there.

**Shri Nambiar:** I am glad a senior Member like Dr. Aney is prepared to agree. I would request the hon. Minister to accept this amendment. After all, because it comes from Mr. Nambiar whom Mr. Patil does not like, please do not reject it.

**Shri S. K. Patil:** I very much like you.

**Shri Nambiar:** I have no personal quarrel or controversy with him, but this whole law looks ridiculous and looks fantastic and something reasonable must be done. That is why I press my amendment.

**Shri Bade:** My amendment is very simple. I do not agree with Mr. Nambiar in this respect. A police officer, a railway officer can summon a witness, about that of course there is no objection, but after summoning the witness, he should not examine him on oath. Therefore I have got objection, and I have therefore given my amendment. It should be an inquiry under section 162 of the Criminal Procedure Code, and therefore I want that sub-clause (4) should be deleted as Mr. Nambiar wants it. An investigation is never a judicial inquiry in jurisprudence, and therefore I want this sub-clause (4) to be substituted by my amendment that every such inquiry as aforesaid shall be deemed to be an inquiry under section 162 of the Code of Criminal Procedure, 1908, because if statements are taken on oath and signed by the summoned persons, then such statements, if it is a judicial inquiry, are admissible in court. Therefore, it will be an extra judicial confession. Therefore, I do

not want that a police officer or a person who is empowered with the powers of a police officer, while investigating, should take a statement on oath. I hope the hon. Minister will accept this amendment.

**Dr. M. S. Aney:** Only one sentence. This is a serious departure from the existing penal law of the land. When a police officer makes an enquiry, to turn that enquiry into a judicial enquiry by giving him the right to administer the oath is a novel procedure, unheard of. Therefore, I am in favour of what my hon. friend Shri Nambiar has stated.

The Minister of State in the Ministry of Law (Shri C. R. Pattabhi Raman): There is nothing unique about this, because in section 4(m) of the Criminal Procedure Code, a "judicial proceeding" is a proceeding in the course of which evidence is or may be legally taken on oath. "Judicial proceeding" in the meaning of section 193 of the Indian Penal Code is an investigation directed by law, preliminary to proceeding before a court of justice, is a stage of the judicial proceeding though the investigation may not take place before a court of justice. This provision is based on the provisions contained in section 14 (3) of the Central Excise and Salt Act, 1944.

**Shri U. M. Trivedi (Mandsaur):** Two wrongs do not make a right.

**Shri C. R. Pattabhi Raman:** This is an Act of 1944. For purposes of comparison I may read the provision in the Bill and the amendment proposed by the hon. Member. The provision in the Bill reads:

"Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code."

And the amendment proposed by the hon. Member reads:

"Every such inquiry as aforesaid shall be deemed to be inquiry under section 162 of the Code of Criminal Procedure, 1898."

As I said, there is nothing unique about this provision in the Bill as it is based on section 14 (3) of the Central Excise and Salt Act, and as you are aware, the definition of a judicial inquiry is wide enough to embrace all these situations.

**Shri U. M. Trivedi:** That was in 1944 before India became independent.

**Shri Nambiar:** When there was no Constitution. Now there is the Constitution.

**Mr. Deputy-Speaker:** The question is: Page 4,—

omit lines 9 to 11. (9).

*The Lok Sabha divided:*

### Division No. 34]

### AYES

[13.54 hrs.]

Alvares, Shri  
Aney, Dr. M. S.  
Bade, Shri  
Banerjee, Shri S. M.  
Brij Raj Singh, Shri  
Gupta, Shri Priya

Kachhavaiya, Shri Hukam Chand  
Kamath, Shri Hari Vishnu  
Kandappen, Shri  
Kapoor Singh, Shri  
Karni Singhji, Shri  
Krishnapal Singh, Shri

Nambiar, Shri  
Sezhiyan, Shri  
Trivedi, Shri U. M.  
Utiya, Shri  
Yudhvir Singh, Shri

### NOES

Alva, Shri A. S.  
Anjanappa, Shri  
Babunath Singh, Shri  
Bal Krishna Singh, Shri  
Balmiki, Shri  
Bhargava, Shri M. B.  
Birendra Bahadur Singh, Shri  
Brij Basi Lal, Shri  
Chanda, Shrimati Jyotsna  
Chandak, Shri  
Chandrabhan Singh, Shri  
Chaudhry, Shri Chandramani Lal  
Chaudhuri, Shrimati Kamala  
Chavan, Shri D. R.

Daljit Singh, Shri  
Das, Shri B. K.  
Ganapati Ram, Shri  
Himatsingka, Shri  
Jadhav, Shri Tulsidas  
Jyotishi, Shri J. P.  
Kindar Lal, Shri  
Kotoki, Shri Liladhar  
Laskar, Shri N. R.  
Mahadeva Prasad, Dr.  
Mahishi, Dr. Sarojini  
Mandal, Shri Yamuna Prasad  
Maniyanagan, Shri

Marandi, Shri  
Masuriya Din, Shri  
Matchareju, Shri  
Mehrotra, Shri Braj Bihari  
Mishra, Shri Bibbuti  
More, Shri K. L.  
Murti, Shri M. S.  
Musafir, Shri G. S.  
Naskar, Shri P. S.  
Patil, Shri M. B.  
Patil, Shri S. K.  
Pattabhi Raman, Shri C. R.  
Pratap Singh, Shri

## NOES

Puri, Shri D. D.  
 Raghunath, Singh Shri  
 Rai, Shrimati Sahodra Bai  
 Rajdeo Singh, Shri  
 Raju, Shri D. B.  
 Ram Subhag Singh, Dr.  
 Rane, Shri  
 Ranjit Singh, Shri  
 Rao, Shri Jaganatha  
 Raut, Shri Bhola  
 Reddy, Shri H. C. Linga  
 Roy, Shri Bishwanath  
 Sadhu Ram, Shri  
 Saigal, Shri A. S.

Samanta, Shri S. C.  
 Sarat, Shri Sham Lal  
 Satyabhama Devi, Shrimati  
 Sen, Shri P. G.  
 Sham Nath, Shri  
 Shankaraiya, Shri  
 Sharma, Shri D. C.  
 Sharma, Shri K. C.  
 Shastri, Shri Ramanand  
 Sheo Narain, Shri  
 Siddananappa, Shri  
 Siddhanti, Shri Jagdev Singh  
 Sidheshwar Prasad, Shri  
 Singha, Shri Y. N.

Sinha, Shrimati Ramdulari  
 Sinha, Shri Satya Narayan  
 Sumat Prasad, Shri  
 Tiwary, Shri D. N.  
 Tiwary, Shri K. N.  
 Tula Ram, Shri  
 Tyagi, Shri  
 Uikey, Shri  
 Veerabasappa, Shri  
 Verma, Shri K. K.  
 Vidyalkar, Shri A. N.  
 Virbhadra Singh, Shri  
 Warrior, Shri  
 Yadava, Shri B. P.

**Mr. Deputy-Speaker:** The result of the division is: Ayes: 17; Noes 82.

*The motion was negatived.*

*Amendments Nos. 10 and 11 were put and negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 9 stand part of the Bill."

*The motion was adopted.*

*Clause 9 was added to the Bill.*

*Clauses 10 to 16, Clause 1, the Enacting Formula and the Title were added to the Bill.*

**Shri S. K. Patil:** Sir, I move:

"That the Bill be passed."

**Shri Priya Gupta (Katihar):** It is a very important Bill and I would take just a few minutes.

**Mr. Deputy-Speaker:** We should conclude this before 2 O'clock; he may take two minutes.

**Shri Priya Gupta:** I have to submit that the Railway Minister should withdraw this Bill. I have given the reasons in my original speech. When the accidents were on the increase and they did not know what to do, the railway ministry ...

**Mr. Deputy-Speaker.** Speak on the Bill.

**Shri Priya Gupta:** Please hear me, Mr. Deputy-Speaker. The Railway Ministry sent a chart of punishment and that was forwarded to the Members of Parliament to show that they were taking some action to stop the accidents. Similarly in the Railway Protection Force by extending the cadre from what it was in 1956, it has

been doubled and trebled, they want to show that they are taking action. But the stoppage of thefts could not be done by three ministers, one Cabinet, one Deputy and one State minister and four members on the Railway Board along with a chairman and eight general managers and two general managers (workshops). They could not stop the thefts because they are not sincere but just want to show that they do something they bring in this Bill but they will use it to harass some people. They will show to the people that they were arresting some people for thefts. I am always ready to support the Railway Ministry in any measures they take to stop thefts but this is not the right step. This shows what steps they would take in future. From tomorrow after the Bill is passed we will be hearing of court cases and the RPF will have troubles and they will create trouble for persons in the railways against whom they have personal grudge. This type of cases will be on the increase. Who is going to bear the brunt of these troubles? It is these railwaymen. How are the thefts of railway property going to be checked?

**Mr. Deputy-Speaker:** The hon. Member should conclude now.

**Shri Priya Gupta:** I request you to impress upon the Railway Minister to withdraw the Bill and not to proceed with it any further.

**Mr. Deputy-Speaker:** Order, order. Shri Banerjee.

**Shri Priya Gupta:** You are just calculating seconds and minutes; one cannot always conclude in time.

**Mr. Deputy-Speaker:** Order, order. You cannot go on like this.

**Shri S. M. Banerjee (Kanpur):** I will only mention one or two points.

**Shri Priya Gupta:** This is not the procedure of passing Bills.

**Shri S. M. Banerjee:** I will put my points in a nutshell. When this Bill is passed and becomes an Act, I would request the hon. Minister Shri Patil and Dr. Ram Subhag Singh to see.....

**An Hon. Member:** Why not Shri Sham Nath? I am sorry; I forgot; .... that the Railway protection force which is supposed to protect the property of the Government protects it well. There is heartburning among the RPF people because of supersession.

14 hrs.

**Mr. Deputy-Speaker:** Do not bring in all these things. The time is over. Has Mr. Patil to say anything?

**Shri S. K. Patil:** I have nothing to reply.

**Mr. Deputy-Speaker:** I shall put the question to the vote of the House.

**Shri Kapur Singh (Ludhiana):** Mr. Deputy-Speaker, Sir, I wanted to speak for just a minute. You were not looking at this side.

**Mr. Deputy-Speaker:** Your Bill is coming.

**Shri Kapur Singh:** I wanted to speak on this Bill. I want to oppose this Bill. *(Interruption)* It is very unfair.

**Mr. Deputy-Speaker:** Order, order. The question is:

"That the Bill be passed".

*The motion was adopted.*

#### PUNJAB REORGANISATION BILL

**Mr. Deputy-Speaker:** The House will now take up consideration of the Bill to provide for the reorganisation of the existing State of Punjab and for matters connected therewith. No time has been fixed. I want the opinion of the House on it. We have two hours for it today.

**Shri U. M. Trivedi (Mandsaur):** 15 hours must be allotted for it.

**Shri Kapur Singh (Ludhiana):** Not less than 15 hours. It is a most momentous

Bill. Therefore, at least 15 hours should be given.

**Mr. Deputy-Speaker:** We have only today and tomorrow.

**Shri Raghunath Singh (Varanasi):** We have to finish the Bill today. We are going to finish this Bill today. It has to be finished today. Please consider that point also.

**Several hon. Members rose—**

**Mr. Deputy-Speaker:** Order, order:

**The Leader of the House (Shri Satya Narayan Sinha):** I have got a request to make. Whatever time you allot, I think and I would propose that four hours will be quite sufficient for this Bill. *(Interruption)* I want to make one thing clear. I would request the House to co-operate. It does not matter how long we will have to sit; it does not matter if we have to sit till midnight, but we would like to finish this Bill today. Unless we finish this Bill we will not rise.

**Shri U. M. Trivedi:** Sir, on a point of order. It is unfortunate that this Bill is being brought for consideration today. This Bill cannot be discussed in this House by virtue of the provisions contained in....

**Mr. Deputy-Speaker:** You may raise the objection later. I have to inform the House that at 4 O'clock we have to take up further discussion on the motion by Shri Siddhanti, on which Shri Raghunath Singh has to continue his speech. So, we have two hours for this Bill today, and tomorrow. The hon. Minister, Shri Satya Narayan Sinha, has suggested four hours for this Bill.

**Shri Kapur Singh:** How can we discuss this Bill, a Bill of this nature, in just four hours, Sir? *(Interruption)*

श्री यद्वीर सिंह (महेन्द्रगढ़) : बीच में आप मोशन को भी रखना चाहते हैं, या तो उस मोशन को सस्पेण्ड करें।

**Mr. Deputy-Speaker:** The House can sit late and finish it.

**Shri Satya Narayan Sinha:** I have made that request to the House. My motion is that four hours be allotted to this Bill. As I find that hon. Members are anxious that more time should be given and they feel that four hours will not be sufficient.