

14.14 hrs.

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

**Mr. Speaker:** Further consideration of Railway Property (Unlawful Possession) Bill. **Shri Rane.**

**Shri Rane (Buldana):** I stated yesterday that I support the Bill and do not agree with the Members who have opposed the Bill.

The hon. Minister has stated in his speech yesterday that the claims bill which was 29 million rupees in 1953-54 rose to 42 million in 1962-63.

14.15 hrs.

[**MR. DEPUTY-SPEAKER in the Chair**]

There must also be, I imagine, huge losses due to the destruction of property and the small and big thefts from wagons, etc. It is rather sad that the offences are increasing notwithstanding the creation of the railway protection force. I, suppose that this is due to want of power in the hands of the force. I, therefore, welcome this Bill as it seeks to invest the RPF with the necessary powers. Hon. Members **Shri Nambiar, Bade and A. P. Sharma** had expressed misgivings and apprehensions about the misuse of powers by the RPF. That argument can be advanced for the misuse of the power by the police also. So, there is no force in that. I feel that the present measure would not be adequate to meet the growing menace and increasing of offences. Now-a-days the tendency to destroy government and public property is growing. In broad daylight in West Bengal, Bombay and in Mysore the railway property had been destroyed recently and railway tracks are tampered with. In certain countries the destroyers of public property are regarded as enemies of the people; I have read this and this has been laid down in their constitutions and very heavy and severe punishments are prescribed in their Acts. Hon. Minister should give thought to this aspect of the question. The whole problem

should be studied in detail. If the railway authorities are not able to study these problems, I go to the length of saying that a committee should be formed to study in detail all these problems because the expenses are going up. All these problems should be studied and the committee should suggest ways and means to check the increase in offences.

I now come to my next point. There are some reasons which lead to this increasing of offences. Firstly, the railway authorities are not taking advantage of the existing penal provisions in the Railway Act.

**श्री प्रिय गुप्त (कटिहार) :** उपाध्यक्ष महोदय, इतना जरूरी बिल सदन के सामने है, भूतपूर्व सचेत बोल रहे हैं, पाटिल साहब हाउस में बैठे हैं, जो कि होम मिनिस्टर होने वाले हैं, लेकिन हाउस में कौरम नहीं है।

**Mr. Deputy-Speaker:** The Bell is being rung—there is now quorum.

**Shri Rane:** In the British days I had to defend a small boy of 12, a peasant's son who has thrown a stone at a running train; he was arrested then and there and prosecuted and I had to defend him in court in those days. Now-a-days we see offences of greater magnitude being committed but they do not take action. Secondly, I am told by several persons that some of these offences are taking place on account of the connivance and indirect participation of some railway servants. If it is probed into, there will be some check. In the whole of India, in many places, gangs of persons who steal railway property had come into existence. I think the police also know it. I do not know whether the railway authorities know it or not. There are also many receivers of stolen property from the members of that gang but they are not unearthed.

**Mr. Deputy-Speaker:** Mr. Sarjoo Pandey.

**Shri U. M. Trivedi (Mandsaur):** Sir, the time for this Bill may be extended.

**Mr. Deputy-Speaker:** At the suggestion of Mr. Kamath yesterday the time was already extended. He moved a motion and it was extended by one hour. We have now 1 hour and 35 minutes.

**Shri U. M. Trivedi:** That will not be enough; time will have to be further extended. This is a Bill which militates against the very principle of jurisprudence. Such a Bill where the very principle of jurisprudence has been attacked has not come forward in the history of India. I think this must be discussed thoroughly. Therefore, I am making a formal motion that the time for this Bill be further extended. I think the House will agree with me in view of the fact that very important points of law are involved.

**Mr. Deputy-Speaker:** I am sorry, Mr. Trivedi.

**Shri U. M. Trivedi:** This is not a personal question

**Mr. Deputy-Speaker:** There cannot be a motion again on the same subject. Mr. Kamath moved a motion yesterday and it had already been extended. The House assented to it and there must be some sanctity for the decisions of the House. You cannot move a second motion again. Mr. Pandey.

**श्री सरजू पाण्डेय (रसड़ा) :** उपाध्यक्ष महोदय, सदन के सामने जो विधेयक है, मैं उसका विरोध करने के लिए खड़ा हुआ हूँ। हमारी सरकार को कानून बनाने की बीमारी भी हो गई है। सबसे पहला बुनियादी सवाल यह है कि इस देश में अपराध होते ही क्यों

हैं। रेलवे की जायदाद और प्रापर्टी को नुकसान पहुंचाने वालों को रोकने के लिए रेलवे प्रोटेक्शन फ़ोर्स को अधिकार देने के लिए इस सदन में यह बिल लाया गया है। कई बार इस सदन में कहा गया है और मेरी खुद यह राय है, दुनिया के दंड शास्त्रियों की राय है कि अपराध तब तक नहीं रोके जा सकते जब तक कि अपराध के मूल कारण नहीं हटाये जाते। मुझे मालूम है कि इस तरह के छोटे छोटे लोगों को इतने ज्यादा अधिकार देकर सिवाय इस देश में भ्रष्टाचार बढ़ाने के और कुछ नहीं हो सकता। रेलवे के जो मामूली सिपाही हैं या और दूसरे कर्मचारी हैं,

टी० टी० आदि में और उनमें इसलिए झगड़ा होता है कि डब्ल्यू टी० जो मुसाफिर आते हैं, उनमें वह कहते हैं कि आधा पैसा हमको दो और वह मारपीट करते हैं। रेलवे में चोरी करने वाले जो हैं, जब से यह रेलवे प्रोटेक्शन फ़ोर्स बनी है, इसके ज्यादातर कर्मचारी चोरी में हिस्सा लेते हैं। कोयला और दूसरी चीजें भेवे वगैरह जो चोरी जाते हैं, वह सारा का सारा यही निकालते हैं। और इसके बदले में यह पुलिस कर्मचारी जिनके आप गीत गाते हैं, वह उन लोगों को बन्द करते हैं जो उनको घूस नहीं दे सकते। वही गरीब बन्द किये जाते हैं। मैं समझता हूँ कि रेलवे प्रापर्टी को नुकसान पहुंचाने वालों को सजा देने के लिए ऐसी धारारें मौजूद हैं जिनके जरिये से उनको सजा दी जा सकती है। फिर मैं नहीं समझता कि क्या इसकी आवश्यकता महसूस हुई कि सदन में यह बिल लाया गया और एक घंटे में इसको

[ श्री सरजू पाण्डेय ]

पास कराने की कोशिश की जा रही है। मैं सैकड़ों मिसालें दे सकता हूँ जहाँ इस तरह की चीजें होती हैं। अगर सरकार चाहती है कि दरअसल इस देश में अपराध हकें तो उसे अपराध की बुनियाद को मिटाना होगा। सरकार के सारे उसूल, सारे सिद्धांत, सारी बातें बिल्कुल पारब्रह्म की तरह हैं जिन पर अमल कभी नहीं होता है। यह चोरों को प्रोटेक्ट करेंगे। अगर कोई पकड़ा जायगा तो मिनिस्टर टेलीफोन करेंगे कि छोड़ दिया जाय।

**एक माननीय सदस्य :** गलत बात है।

**श्री सरजू पाण्डेय :** गलत नहीं, सही बात है। यहाँ के मिनिस्टर टेलीफोन करेंगे कि छोड़ दो। नौकरियों में सारे के सारे वही लोग रखे जायेंगे जो इन के नातेदार रिश्तेदार हैं... (व्यवधान)... मेरे पास सबूत है, आप जांच कीजिएगा क्या? ... (व्यवधान)... पब्लिक सर्विस कमीशन भी आप का ही है। सारे का सारा आज रेलवे विभाग में मैं समझता हूँ कि सब से ज्यादा भ्रष्टाचार है। अगर इनके घरों की तलाशी ली जाय तो बहुत कुछ मिल सकता है। इस अवसर पर मुझे राज्य सभा में एक मेम्बर ने एक कहानी कही थी, वह याद आ गई। रणजीत सिंह के दरबार में कोई आदमी गया इनाम मांगने, उस ने कहा कि मैं दाढ़ी पर हाथ फेरूंगा जितने बाल आयेंगे उतनी अशर्फी दे दंगा इस पर उस आदमी ने कहा कि दाढ़ी श्रीमान को हो और हाथ हमारा फिर

जितने बाल आयें उतनी अशर्फियां दें। इसी कहाना की मैं दोहराना चाहता हूँ। **फाइल** आपकी और हाथ हमारा हो तब आपके भ्रष्टाचार का पता चलेगा। इस देश के ही नहीं दुनिया के दण्ड शास्त्रियों की बात है, हाथ काटने के बदले हाथ काटे गए, सिर काटने के बदले सिर काटे गए, दांत तोड़ने के बदले दांत तोड़े गए, पिक पार्केटिंग के लिए फांगी दी गई, मगर अपराध नहीं रुके। मुझे लन्दन का एक किस्सा याद है। जहाँ पिक पार्केटिंग के लिए मेन सड़क पर एक आदमी को फांसी दी जा रही थी, वहाँ उसी जगह जो लोग यह देख रहे थे, उसी मजमे में एक आदमी पिक पार्केटिंग कर रहा था। तो मैं कहूंगा कि इस बिल को रेलवे मंत्री जो वापस ले लें। इससे सिवाय भ्रष्टाचार और घूसखोरी बढ़ने के और कुछ नहीं हो सकता। रेलवे में तो किसी की जान, लाइफ, प्रापर्टी कुछ भी सिक्कोर नहीं है और यही पुलिस जाकर जिनको आप अधिकार देने जा रहे हैं, यह सब कराती है। मामूली गांव के लोग जिन को कहीं शरण नहीं मिलती है वह जाकर रेलवे प्रोटेक्शन फोर्स में भरती हो जाते हैं। जितने क्राइम करने वाले लोग गांवों के हैं जो गांवों में कंट्रोल में नहीं आते, उन को गांव वाले कहते हैं ले जाओ, पुलिस में भर्ती कर दो, यह गांव में कंट्रोल में नहीं रहते हैं। उन लोगों को यह अधिकार देना कतई तौर पर गलत है। इस लिए मैं मंत्री जी से प्रार्थना करूंगा कि इस बिल को वापस लें, वरना इस देश में इस का बेजा इस्तेमाल होगा और कर्प्शन और बढ़ेगा।

**श्री विश्वनाथ पाण्डेय (सलेमपुर) :** उपाध्यक्ष महोदय, मैं तो मंत्री महोदय को धन्यवाद देता हूँ कि वह इस तरीके का विधेयक इस सदन में प्रस्तुत किये हैं। इस विधेयक को तो मैं समझता था कि पहले ही आना चाहिए था लेकिन अब आया है तो भी अच्छा है क्योंकि रेलवे सम्पत्ति राष्ट्र की सम्पत्ति है और उस की रक्षा करना आवश्यक है। रेलवे का विस्तार सारे भारतवर्ष में है और इस का विस्तार-क्षेत्र बहुत बड़ा है और जिस तरीके से उन्होंने प्रोटेक्शन फोर्स बढ़ाया है उस का अभिप्राय यह है कि रेलवे की चोरी, भ्रष्टाचार, लूट और डकैती बन्द की जाय लेकिन देखने में यह आया है कि वाबजूद इस के यह रुक नहीं सकता। उस का खाम कारण यह था कि उन को पूर्ण अधिकार नहीं था और पूर्ण अधिकार लेने के लिए हमारे मंत्री महोदय इस विधेयक को ले आये हैं। जैसा कि देखा गया है कि जब तक कि कड़ा नियम नहीं बनाया जायगा, तब तक कि रेलवे के प्रशासन को ताकत नहीं दी जायगी, जो रक्षा करने वाली संस्था है रेलवे सम्पत्ति की उस को अधिक सजा करने की और मुकदमा करने की ताकत नहीं दी जायगी तब तक मैं समझता हूँ यह भ्रष्टाचार और चोरी कभी रेलवे प्रशासन में बन्द नहीं हो सकती। जैसा कि मंत्री महोदय ने बताया है 1953-54 में लोगों ने चोरी के माल के प्रति जो दावे किये वह 29 मिलियन के करीब था और 1962-63 में बढ़ कर के वह 42 मिलियन हो गया। मैं समझता हूँ कि शायद इससे भी अधिक होगा। जो आंकड़ा उन्होंने प्रस्तुत किया वह इससे भी कहीं अधिक होगा। मैं समझता हूँ कि यह तभी इस की रक्षा हो सकती है जब कि इस प्रोटेक्शन फोर्स को अधिक ताकत प्रदान की जाय। इस मुकदमे से यह बिल लाये हैं। इस मुकदमे से नहीं लाये हैं कि साधारण लोगों के हाथ में, जो प्रोटेक्शन फोर्स है, उस के हाथ में अधिक ताकत दी जाय इसलिए कि वह इस का दुरुपयोग

करे बल्कि इसलिए कि जो रेलवे सारे हिन्दुस्तान में फैली हुई है, जिस के कई जोन्स हैं उस में सामान की चोरी जो होती है, उसकी रूकावट हो। मैं तो समझता हूँ कि अगर इस तरीके का विधेयक स्वीकृत हुआ, और मैं तो यह समझता था कि सदन में इस तरह के विधेयक को सर्वसम्मति से लोग स्वीकार करेंगे, लेकिन विरोधी दल के लोगों ने जैसा कि कहा इस से भ्रष्टाचार नहीं मिट सकती, इससे बुराई नहीं मिट सकती, मुझे तो आश्चर्य होता है कि जब चोरी, भ्रष्टाचार और बुराई को मिटाने के लिए कोई बिल प्रस्तुत होता है तो उस की भी छीछालेदार की जाती है, और उसके ऊपर भी विवेचनात्मक आलोचना की जाती है। यह तो ऐसा विधेयक है कि इस को सर्वसम्मति समर्थन प्राप्त होना चाहिए।

मैं यह भी कहना चाहता हूँ कि इस के साथ साथ कि रेलवे के जो यात्री हैं, रेलवे में जो सामान बेचते हैं एक स्टेशन से दूसरे स्टेशन पर, वह नहीं समझ पाते हैं कि उनका सामान सही सलामत पहुंच पायेगा या नहीं पहुंच पायेगा। इस तरीके से जो अधिकार रेलवे मंत्री महोदय इस विधेयक के द्वारा प्राप्त करना चाहते हैं, प्रोटेक्शन फोर्स के लिए उससे रेलवे प्रशासन के प्रति, रेलवे मंत्री के प्रति, रेलवे प्रोटेक्शन फोर्स के प्रति लोगों की श्रद्धा बढ़ेगी, लोगों की भावना अधिक हो जायगी क्योंकि हिन्दुस्तान में माल ढोने के लिए भी सब से प्रमुख साधन रेलवे है और उस के द्वारा ही लोगों का कल्याण हो सकता है। मैं इस शब्दों के साथ जो विधेयक मंत्री महोदय ने प्रस्तुत किया है उसका समर्थन करता हूँ।

**श्री श्रीकार लाल बेरवा (कोटा) :** उपाध्यक्ष महोदय, जो यह बिल लाया गया है जिसके अन्दर कि रेलवे प्रोटेक्शन फोर्स को यह पावर दी जा रही है कि वह बैरर वारन्ट के पकड़ सकते हैं, तो यह तो एक

## [श्री श्रीकार लाल बेरवा]

अप्टाचार का बड़ा अड्डा बनाने के लिए मंत्री महोदय सोच रहे हैं। इस से बड़ा अड्डा तो कहीं बनेगा भी नहीं क्योंकि पहले ही रेलवे में इतना अप्टाचार है, शायद 75 परसेंट समझ लो तो अब 90 परसेंट हो जायगा। मैंने दिल्ली मैन रेलवे स्टेशन का नजारा देखा है। वहां पर क्या होता है ? पहले यहां पर दावे 22 लाख रुपये के होते थे। आज मैंने देखा तो करीब 4 करोड़ के दावे हो रहे हैं। उस का कारण क्या है कि रेलवे प्रोटेक्शन फॉर्स के यहां पर कम से कम 40 आदमी लगे हुए थे इन प्लेटफार्मों पर सामानों की निगहबानी करने के लिए। उन में से कुछ आदमी कम कर दिये गये। आदमी कम करने से क्या हुआ कि जो दागीन दिल्ली रेलवे स्टेशन पर उतरने वाले थे, यहां के कुछ क्लर्कों ने जो बदमाशी करते थे, उन्होंने उस के नम्बर मिटा कर के दिल्ली के बजाय मथुरा के लिए कर दिया और मथुरा में जा कर उन दागीनों को छुड़वा लिया और छुड़वाकर सीधे कोसी कला के प्लेन मार्केट में ले जा कर बेच दिया। रंगे हाथों गिरफ्तार हुए हैं अभी आठ दिन पहले। अगर शिकायत की जाती है तो उस को दबा दिया जाता है और उलटे यह शुक्रवाह करके कि इस क्लर्क ने शिकायत की है, उसका तबादला करा दिया जाता है, उस से बदला लिया जाता है। इतना अप्टाचार है प्रोटेक्शन फॉर्स के अन्दर। रेलवे कर्मचारी ऊपर का नम्बर मिटा कर दिल्ली के बजाय आगरा कर देते हैं। आगरा में जा कर उसी नाम से छुड़वा लेते हैं और बेच देते हैं।

मैं अपने यहां की बात बताऊंगा गंगापुर स्टेशन की। इन्वारी किया तो स्टोर में 400 स्लीपर कम मिले। पी० डब्ल्यू० आई० ने क्या किया कि आग लगा दी और 300 और जला दिये यानी कुल 700 के जलने का रिकार्ड दे दिया कि 700 जल गये। इस लिए रेलवे की सम्पत्ति को न पहचाने के लिए जितने रेलवे

कर्मचारी जिम्मेदार हैं, बल्कि इस में जितना बड़े बड़े अफसरों का हाथ है, उतना छोटों का नहीं है।

मैंने रेलवे माल गोदाम, कोटा के लिए लिखा, वहां पर अच्छी अच्छी टैरिलीन का कपड़ा, टैरिलीन के सूट निकाल लिए गये और फिर आग लगा दी और कह दिया कि आग लग गई। हमारा रेलवे विभाग उनमें कोई जांच नहीं करता, बल्कि मामले को दबा कर और झूठी रिपोर्टों के आधार पर हमारे जैनरल मैनेजर बम्बई में बैठे हुए यह कह देते हैं कि आग लग गई, इस वजह से नुकसान हो गया, लेकिन उसकी जांच का कोई भी प्रमाण उनके पास नहीं होता है। अगर इस बिल के जरिये रेलवे प्रोटेक्शन फॉर्स को और ज्यादा पावर्स दे दी गई तो अप्टाचार दिन दुगनी और रात चौगनी तरक्की करता जायगा।

सवारियों का आज यह हाल है कि जो गाड़ियां या पारसल गाड़ियां स्टेशन पर खड़ी होती हैं, इन्स्पेक्टर साहब एक वाल्टी लेकर सिपाही को भेज देते हैं। उन में जो भैंसें बगैरह जा रही होती हैं, सिपाही वाल्टी लेकर जाता है और कहता है कि यह दीवान साहब की वाल्टी है और उस में दूध भरवा कर ले आता है। यह रोजाना हो रहा है और आप चैक कर सकते हैं। आप मेरे साथ भोजिये, मैं चैक करता हूं, रोजाना वाल्टी की वाल्टी दूध ले जाते हैं। कोयला तो गरीब आदमी उठा कर ले जाता है, लेकिन चोरी वह है जहां गांठों की गांठें देखते देखते गायब हो जाती हैं। गंगापुर में कोयले की वैगन पूरी की पूरी गायब हो गई, 22 हजार रुपये की वैगन गायब हो गई, लेकिन उसकी कोई चिन्ता नहीं है। वहां पर इतने पुराने-पुराने अप्टाचारी बैठे हुए हैं कि वे पता नहीं लगने देते। वहां के ठेकेदार सेठ बने बैठे हैं, चाय बेचने वाले करोड़पति

बने बैठे हैं, लेकिन हमारे रेल मंत्री क्या करें जनरल मैनेजर के पास रिपोर्ट करें। तो कह देते हैं कि मिनिस्टर से बातचीत करो, मिनिस्टर साहब को लिखें तो वे जनरल मैनेजर से पूछ कर झूठा-सच्चा जवाब दे देते हैं, जैसा जनरल मैनेजर ने बताया, वैसा लिख दिया।

इस लिए, उपाध्यक्ष महोदय, अगर ये पावर्स दे दी गईं तो फिर यात्रियों का जो सामान है वह भी नहीं बचेगा। मैं आपको एक और उदाहरण दूँ। यात्रियों का सामान लोथरूम में रखा जाता है लेकिन कोई टोकन उन को नहीं दिया जाता और उनको बैठा दिया जाता है। मैंने कई दफा इस के लिए कहा कि सामान पर टोकन नम्बर होना चाहिए, एक यात्री को दे दिया जाय और एक वहाँ रहे लेकिन रोजाना प्रोटेक्शन फोर्स के जरिये सामान उतरवा दिया जाता है। घुम्बा नं० 21 पर बक्से को गिरवा दिया जाता है और बाद में वहाँ से उठाकर मंगवा लेते हैं। इस लिए मेरा यह कहना है कि अगर यह पावर्स इस भ्रष्टाचारी पुलिस को दे दी गईं तो अभी तो यह सामान जाता है, फिर बदन पर कपड़े भी नहीं रहेंगे, उन को भी उतरवा लिया जायगा।

**Shri Himatsingka (Godda):** Sir, in view of the fact that stealing and other offences have increased very considerably and there is considerable loss to railway property, additional powers are certainly necessary. But I have some misapprehensions about some clauses in the Bill.

Clause 5 says:

"Notwithstanding anything contained in the Code of Criminal Procedure, an offence under this Act shall not be cognizable".

That means no one can be arrested without a warrant. At the same time, the next clause gives power not only to the superior officers but even to a

member of the Force to arrest persons with a warrant. These are contradictory, according to my view.

Then the question arises whether the power now being given to the RPF is exclusive or this is in addition to the existing powers of the ordinary police under the present Act to take action for offences against railway property. Clause 14 says:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Does this take away the existing powers of the police and other officers under the Cr. P.C.? If that be so, as a result of this Bill, instead of any benefit accruing, there will be definitely a set-back in arrest, detention and prosecution of persons who commit these offences. This should be given careful consideration whether this is not a retrograde measure in this sense.

Then, I do not understand what is intended by clause 4:

"Any owner or occupier of land or building or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives...." etc.

Why should these words "any owner or occupier of land or building or any agent of such owner or occupier" be specified? Any person who connives at an offence against the provisions of this Act should be punishable. Why should there be this restriction that only the owner or occupier of land or building or any agent of such a person should be punished? Does it mean that any stolen property is retained in such building or land? Why is this provision introduced in this form? That needs explanation. I would like the Minister to clarify what is intended by this clause limiting it to the owner or occupier of land or building

[Shri Himatsingka]

or his agent, and not making it wider so as to apply to any person willfully connives at any offence against the provisions of the Act.

With these remarks, I request the Minister to make it clear whether this is an additional power given to the RPF or it will be an exclusive power given to the RPF, taking away the existing powers of the police authorities.

**श्री रामसेवक यादव (बाराबंकी) :**

उपाध्यक्ष महोदय, माननीय पाटिल साहब ने यह जो विधेयक रखा है रेलवे सम्पत्ति के बचाने के लिये, जब मैं उस पर विचार करता हूँ तो ऐसा ही लगता है जैसे कोई नगर-वधु पतिव्रत धारण करने का व्रत ले।

श्रीमन्, इस सरकार के तरकश में इतने तीर हैं कि वे काफ़ी हैं, अगर यह ईमानदारी से चाहे तो रेलवे सम्पत्ति या कोई अन्य सम्पत्ति को बचा सकती है। क्योंकि, श्रीमन्, ताजीराते हिन्दू ज्ञान्ता फौजदारी को अगर देखें तो कोई भी ऐसा जुर्म नहीं है जो उसके अन्दर न आ जाता हो और उसके तहत उस को सजा न मिलती हो। फिर उस के बाद यह प्रिवेन्टिव डिटेन्शन एक्ट, भारत रक्षा कानून के अन्तर्गत इतने अधिकार रखते हुए अगर माननीय पाटिल साहब रेलवे की सम्पत्ति की रक्षा नहीं कर सके, तो मैं साफ़ कहना चाहूँगा कि इस विधेयक के पारित होने के बाद रक्षा होना असम्भव है। हाँ, इस से एक बात ज़रूर हो जायगी, जो रेलवे प्रोटेक्शन फोर्स है, उसके हाथ में असीमित अधिकार आ जायेंगे और उस से लोगों को नाजायज़ ढंग से तंग करने का अधिकार उनको और मिल जायगा।

मैं आपको इस का एक नमना देना चाहता हूँ कि आर० पी० एफ० के आफिसर लोग क्या करते हैं। एक दिन बाराबंकी से पटना के लिये मेरा रिज़र्वेशन था, आर० पी० एफ० के आफिसर साहब डबलरूमन्ती लखनऊ से उस में बैठ गये, उस गाड़ी के एक

हरिजन कण्डक्टर ने मना भी किया, लेकिन उसकी भी चिन्ता उन्होंने नहीं की। जब वहाँ गाड़ी पहुंचती है तो हम को जगह नहीं मिली, गाड़ी डिटेन हुई, मैंने कम्प्लेंट की लेकिन आज तक उस केस में कुछ नहीं हुआ, बल्कि उस हरिजन कण्डक्टर से जवाब तलब हो गया कि तुमने क्यों एलाट कर दिया। जिस फोर्स का यह हाल हो, जो रात दिन गांटों में कपड़ा और बौरों में चीजों को चुराती हो, उस के हाथ में इतना जबर्दस्त अधिकार दे दिया जाय तो मैं समझता हूँ उस का दुरुपयोग हो हो कर रहेगा।

दूसरी चीज जो मैं कहना चाहता हूँ वह यह है कि जनतन्त्र में जवाबदेही होती है मंत्री को। अगर देश में, और खास तौर से इस विभाग में, रेलवे में दुर्घटनायें हों तो किस से जवाब मांगा जायेगा। जनरल मैनेजर से नहीं बोर्ड के मेम्बरो से नहीं। वह माननीय मंत्री डा० राम सुभग सिंह या जो उन के बड़े आफिसर हैं श्री पाटिल, उन से मांगा जायेगा। और अगर असफलतायें इतनी हों कि उन का जवाब न हो तो माननीय मंत्री महोदय का शर्म अपनी चाहिये और अपनी असफलता को कबूल करना चाहिये। लेकिन माननीय पाटिल साहब क्या कहते हैं कि मैं कोई इतना हयादार नहीं हूँ कि इस्तीफा दे दूँ अपनी असफलताओं पर। जनतन्त्र में इस को कहा जाता है चोरी और सीनाजोरो। एक तरफ तो उसे रोक नहीं पाते हैं और उस के बाद इम तरह से कहते हैं।

मैं कहना चाहूँगा कि आज मंत्री महोदय रेल विभाग के मंत्री हैं। कभी वह इम देश के छाद्य मंत्री रह चुके हैं। यह आरोप भी लगाया गया इस सदन में कि बर्मा से जो चावल आता था उस में हजारों रुपयों का नुकसान हर जहाज पर होता था। वह मामला आज भी साफ सामने नहीं आया। यह प्रश्न उठ चुका है और मंत्री महोदय को इस पर सफाई देनी चाहिये थी, सरकार को देनी चाहिये थी, विदेश मंत्री को देनी चाहिये थी। वह बात

आज तक माफ नहीं हुई है। मंत्री महोदय रेलवे जायदाद को बचाने के लिये कानून पेश कर रहे हैं।

**The Minister of Railways (Shri S. K. Patil):** Sir, I rise to a point of order.

**श्री रामसेवक यादव :** मैं ईल्ड नहीं कर रहा हूँ।

**Shri S. K. Patil:** He will have to sit down I am rising to a point of order.

**Mr. Deputy-Speaker:** Let me hear the point of order.

**Shri S. K. Patil:** Sir, my point of order is this. The hon. Member is doing something which the Speaker had disallowed earlier. He was raising some question which had no relevancy here, without giving me any notice, and my name was being used. Under Rule 353 of the Rules of Procedure I raised a point of order and he was stopped by the Speaker. In the guise of talking on this Railway Property (Unlawful Possession) Bill, he is referring to the same thing which relates to the Food Department. My point is that any reference to that now is irrelevant and must not be taken note of.

**Mr. Deputy-Speaker:** He should not say anything about that. He may speak on this Bill.

**श्री रामसेवक यादव :** मैं आप से निवेदन करूँ कि चूंकि उन्होंने संगत और असंगत का प्रश्न उठाया है, मैं जानना चाहूँगा कि वह मंत्री रेलवे को जायदाद बचाने के लिये यह कानून बना रहे हैं और यह विधेयक लाये हैं जिन के खिलाफ इस प्रकार का आरोप है कि उन्होंने देश की सम्पत्ति की रक्षा नहीं की, और मैंने उस के लिये यहाँ पर यह मिमाल दी है तब यह कैसे असंगत होता है।

**Shri S. K. Patil:** He is referring to the same thing disobeying your ruling.

**श्री रामसेवक यादव :** कोई रूलिंग नहीं है। मैं तो यह कहूँगा कि माननीय पाटिल...

**Mr. Deputy-Speaker:** I shall examine these remarks and see.

**Shri S. K. Patil:** All those remarks are to be expunged from the proceedings.

**Mr. Deputy-Speaker:** It is all irrelevant. You must give previous notice. It has nothing to do with this Bill.

**श्री रामसेवक यादव :** प्रीवियस नोटिस देने का मवाल नहीं है। यह सदन में आ चुका है। मैं श्री पाटिल से कहना चाहूँगा कि वह अपने अधिकारों और अपने पद का दुरुयोग कर के उपाध्यक्ष महोदय पर दवाब न डालें।

**Mr Deputy-Speaker:** There is no reason why you should raise it here. It is irrelevant.

**Shri Nambiar (Tiruchirapalli):** The hon. Minister need not be so touchy about it. The more he objects the more he speaks.

**Mr. Deputy-Speaker:** Anything and everything cannot be said while speaking on a Bill.

**श्री रामसेवक यादव :** जो आर० पी० एफ० है उस के ऊपर खुद इस प्रकार के आरोप हैं कि वह स्वयं रेलवे सम्पत्ति को नुकसान पहुंचाते हैं और अगर उस को यह जबरन अधिकार दिया जाये तो उस से कभी यह हो सकता है कि इस सदन के जो माननीय सदस्य रेलवे में बैठ कर सफर करे उन के लिये वह कह दे कि यह पंखा खोल रहे थे। उन का चालान हो सकता है। इसी तरह से.....

**श्री शिव चरण मायूर (भीलवाड़ा) :** हम तो नहीं करेंगे लेकिन जब आप पावर में आयेंगे तब जरूर ऐसा करेंगे।

**श्री रामसेवक यादव :** हम तो इस तरह से इस का इस्तेमाल नहीं करेंगे लेकिन पाटिल साहब का इस तरह का रवैया होगा तो उसके लिये किया जा सकता है।



[ श्री रामसेवक यादव ]

मैं चाहूंगा कि मंत्री महोदय जरा इस बात पर ध्यान दें कि जो मौजूदा कानून है वह काफी है अगर वह चाहते हैं कि रेलवे की सम्पत्ति को बचाया जाये। अब इस से ज्यादा अधिकार उन को नहीं मिलने चाहियें। सदन से भी मेरा निवेदन है कि उन को वह ज्यादा अधिकार न दे।

इन शर्तों के साथ मैं इस विधेयक का विरोध करता हूँ।

**Shri Muthiah (Tirunelveli):** Mr. Deputy-Speaker, Sir, I rise to support this Bill. The Bill is essential and timely in view of large-scale thefts and pilferages occurring frequently in the Railways both in respect of properties owned by Railways and goods of the public transported by railways.

I submit, Sir, the people are becoming indifferent and irresponsible in the case of public property or government property including railway property. We find nowadays public property including railway property being destroyed by mob violence during demonstrations as was witnessed recently in Bombay and Calcutta. Railway properties in railway compartments and railway stations, in the goods sheds and goods trains, are being pilfered by anti-social and anti-national elements. Even nuts and bolts and crews are found missing in the railway compartments. Such thefts are a national disgrace and unworthy of a civilised nation.

Goods in goods trains are stolen frequently and on a large scale. With the increase in the quantum of goods traffic on the railways, thefts are also increasing. This is proved by the increasing claims bills. The claims bills rose from Rs. 29 million in 1953-54 to Rs. 42 million in 1963-64.

The amendment of the Indian Railways Act in 1961 has made it obligatory on the Railways to pay claims for losses, destruction, damages or deterioration or non-delivery of goods despatched. Because of this additional res-

ponsibility, effective steps have to be taken to prevent heavy losses on the Railways and to reduce claims bills.

The Railway Stores (Unlawful Possession) Act, 1955, is applicable only to unlawful possession of railway property owned by the Railways and does not cover the offences relating to goods of the people entrusted to the Railways for transport. Again, till now, the offences under this Act, were investigated and enquired into by the State Police. Because of this, the Railway Protection Force is handicapped in effectively dealing with thefts and pilferages of railway property.

**Shri Nambiar:** Police cannot do the job?

**Shri Muthiah:** The jurisdiction of the State Police is limited to the State boundary. Therefore, it is difficult for the State Police to make thorough investigations into thefts of Railway property. The Railway Protection Force is not equipped with necessary powers of investigation and prosecution. Investigation and prosecution are now conducted only by the State Police. This is not helpful for effective dealing with the problem. Therefore, this comprehensive Bill has been brought: firstly, to include the unlawful possession of goods entrusted by people to the Railways for transport and, secondly, to give powers of investigation and prosecution of offences relating to railway property to the Railway Protection Force.

The existence of double jurisdiction, both by State Police and by Railway Protection Force, is a serious handicap. The railway Protection Force needs to be strengthened and to be given full powers to tackle thefts of railway property. The additional expenditure is estimated to be only 1.67 per cent of the present cost on the Railway Protection Force.

Severe punishment should be given to the offenders guilty of thefts of railway property. Provision should be

made in this Bill or subsequent amending Bill for awarding deterrent punishment for mob violence and mob destruction of railway property.

I come to the Bill. Clause 3 of the Bill provides punishment for unlawful possession of railway property either stolen or unlawfully obtained. The punishment is imprisonment or fine or both. Clause 4 speaks of penalty for those who connive at the theft of railway property. It is necessary that abettors are also punished. Section 6 gives power to the Railway Protection Force to arrest without warrant any person guilty of theft of railway property or suspected of theft. Here it is necessary to ensure that the power is not misused by the railway officials and innocent people are not arrested and harassed under mere suspicion.

Under section 10, the officer can get a search warrant from a magistrate to search any place suspected of having any stolen property, seize such property and produce it before a court, and the court, when it is convinced of the theft, can order forfeiture of the stolen property to the Government. The right to enter the premises of a suspected person is likely to lead to misuse of powers by the officers sometimes. This should not lead to harassment of innocent people by the railway officials.

**Shri Priya Gupta:** I rise to oppose the Railway Property (Unlawful Possession) Bill. This proposal was mooted in 1956. After conception for a period of ten years this embryo has been produced by the Railway Minister. The first conception was aborted by Shri Lal Bahadur Shastri when he was the Railway Minister. The attempt of the Ministry of Railways to bring forward a Bill was untimely aborted during Shri Lal Bahadur's time because the State Governments did not give in.

**Shri Alvarez (Panjim):** All abortions are untimely.

**Shri Priya Gupta:** I want to say that this Bill is against the provisions of

the Constitution. If you look at the Seventh Schedule to the Constitution, in List II, the State List, item 2 reads "Police, including railway and village police". So, the State police will have jurisdiction over the railways also. Clause 8, sub-clause (2) of the Bill reads:

"For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case."

This can be done only when the relevant entry in the State List is amended so that the Centre can also have jurisdiction concurrently over the police. Otherwise, the passing of this clause will mean that the State police is being divested of the normal powers which it has under the Constitution. That can be done only when the States concerned give their approval to it and an amendment to the Constitution is adopted. So, Sir, on this very fundamental question, I would like your decision, the decision of the House and the wisdom of the Government.

**Shri Alvarez:** Government have no wisdom.

**Shri Priya Gupta:** I want to know one thing. Suppose a RPF officer exercises police powers from UP to Bihar, Bihar to Assam and from Assam to Bengal. Now the Chief Security Officer will be different for different railways. Since each Railway passes through two or more States, under whose jurisdiction will he come? That is a fundamental question. Secondly, will this Bill preclude the regular police officers including GRP of the area from taking action for offences being committed?

Then, clause 3 of the Bill talks of first offence and second offence. Is the Railways going to maintain a chart of offenders and find out whether the particular persons is the first offender or the second offender? Already, the arrears of claims of railway employees

[Shri Priya Gupta]

cannot be paid because of paucity of staff. Will this extra work also be given to them?

Also, in clause 3(b) the punishment mentioned is too heavy. It is heavier than the gravity of the offence warrants. At least, it should be the same as is prescribed in the Indian Penal Code and the Code of Criminal Procedure.

**Mr. Deputy-Speaker:** He should conclude now.

**Shri Priya Gupta:** Sir, it is a very important matter.

**Shri Alvares:** He is the Secretary of the Railwaymen's Federation. He is speaking on behalf of several lakhs railwaymen.

**Shri Priya Gupta:** Coming to another point, what about the service conditions of the RPF employees? There is the RPF Act. Because of the change in their service conditions, they were promised by the Railway Ministry that whoever does not want to remain in the RPF will be absorbed in the open line works of the railways. That has not been done with the result that so many old people have been forced to continue in the RPF against their will, even though they have opted to go out of it. Now you are putting further restrictions on them. I think the railways are looking after their own interests and not the service conditions of the people who have entered the railway service.

15 hrs.

Then, the RPF was organised to ensure that the railway properties are safely kept. Now the RPF organisation has got a wing, bigger than the wing meant for the protection of railway property, called the intelligence wing to watch the trade union activities of the railway workers. The RPF was originally organised to protect railway property from theft. Now, there is a separate force, a

separate cadre, inside the RPF to watch the trade union activities of the railway employees. It is the TB cell of RPF. Now when this Bill is passed, the District Officer, Divisional Superintendent or the General Manager will harass those railway workers who are participating in trade union activities when RPF will have powers to arrest on the plea of some railway property being found in their possession. It will take many years for the employee to go to a court of law and clear himself. In the mean time, they will cow down the trade union work by harassing the union workers saying that they are found in possession of some railway property.

Do the Railway Ministry want to over-rule the Chief Ministers of States by this Bill? Because, it is very clear from the Constitution itself that the police being a State subject, will be under the State.

Coming to another point, the employees of RPF who have put in a number of years of service are not given promotions, because....

**Mr. Deputy-Speaker:** We are not concerned with promotions in this Bill. It is not relevant.

**Shri Priya Gupta:** Kindly hear me, Sir. The appeal rules in the RPF will also change in the context of this Bill. I have seen that even high officials of the RPF of the rank of DIG, AIG and sub-inspectors, they are superseded by the nominee of the Railway Ministry or the General Manager. I want to know whether it is the whimsical officers of the Railway Board or the whimsical Minister—excuse me, Sir, for saying so—who will decide whom to give promotions in the RPF?

These are some of the points which I want to place before the House for serious consideration, because they will have their repercussions not only on the railway employees but on the

people of India at large. So, in the end, I say that the whole intention is *mala fide* and this Bill is not meant to stop the theft of railway property. There are many other laws already in force under which the police can take action if the object is only to protect railway property. With these words, I oppose the Bill.

**Mr. Deputy-Speaker:** I will call the Minister at 3-10 p.m. Now, Shri Sinhasan Singh.

**Shri U. M. Trivedi:** Sir, you said that time cannot be extended because a motion was moved earlier. We have got precedents to show that a motion of this nature, for extension of time, is not held out if the House so desires.

**Mr. Deputy-Speaker:** Can you give me any one precedent when the House has extended time twice on the same Bill?

**Shri U. M. Trivedi:** Three times the House has extended the time for a Bill. I can give instances.

**Mr. Deputy-Speaker:** All right, you give me the precedent.

**Shri Nambiar:** Sir, formerly the time allotted was one hour and at our request you made it two hours. It is such an important Bill where the constitutional provisions are impinged.

**Mr. Deputy-Speaker:** If it is against the Constitution, how can I throw it out?

**Shri Nambiar:** But can it not be discussed also?

**Mr. Deputy-Speaker:** You show me the authority and I will put it to the House again.

**Shri Alvares:** Even if we want to throw it out, we have to convince the House.

**Shri Nambiar:** It is a very important piece of legislation.

**Mr. Deputy-Speaker:** If Shri Trivedi is able to show me any precedent when the House has extended the time a second time, I will put it to the House.

**Shri S. K. Patil:** I would give 10 minutes of my own time to Shri Trivedi.

**Shri U. M. Trivedi:** I will require only 7 minutes.

**Shri Nambiar:** Not only Shri Trivedi's points but this has to be thoroughly discussed.

**Shri Bade (Khargone):** Time was extended thrice on the Representation of the People (Amendment) Bill here in this House last week.

**Mr. Deputy-Speaker:** Only once. I extended it.

**Shri Nambiar:** It was extended again.

**Shri U. M. Trivedi:** If I get five minutes, that will be all right.

**Shri Priya Gupta:** Kindly extend the time. It is a very important Bill.

**Mr. Deputy-Speaker:** I am very sorry.

**Shri Priya Gupta:** We crave your indulgence. You wanted a precedent. We have quoted that.

**Mr. Deputy-Speaker:** Order, order. Shri Sinhasan Singh.

श्री निदास्त सिंह (गोरखपुर): उपाध्यक्ष महोदय, इस विधेयक को पढ़ने के बाद मैं इस नतीजे पर पहुंचा हूँ कि यह विधेयक रेलवे प्रापर्टी की रक्षा करने के बजाये कहीं गवर्नमेंट को झगड़ में न डाल दे। आज रेलवे में दो तरह की फ़ोर्स हैं: एक जी० अर० पी० और

## [श्री सिंहासन सिंह]

दूसरी अर० पी० एफ० । एक दफा मैं ने रेलवेज कनसल्टेटिव कमेटी में मंत्री महोदय से कहा था कि एक जगह पर दो तरह की फ़ॉस रहने के कारण, जिन में कोई को-आर्डिनेशन नहीं है, सही तरीके से काम होने के बजाये रेलवे प्रापर्टी की चोरी अधिक बढ़ गई है, जिस की जिम्मेदारी कोई नहीं लेता है । अब तक तो रेलवे की सम्पत्ति की चोरी को पकड़ने का अधिकार केवल जी० अर० पी० को था । इस विधेयक में हम अर० पी० एफ० को भी वह अधिकार दे रहे हैं । इस का अर्थ यह है कि एक ही विभाग की वस्तुओं की चोरी को पकड़ने के लिए दो समानान्तर अधिकारी बनाए जा रहे हैं । उन में से कौन सुपीरियर होगा और कौन इनफ़ीरियर होगा, इस बात को कहीं भी स्पष्ट नहीं किया गया है ।

इस बिल में एक बड़ा भारी लूपहोल है । इस की क्लॉज 6 और 10 में कोई मेल नहीं है । क्लॉज 10 में कहा गया है कि फ़ॉस का अधिकारी किसी मैजिस्ट्रेट से वारंट ले कर किसी स्थान को सर्च करेगा, जब कि क्लॉज 6 के मताबिक फ़ॉस का कोई अधिकारी सर्च से पहले ही किसी व्यक्ति को रेलवे की प्रापर्टी रखने के सन्देह में पकड़ सकता है । अगर फ़ॉस के किसी अधिकारी को यह शुबहा है कि किसी घर में रेलवे की प्रापर्टी रखी हुई है, तो वह उस को गिरफ़्तार कर लेगा और उस के बाद सर्च करने के लिए जायेगा । इन दोनों क्लॉज का परिणाम क्या होगा ? फ़ॉस का कोई अधिकारी यह दरख़ास्त देता है कि अमुक व्यक्ति के यहां रेलवे प्रापर्टी होने का सन्देह है, इस लिए उस को सर्च वारंट दिया जाये । वह मैजिस्ट्रेट उस अधिकारी की बात पर सीधे विश्वास न कर के इस बात की एन्वयरी करेगा कि सर्च वारंट दिया जाये या नहीं । इस बीच में वह प्रापर्टी उस स्थान से हट जायेगी ।

मेरा कहना यह है कि ऐसा विधेयक बनाया जाना चाहिए, जो हर तरह से स्वतंत्र हो । इस विधेयक में परावलम्बन है, जिस के कारण चीन्नों के निकल जाने का अन्देशा है ।

इस विधेयक की क्लॉज 5 में कहा गया है कि इस विधेयक के अन्तर्गत जो अपराध होंगे, वे काम्नीजेबल नहीं होंगे । काम्नीजेबल और नान-काम्नीजेबल अपराध में अन्तर केवल यह है कि जिस अपराध को कोई पुलिस अधिकारी बगैर किसी वारंट के पकड़ सके, वह अपराध काम्नीजेबल है और जिस अपराध के सम्बन्ध में गिरफ़्तार करने की शक्ति सीमित है, जिस में बगैर मैजिस्ट्रेट या सुपीरियर आफ़िसर की इजाज़त के गिरफ़्तारी न की जा सके, वह अपराध नान-काम्नीजेबल है । जैसा कि मैं ने कहा है, क्लॉज 5 में कहा गया है कि क्रिमिनल प्रोसिजर कोड के प्राविजन्स के बावजूद इस विधेयक के अन्तर्गत सब अपराध नान-काम्नीजेबल होंगे । क्रिमिनल प्रोसिजर कोड में चोरी के सब अपराध काम्नीजेबल हैं । उस में धारा 411 के, चोरी का माल रखने या चोरी के जितने अपराध हैं, व सब काम्नीजेबल हैं । इस विधेयक की क्लॉज 3 में कहा गया है कि रेलवे की किसी सम्पत्ति को अपने अधिकार में रखना आफ़ेंस है, यानी वहां पर धारा 411 आ गई । किसी चोरी के माल को अपने घर में रखना धारा 411 हुआ । चोरी करते पकड़ा जाना काम्नीजेबल है । इस विधेयक में इन अपराधों को नान-काम्नीजेबल कर दिया गया है । इस की तुलना में बिना किसी वारंट के गिरफ़्तारी के इतने व्यापक अधिकार दे देना कैसे मेल खाता है । नान-काम्नीजेबल आफ़ेंस में बगैर वारंट के गिरफ़्तार नहीं किया जा सकता है, लेकिन इस विधेयक में अपराधों को नान-काम्नीजेबल भी कर दिया गया है

श्रीर बिना वारंट गिरफ्तारी के अधिकार भी दे दिये गए हैं।

जैसा कि मेरे मित्र ने कहा है, मुझे शय है कि कहीं आगे चल कर यह विधेयक कांस्टीट्यूशन के विरुद्ध करार न दे दिया जाय। इस पर विचार करने की जरूरत है कि ला एंड आर्डर एक स्टेट सबजेक्ट है। ला एंड आर्डर में चोरी में पकड़ना, गिरफ्तारी, जडिशल जस्टिस आते हैं और ला एंड आर्डर स्टेट सबजेक्ट हैं। इस विधेयक में उसको सट्टल सबजेक्ट कर दिया गया है और इस बारे में सट्टल गवर्नमेंट के अधिकारियों को अधिकार दे दिये गए हैं। इस प्रकार दो अधिकारियों में आपस में टकराव होगा। क्या गवर्नमेंट ने इस बारे में कानूनी राय ले ली है कि अगर कोई इस विधेयक को सुप्रीम कोर्ट में चेलेंज करे, तो यह टिक पायेगा या नहीं? मेरा अनुरोध है कि मंत्री महोदय ऐसा रास्ता निकालें कि रेलवे सम्पत्ति की रक्षा करने के लिए एक ही अधिकारी हो-वो तरह के अधिकारी न हों। इस समय एक तरफ जी० आर० पी० है, जो कि स्टेट की पुलिस है और दूसरी तरफ आर० पी० एफ० है, जो कि सेंट्रल गवर्नमेंट की पुलिस है। इन दोनों पुलिस फ़ोर्सिज में जो संघर्ष चल रहा है, उस का परिणाम यह हुआ है कि चोरी कम होने के बजाये बढ़ गई है।

लेबर यूनियन्ज के लीडर मुझे यह कहने के लिए माफ़ करेंगे कि जब यूनियन के अधिकारी चोरी करते हैं हुए पकड़े जाते हैं, तो कहा जाता है कि चूंकि वे यूनियन के कार्यकर्ता हैं, इस लिए उन को पकड़ लिया गया है, जिस से उन को कोई पनिसमेंट नहीं हो पाता है। यूनियन्ज के अधिकारी इस तरफ ध्यान दें। मुझे कभी कभी बड़ धर्म-संकट में पड़ना पड़ा कि किसी लेबर यूनियन के अधिकारी ने चोरी की हुई है, लेकिन यह झुवाल करना पड़ता था कि उसको बचना चाहिए। माल निकलता था और आप जानते ही हैं कि रेलवे अधिकारियों को मिले हुए होने

के वगैर माल नहीं निकलता। वही माल निकालते हैं।

रेलवेज का माल हर लाइन पर इस तरह फैला हुआ है कि उसको चोरी करना बड़ा आसान है। कोई देखने वाला नहीं है, कोई प्रॉटक्शन नहीं है। हर जगह रेलवे के स्लोपर और दूसरी सम्पत्ति पड़ी हुई है, जिसको बड़ी आसानी से उठाया जा सकता है। इन चीजों को डिस्पोज आफ करने की भी व्यवस्था करनी चाहिए, वना भ्रबों की रेलवेज की सम्पत्ति बर्बाद होती है और बर्बाद हो रही है और चोरी भी होती है। आवश्यकता इस बात की है कि रेलवे एडमिनिस्ट्रेशन को दक्ष और कुशल बनाया जाये। अगर हम कानून के जरिये चोरी को बन्द कर सकें, तो यह बड़ी खुशी की बात है। लेकिन कानून के जरिये कभी चोरी बन्द नहीं हुई है। कानून तो पहले से ही बहुत बने हुए हैं। चोरी बन्द होगी कानून को सही तौर पर लागू करने पर। कानून मौजूद है, लेकिन वह लागू नहीं हो रहा है। यह जो एडिशन की जा रही है, वह झगड़ा पैदा कर सकती है। गवर्नमेंट इस बारे में कानूनी राय हासिल कर ले कि कहीं यह बिल जी० आर० पी० के अधिकारों का अतिक्रमण तो नहीं करता है, जो कि स्टेट्स के अन्तर्गत हैं, क्योंकि इस विधेयक के द्वारा आर० पी० एफ० को समान अधिकार दिये जा रहे हैं।

**Shri U. M. Trivedi:** Mr. Deputy-Speaker, Sir, to me this law appears to be a hotch-potch of some half-baked lawyer making this law. Perhaps, the man who drafted it did not know what was jurisprudence, did not understand the meaning of the word 'cognizable', did not understand the meaning of the word 'enquire' and, did not know that the man who enquires into an offence cannot be the man who makes an accusation. All these things are hopelessly muddled up in this little piece of legislation that is there.

[Shri U. M. Trivedi]

Sir, I am at one with the Railway Ministry that thefts are taking place in the railways, that we are handicapped in making investigation, that we are handicapped in bringing these thieves to book and that the State police is not at all helpful. On the contrary, it sits on the throat of the poor railway employee and makes money out of it which is the primary concern that they have. Everyday, thefts are occurring and the thefts are occurring with the help of the police. But at the same time, I say that this is not a measure which can eradicate the evil which exists and which this Bill wants to remedy. This is not at all possible to be done with this measure. On the one hand, you are giving powers to the Railway Protection Force, the power of enquiry, the power of summoning witnesses, the power of taking oath and recording evidence and that it will be called a judicial proceeding. Such a thing has never been conceived of that the man who accuses anybody makes a judicial enquiry into the affairs. Such a thing has not been conceived of in law. Any person who has any knowledge of jurisprudence will agree with this.

On one hand, clause 5 says that the offence is not cognizable and immediately, on the other hand, clause 6 says that for a superior officer it is cognizable. What type of cognizance is it? It is not cognizable for one and the very next sentence says that it is cognizable for the other superior officer who can arrest the man. What type of cognizance is it? And that very man who can make arrest can have a search warrant issued but for that he has got to go to the magistrate and by the time the warrant is issued, that scoundrel will remove all the goods that are lying there and nothing will be found. What type of law will it be? How will it be adjusted? To what advantage will it be? The magistrate will make enquiries and issue the notice. Magistrates are not always above board. They

are also influenced by considerations of different types. He will have to issue the notice and by the time the notice is issued, the goods will disappear.

Now, if the power is to be given, let it be given properly. I would suggest one thing to the hon. Minister. Let the hon. Minister think of it and let him withdraw this Bill. Let him have a comprehensive Bill that for the whole of India, the Railway Police must be in the hands of the Union Government and that it should be maintained by the Union Government. Let the law be amended; let a proper law be made. Let every prosecution and every trial take place at the Centre either under the charge of Home Ministry or Railway Ministry. Then and then alone, we can come to this. Otherwise, there will be conflict between the Railway Police Force and the State Police and there will be a lot of fussle between them. Then, instead of one, there will be thieves entering into competition with each other in depriving the Railways of their railway property. That is there.

I, therefore, say, apart from the defects that can be pointed out at one stage or the other in the various provisions of this Bill, the very fundamentals of this Bill are wrong in principle, wrong in jurisprudence, and illegal and unconstitutional and the very conflict between the two sections will take place and that will create positions of *ultra vires* nature in this matter. I most emphatically submit to my hon. friend, Mr. Patil—all of them are good and kind to me—and tell them let this Bill be withdrawn and let us come to the conclusion that this is not the law which is meant for removing the evil that is there.

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

श्री श्री त्रिवेदी (मुरैर) : अध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है। 376 और 340 के अन्तर्गत मैं स्थगन प्रस्ताव पेश कर रहा हूँ। यह 340 नियम इस प्रकार है :

"At any time after a motion has been made, a member may move that the debate on the motion be adjourned."

अब इस वक्त सदन के सामने निम्न-लिखित प्रस्ताव है जो कि आर्डर पेपर 14वां आईटम है देख लीजिए :

"Further consideration of the following motion moved by Shri S. K. Patil on the 3rd September, 1966, namely:—

"That the Bill to consolidate and amend the law relating to unlawful possession of railway property, as passed by Rajya Sabha, be taken into consideration."

मैं स्थगन प्रस्ताव 340 नियम के मातहत इस लिए पेश कर रहा हूँ कि आज दोपहर ... (व्यवधान) ... आज दाजी साहब ने सवाल उठाया था, श्री चन्द प्यारे लाल कम्पनी का मामला और धिर्गि कम्पनी का मामला उठाया था।

**Mr. Deputy-Speaker:** This has nothing to do with that. I do not allow it.

श्री मन्वु लिये : मैं आपको बता रहा हूँ।

**Mr. Deputy-Speaker:** I am sorry. I do not allow it.

श्री मन्वु लिये : मैं एक मिनट से ज्यादा समय नहीं लूंगा ... (व्यवधान) ... यह रेलवे की जायदाद की रक्षा करने के लिए विधेयक लाया गया है। लेकिन हिन्दुस्तान को वित्तीय घाटे में डालने की जिम्मेदारी

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जो मौजूदा रेल मंत्री हैं, उन पर है, जब वह खाद्य मंत्री थे उस जमाने में जो घाटा हुआ है और देश का जो नुकसान हुआ है, उन के बारे में तो मंत्री महोदय की सफाई आयी नहीं ...

**Shri S. K. Patil:** What you have not allowed, the hon. Member is bringing it again. It is thoroughly out of order.

श्री मन्वु लिये : तो इसलिए 'अध्यक्ष महोदय, वह इस बिल पर कैसे बोल सकते हैं, यह मेरी समझ में नहीं आता। इसलिए चर्चा मेरा स्थगन का प्रस्ताव है, उस पर आप बहस करवाइए और बोट लीजिए।

**Mr. Deputy-Speaker:** Rule 340 does not apply to this. It has no relevance. I do not accept the motion. Shri Patil.

श्री मन्वु लिये : स्थगन प्रस्ताव तो लीजिए।

**Mr. Deputy-Speaker:** I am not allowing it. Rule 340 does not apply here.

श्री मन्वु लिये : स्थगन प्रस्ताव नहीं लेंगे ? रूल्स आफ प्रोसीजर का पालन नहीं होगा ? नियमों का तो पालन होना चाहिए। आप प्रस्ताव पर बोट लीजिए।

**Shri S. K. Patil:** Sir, in respect of this Bill that has been considered today, several amendments have been moved and several difficulties have been pointed out. I was very carefully listening to my hon. friend, Shri Trivedi, that there might be some difficulties arising out of this particular enactment when it is passed. So also there have been arguments made by people who I presume may have been lawyers sometimes in their lives but have completely forgotten their law that this is against the Constitution. If there is any Bill against the Constitution, even if this House passes it, then also it can go.



**An hon. Member:** You are not a lawyer.

**Shri S. K. Patil:** I am glad I am not a lawyer. It is much better not to be a lawyer than to be a lawyer of this type.

**Shri Priya Gupta:** Don't call us liar. . . (Interruption).

श्री राम सेवक यादव : अध्यक्ष महोदय, इस सदन में झूठ शब्द वापस लिया गया है। मेरा व्यवस्था का प्रश्न है, झूठ शब्द जो इस्तेमाल किया है वह वापस लिया जाये। . . . (व्यवधान) . . . अध्यक्ष महोदय, आप सुनेंगे नहीं ?

**Mr. Deputy-Speaker:** There cannot be a point of order here. He is replying to the debate.

**Shri Bade:** Did he mean a lawyer or liar? There is a difference. . . (Interruption).

**Shri Ram Sewak Yadav:** He must withdraw that.

**Shri Priya Gupta:** He has called us a liar.

**Shri S. K. Patil:** I never said liar. I am never capable of saying that. . . (Interruption).

**Mr. Deputy-Speaker:** Order, order. I have heard him saying lawyer. The hon. Minister may continue.

**Shri S. K. Patil:** These points have been raised and the people have to shout loud when they have nothing to defend their case with. There are one or two very substantial things that have been suggested. To that also, I shall address myself. . . (Interruption).

**Mr. Deputy-Speaker:** There should be no running commentary.

**Shri S. K. Patil:** The constitutional position concerned is under Schedule

VII. This House and the Railways have got the competence to have a law of this nature. As to whether it will ultimately conflict with the G.R.P. and the Criminal Procedure Code, etc. is a point that is now raised by Shri Trivedi. Had he really done it a couple of days ago, I could have given further thought to that question—I do not find it myself; I am not doing it—but I can assure him of one thing. If it is found in the exercise of this enactment that any such thing is likely to occur, either I will come forward to amend it or to withdraw it if becomes necessary. With that assurance I am not withdrawing it.

**Shri Nambiar:** Is he postponing it?

**Shri S. K. Patil:** I am not even postponing it.

There have been questions as to why there should be two parallel authorities, why, when there are a Criminal Procedure Code and the Police of the State, should we do it? We have been doing it in many things e.g. in Customs and Excise. This is not the first time. We have got a much larger jurisdiction than the Customs and the Excise. And the only point, which is limited, is this: that under the R.P.F. Act, we have those powers, but we are wanting to extend them to take them to their logical sequence, namely, if they have got to be effective, then these powers of investigation and inquiry have got to be given. There is nothing beyond that that is intended. Therefore, there is no duplication of powers and to say that there is a duplication of powers, etc., is something which is not correct. (Interruptions).

**Shri Priya Gupta:** This is a wrong argument.

**Mr. Deputy-Speaker:** He must hear the argument. Please sit down. (Interruption). He should not shout like this.

**Shri S. K. Patil:** The hon. Member has to shout because there is no substance in what he says.

A point has been raised by Mr. Rane and also by many other members, but I find that that is not within the purview of this Bill. The object of the Bill is this: the R.P.F. is to protect the Railway property; they have to guard it, but they have no powers of investigation and inquiry; therefore, to give them those powers, this enactment has been brought. But the question which the hon. Member has raised—several other members have also raised it—is that there is so much of vandalism and there is so much of destruction of property of Railways for whatever reason. Let us remember that in very many cases, there are political reasons and not any other; they are not the ordinary dacoits, they are not the ordinary thieves; they are a very sophisticated type of dacoits and thieves who sometimes do this destruction and vandalism. There ought to be a remedy in order that the railway property, which is a national property, is protected. But the object of this Bill is not that. That is going far beyond this particular scope, which is a very limited one, i.e., the scope of this particular enactment is very limited. But something is necessary for that also because this trade goes on increasing day by day. When they have nothing else to do, they do this; they are not brave people; they do something which is immediately possible—set fire to it—because nobody looks at it, because there is no police nearby. Only cowards do such things; brave people do not do such things. (*Interruptions*).

**Shri Nambiar rose—**

15.29 hrs.

[**SHRI SHAM LAL SARAF** in the Chair]

**Shri S. K. Patil:** The hon. Member is not a coward. What I am saying is this. Because railway property is lying everywhere on our tracks which

are 50,000 kilometres and there is no Police everywhere to guard it, when these people, whom I have just described, have nothing else to do, they are doing this. How this railway property is to be protected against that kind of vandalism is a question that has been engaging my attention for a long time. During the last two years and a little more that I have been the Minister, property worth more than a couple of crores of rupees have been destroyed purely out of vandalism. That is not an act of bravery; I do not find any bravery in that. It is a property that belongs to the nation, including the members of the Opposition, including every member of every party, whether in this House or outside. It should be regarded as sacred because that does not justify anything, that does not prove anything—the destruction of property or anything like that. Therefore, this whole question has got to be investigated and proper laws made to stop this. There must be powers that if anybody is really trying to do it, he must be shot at sight; otherwise, these things will never disappear. But those powers are quite different from the one that we are thinking of having today because this particular Bill, this particular enactment, does not concern that. Its purview is very much limited, i.e., of investigation and inquiry of the cases that are ordinarily committed. It is a little extension of the same Act which is there. (*Interruptions*). Therefore, the Railway Ministry is thinking for a long time of appointing a high-powered committee—this is a pronouncement that I am making—to go into all aspects of the working of the Protection Force and the policing on the Railways. Some Members of Parliament—it is my desire—should also be associated with that inquiry. I am not naming the members of the Committee today because in due course such an announcement would be made. My colleague, Dr. Ram Subhag Singh will be the Chairman of this Committee. It is absolutely necessary in order to put a

[Shri S. K. Patil]

stop this, but that is something which is outside the purview, as I said, of this particular enactment.

All the amendments that have been moved are under a mistaken notion that this takes the place of G.R.P. or conflicts with G.R.P. Since it is not so, I am not accepting them.

There are others who asked why there should be such a punishment; they said that it was too severe a punishment. This is a different kind of offence; it is not an ordinary offence that you are dealing with. There are things which either belong to the Railways or are entrusted to the care of the Railways, and here are people who do not recognise this; while the train is running or while the train is stationary, the thefts are taking place. If for taking cognisance of the offences warrants are to be secured, then what would happen? Somebody who has taken it had already gone and you sit down, then go to the Magistrate, bring the warrant and do things like that. That is not exactly the purpose for which the legislation has been brought. If there are any anomalies, if there are any excesses as a consequence of the functioning of this enactment, surely this House will be able to amend it or annul it or do anything like that. What I am saying is this. If we really want that it should be a deterrent, it should be a deterrent. Do not call it a deterrent and then go on watering it down, so that the man can do it as much as he likes.

A question was raised by one of my hon. friends whether we keep a list of the offenders. May I tell him that in many laws, not only in this, there are provisions of this description; what should be the punishment for the first offence, what should be the punishment for the second offence and so on. Then surely somebody is making a list of it and it may sometimes escape the attention. The hon. Member need not be afraid that if

he commits the offence for the second time, he will be forgotten or forgiven about it.

**Shri Nambiar:** I rise on a point of order.

**Mr. Chairman:** There is no point of order now.

**Shri S. K. Patil:** There is no point here. I am quite sure that the hon. Member is good enough; he has been a railway servant for a long time; we are glad that there is some knowledgeable person sitting in this House who knows the Railways and possibly knows it on both the sides—the good points as well as the bad points of the Railways. So, it is something that I must treat him with respect and that is the respect I am giving.

Therefore, there will be a note of it and if a man commits the offence for the second time, he will be duly punished.

I do not want to take the time of the House. I am not accepting any amendment whatsoever. I commend this Bill.

**Mr. Chairman:** Mr. Priya Gupta.

**Shri Nambiar:** I rise on a point of order. During the course of his speech . . .

**Mr. Chairman:** I am calling Mr. Priya Gupta.

**Shri Priya Gupta:** When he presented the Bill, he said that it was for the purpose of

**Mr. Chairman:** What is his point of order?

**Shri Priya Gupta:** Kindly allow me, Sir. (*Interruptions*).

**Mr. Chairman:** In case he has any point of order to raise under some rule, he can let me know and I will certainly allow him.

**Shri Priya Gupta:** May I submit in all humility one thing?

**Mr. Chairman:** He may submit without humility.

**Shri Priya Gupta:** My whole submission is this. When the Bill was presented, it was said that the purpose was to punish those who are in unlawful possession of railway property. Now he is talking about vandalism, destruction of railway property and attacks by others. It is not a question of possession of railway property; when a man comes and destroys a thing, he does not take it and go away. Vandalism is an act of destruction and he is giving the argument of vandalism, etc., just to carry the sentiments of this House and to get the Bill passed. Without any proper argument, he wants to get the Bill passed.

**Shri Nambiar:** My point of order is a very clear one. While the hon. Minister was replying, he mentioned that if the hon. Member who had spoken just then committed the offence for a second time it would be kept on record and proper punishment would be meted out. That was a sort of insinuation. In fact, it was not only an insinuation but a sort of threat against the Member who spoke against the Bill. Therefore, that remark must be either withdrawn or it should be expunged.

**Mr. Chairman:** Shri Priya Gupta has raised no point of order.

As far as Shri Nambiar's point is concerned, I myself had heard the hon. Minister when he was speaking, and I can say that the hon. Minister did not say so in the context in which the hon. Member is alleging now. The context in which he said it was quite in order. Therefore, there is no point of order.

**Shri Priya Gupta:** Your ruling is that it is not an insinuation?

**Shri Bade:** I want to put only one question to the hon. Minister. I thought that he would clear this point in his speech, because he attacked the profession of lawyers and he had said at the same time that he was not a lawyer himself. But he has not explained the difficulties felt by two or three eminent lawyers and which they have placed before him.

In clause 5, the offence is not made cognizable, whereas in clause 6 it is made cognizable, which means that even a superior officer can arrest the culprit. But in the case of offences which are not cognizable, even the highest officer of the State or the Central Government cannot arrest culprit. How can the hon. Minister reconcile these two provisions? That is my difficulty.

**Mr. Chairman:** The hon. Minister may keep this in mind now. He need not reply to it just now. When the clause is taken up, he may clear this point.

**Shri Kapur Singh (Ludhiana):** I just want to submit one thing on the point which was just now made by my hon. friend over there about certain remarks made by the hon. Minister of Railways.

**Mr. Chairman:** I have already given my ruling on that.

**Shri Kapur Singh:** What you have said does not amount to a complete vindication of the point which he has sought to make out.

**Mr. Chairman:** Let us leave it for a future time.

**Shri Kapur Singh:** It was certainly not in the best of tastes and it should not have been said. That is all that I want to say.

**Shri Nambiar:** Because the Chairman had given his ruling I had kept quiet. Otherwise, I also had my grievance.

Mr. Chairman: The question is.

"That the Bill to consolidate and amend the law relating to unlawful possession of railway property, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

Mr. Chairman: We shall now take up the clauses.

Clause 2—(Definitions)

Shri Nambiar: I beg to move:

Page 2, line 8, add at the end:

"but not the tools, spare parts of no material value, and such other implements of day to day work by railwaymen." (1)

Shri U. M. Trivedi: I have also tabled some amendments.

Mr. Chairman: Under rule 79(1), the amendments that the hon Member Shri U. M. Trivedi has tabled have not been given proper notice of; the notice has not been in time. So, those amendments are not acceptable.

Shri U. M. Trivedi: I think they could be allowed.

Mr. Chairman: Under rule 79, they are not acceptable.

Shri U. M. Trivedi: Why are they not acceptable? There is no question of the rule here. These amendments can always be allowed by the Speaker or by the Chair as soon as they are tabled. I had given notice of them in the morning before the discussion had begun here, and, therefore, I must have the right to move my amendments. You can always waive that rule.

Mr. Chairman: Rule 79 (1) says.

"If notice of an amendment to a clause or schedule of the Bill has not been given one day before the day on which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the Speaker allows the amendment to be moved."

My information is that the Speaker has not permitted them to be moved.

Shri U. M. Trivedi: It is not the Speaker that has to permit but the Chair.

Mr. Chairman: I am sorry. I have already given my ruling.

Shri U. M. Trivedi: If you do not want to allow those amendments, that is a different matter. But it is not a question of the Speaker giving some ruling in the abstract, but it is for the Chair to do so.

Mr. Chairman: Anyway, I have said what I have had to say on that, and, therefore, that should stand.

Now, Shri Nambiar has moved his amendment, and that amendment is now before the House.

Shri Nambiar: Clause 2 (d) defines 'railway property' as follows:

"'railway property' includes any goods, money or valuable security or animal belonging to, or in the charge or possession of, a railway administration."

I want that the following words should be added at the end, namely:

"but not the tools, spare parts of no material value, and such other implements of day to day work by railwaymen."

Under the definition as it stands, railway property means any property of the railways. My difficulty is this. I am not arguing for argument's sake, but I am only pointing out the real difficulties which the working railwaymen would feel and which I suggest we should remove.

Now, a railway employee may take a tool after his work is over, to his house; he takes the tool and goes home after the work is over, at five o'clock or seven o'clock; he may not be able to deposit it in the tool-box or in the tool-room, and so he will have to take it home and he will have to keep it with him and bring it back with him the next day when he comes for work.

**Shri Priya Gupta :** Even spare parts.

**Shri Nambiar :** Now, that tool or spare part which he is taking home is railway property. Anybody who is not in good terms with that railway employee may go to the police station or to the Railway Protection Force and say 'Here is railway property which is in the possession of this railwayman, a gangman or whomsoever he may be', and get a police constable to have that man arrested.

Clause 6, which is the main provision of the king-pin of this Bill provides that:

"Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned."

Under this clause, even a Railway Protection Force constable can arrest that man; he need not go to a magistrate for a warrant; he need not go to anybody for any help; he can himself arrest that person, because it is said that any superior officer or member of the Force can do so; it means that any constable is enough for the purpose, and he can straightaway go and arrest this railwayman and put him under lock-up.

**Dr. M. S. Aney (Nagpur) :** The Railway property in his house is presumed to be stolen property.

**Shri Nambiar :** My point is that the term 'railway property' has not been defined properly. I want that it should be defined very clearly. Under this definition, 'railway property' can mean any of the things which can be considered as tools which are in day-to-day use by the railwaymen.

**Dr. M. S. Aney :** First, the Railway-tools are presumed to be stolen property; then only the man can be arrested.

**Shri Nambiar :** My point is this. The railway employees are doing work and they have to carry tools with them. Railways are not a factory within four walls. Railways are spread throughout the country.

**Mr. Chairman :** The hon. Member is repeating the same thing.

**Shri Nambiar :** The employees have to carry tools, sometimes, to their houses. Therefore, my submission is that the term 'railway property' has not been properly defined here.

**Dr. M. S. Aney :** They can take them home with the permission of the officer.

**Shri Nambiar :** I am bringing this point before the House because I know several cases out of my own personal experience where I have seen this kind of difficulty being experienced by railwaymen. Railway employees who go out of the workshop after their duty....

**Mr. Chairman :** He has made his point.

**Shri Nambiar :** It is not only tools that are involved in this. There are cases where when the railway employees return from their work in the workshop they carry their tiffin carrier with them. Anybody who wants to implicate a particular employee who carries his tiffin carrier may put a nut or a bolt inside the tiffin carrier. At the gate, these may be confiscated by the security staff and the man may be immediately arrested and kept under detention. Formerly, if the railway employee takes out a tool and is caught by the RPF, he has to be produced before a police officer and the police officer has to prosecute the case. Hereafter the necessity of taking him to the police officer is dispensed with. The RPF man himself can do the havoc. Therefore, it will be all the more possible for the RPF to humiliate and harass ordinary railwaymen on the plea of preventing thefts.

[Shri Nambiar]

Therefore, I say that the term 'railway property' has to be properly defined. This is lacking in the definition as it stands.

Shri S. K. Patil: I have nothing to add to what I have said. I oppose the amendment.

Mr. Chairman: The question is:

"Page 2, line 8,—add at the end—  
"but not the tools, spare parts of  
no material value, and such other  
implements of day to day work by  
railwaymen'."(1)

The Lok Sabha divided:

Division No. 31]

AYES

[15-51 hrs.

Bade, Shri  
Bheel, Shri P. H.  
Kandappan, Shri  
Kapoor Singh, Shri  
Laxmi Dass, Shri

Nambiar, Shri  
Ramabadrn, Shri  
Ranga, Shri  
Sezhayan, Shri  
Trivedi, Shri U. M.

Umanath, Shri R.  
Vishram Prasad, Shri  
Warior, Shri  
Yadv, Shri Ram Sevak  
Yudhvir Singh, Shri

NOES

Akkamma Devi, Shrimati  
Aney, Dr. M. S.  
Azad, Shri Bhagwat Jha  
Babunath Singh, Shri  
Balkrishna Singh, Shri  
Basappa, Shri  
Baswant, Shri  
Besra, Shri  
Bhatkar, Shri  
Chandrabhan Singh, Shri  
Chaudhuri, Shri D. S.  
Chaudhuri, Shrimati Kamala  
Dafle, Shri  
Daljit Singh, Shri  
Das, Shri N. T.  
Das, Shri Sudhansu  
Deshmukh, Shri B. D.  
Dixit, Shri G. N.  
Elayaperumal Shri  
Gowdh, Shri  
Gupta, Shri Badahah  
Hansda, Shri Subodh  
Harvani, Shri Ansar  
Hazarika, Shri J. N.  
Hem Raj, Shri  
Kisan Veer, Shri  
Kureel, Shri B. N.  
Lakshmikanthamma, Shrimati  
Lalit Sen, Shri  
Mali Mariyappa, Shri  
Mallick, Shri Rama Chandra  
Mandal, Dr. P.  
Maniyangan, Shri

Mantri, Shri D. D.  
Marandi, Shri  
Mehrotra, Shri Braj Bihari  
Mehta, Shri Jaashvant  
Mishra, Shri Bibhuti  
Misra, Shri Mahesh Dutta  
Misra, Shri Shyam Dhar  
Mohanty, Shri Gokulananda  
More, Shri K. L.  
Munzini, Shri David  
Muthiah, Shri  
Nanda, Shri  
Naskar, Shri P. S.  
Pandey, Shri R. S.  
Pant, Shri K. C.  
Patel, Shri Rajeshwar  
Patil, Shri M. B.  
Patil, Shri S. B.  
Patil, Shri S. K.  
Patnaik, Shri B. C.  
Pratap Singh, Shri  
Puri, Shri D. D.  
Rai, Shrimati Sahodra Bai  
Rajdeo Singh, Shri  
Raju, Shri D. B.  
Ram Sevak, Shri  
Ram Subhag Singh, Dr.  
Ramanathan Chettiar, Shri R.  
Rane, Shri  
Ranjit Singh, Shri  
Rao, Shri Muthyal  
Rao, Shri Rajagopala

Rao, Shri Ramapathi  
Rao, Shri Rameshwar  
Rao, Shri Thirumala  
Roy, Shri Bishwanath  
Sadhu Ram, Shri  
Saha, Dr. S. K.  
Saigal, Shri A. S.  
Samanta, Shri S. C.  
Satyabhama Devi, Shrimati  
Shah, Shrimati Jayaben  
Sham Nath, Shri  
Shankaraiya, Shri  
Sharma, Shri A. P.  
Sharma, Shri D. C.  
Sbeo Narain, Shri  
Shinde, Shri  
Shree Narayan Dass, Shri  
Shyam Kumari Devi, Shrimati  
Siddananajappa, Shri  
Siddhanti, Shri Jagdev Singh  
Sidheswar Prasad, Shri  
Soy, Shri H. C.  
Swamy, Shri M. P.  
Tiwary, Shri D. N.  
Tiwary, Shri K. N.  
Tula Ram, Shri  
Tyagi, Shri  
Upadhyaya, Shri Shiva Dutt  
Vaishya, Shri M. B.  
Veerabasappa, Shri  
Vidyalankar, Shri A. N.  
Wadiwa, Shri

Mr. Chairman: The result of the  
division is: Ayes 15; Noes 97.

The motion was negatived.

Mr. Chairman: The question is:

"That clause 2 stand part of the  
Bill".

The motion was adopted.

Clause 2 was added to the Bill.

**Clause 3—(Penalty for unlawful possession of railway property)**

**Shri Nambiar :** I beg to move.

(i) Page 2, lines 18 and 19,—omit, "unless he proves that the railway property came into his possession lawfully," (2)

(ii) Page 2,

(i) line 21,—for "five years" substitute "one year".

(ii) lines 21 to 25,—omit—"and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees"(3)

(iii) Page 2—

(i) line 27,—for "five" substitute "two".

(ii) lines 28 to 31,—omit—"and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees".(4)

In order that my first amendment may be properly understood, I shall read out the first portion of the clause.

"Whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable . . ."

I seek the deletion of the phrase unless he proves that the railway property came into his possession lawfully'. Otherwise, it will be the responsibility of the accused to prove that he got the property lawfully. According to the normal law of the land, it should be the responsibility of the prosecution to prove that he unlawfully

possessed the property. I know railway properties are being sold in auction in the open market. They are available throughout the country and everybody who is connected with railways may purchase such property. Once such property is purchased, property such as scrap iron or rails or other items, the purchaser stocks it at a place and uses it. Subsequently, after two or three years, the RPF may come and charge the person with having stolen the property and say 'You prove that you came into possession of this property lawfully'. He cannot prove it after three or four years; the receipt may have been lost or not traceable; still all the property might not have been utilised by him. Therefore, when a prosecution is launched against him, the onus must lie on the prosecution to prove that he unlawfully possessed it. That is the normal law of the land. Why should this person who holds the property go to the court and prove that he purchased this property through lawful authority? Whatever provision is made here must be in consonance with the law of the land, the Criminal Procedure Code. Why should there be a different procedure in this case? Hence this amendment.

**Shri Tyagi (Dehra Dun) :** According to the hon. Member, if any stolen property is found out after three or four years, he must be allowed to keep it?

**Shri Nambiar :** My amendment only says that the onus of proof should lie on the prosecution. Otherwise, it will be putting the law in reverse order, making the so-called accused answer the charge and prove as to how he came into possession of it.

*Prima facie* it must be the responsibility on the side of the prosecutor to prove it.

**Dr. M. S. Aney :** I have one reply to give him. If he proves that it is railway property, he has proved everything.

**Shri Nambiar :** My next amendment is this.



**Shri U. M. Trivedi:** I wish to speak on his first amendment. The first amendment must be taken up first.

**Mr. Chairman:** There are four amendments. Let all these be taken together.

**Shri U. M. Trivedi:** It will not be possible. Moving is all right, but once we are taking of the onus of proof or burden of proof upon a particular person, that is a principle of law which is involved so far as this particular amendment is concerned, and I will apply my mind only to this.

I would have readily agreed even to this proposition that a presumption may be made against the accused on the ground that it is railway property, and if the railway property is marked then the presumption would have been easier, but what has happened in this case is this. The definition of railway property today has been widened and widened in this sense that railway property includes any goods, money or valuable security or animal belonging to, or in the charge or possession of, a railway administration. That is to say, any commodity, merchandise, passing on the railway and carried by the railway may have marks of a different variety, or may have no marks, it might be bulk. If it is such a bulk and if the presumption is drawn against a person that he is in unlawful possession of it, then difficulty will arise. It is quite true that this principle would have worked and would have applied if it related to railway property which is so identifiable, but where the railway property includes things which are being handled or are in the charge of the railways, the railways are trustees of that property, the railway as a carrier is in possession of the property, and if an offence is made out, the difficulty will be to establish that the person has come in possession of it by lawful means. That is not possible. Each one of us is likely to be involved.

We purchase some wheat and some railway officer comes and says this wheat must have come from the

godown of the railway, you prove it. It will be a very difficult problem for each one of us to meet this type of charge. Ordinarily, under the Evidence Act, the possession of a stolen property can be presumed against an accused person, but the possession of other property cannot be presumed to be that of stolen property.

I think the amendment of Mr. Nambiar requires proper consideration. This is a very important principle of law and this will create difficulties of an unprecedented nature in view of the fact that the railway property defined under this Act is not railway property identifiable by any marks.

**Shri Bade:** There is one more question. While not agreeing with Mr. Nambiar, and with due respect to my leader, I have got one difficulty. I want to ask the Railway Minister this question. While proving the offence in the court, you are to prove in the beginning that it is railway property, that is in charge of or in the possession of the railway administration, and once you prove that it is the property of or in charge of the railway administration or in railway possession, then the burden of proof is on the accused. If that is the meaning given here . . .

**Shri Nambiar:** That is not given.

**Shri Bade:** Then, of course, even my leader Mr. Trivedi, may not have any objection, but even that is not clear here. Is that the meaning? The Railway may clarify.

**Shri Nambiar rose—**

**Mr. Chairman:** Mr. Nambiar has spoken.

**Shri Nambiar:** I have to speak on the other amendments.

**Mr. Chairman:** Why did you not speak then?

16 hrs.

**Shri Nambiar:** Then objection came I do not have much argument except to explain.

In clause 3(a), for the first offence, for imprisonment of five years I have substituted one year. If a first offence has got any meaning, then five years should not come there, it must be one year. For the second offence, he again says five years. What is the distinction he makes between the first offence and second offence? Therefore, I have substituted one year for the first offence and two years for the second offence.

Clause 3(a) says:

"for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both. . .

then comes extraneous matter—

"... and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees."

This addition is a directive which is given to the Judge. We are now telling the Judge that he should not give any punishment which is less than one year, and if at all he is giving only one year's punishment, he must give reasons for that. Why should you feller the hands of a Judge, who is going to decide the case? This leaves a very bad taste, and is very bad in the sense that you are now dictating terms even to the Judge as to how he must write his judgment. If at all you mean to have rule of law, then have the rule of law. If you want to have the rule of Mr. Patil, as Mr. Patil's law, then let it come. With all respect to the hon. Minister, I can understand a particular codification or jurisprudence or law being enacted by Mr. Patil.

**Mr. Chairman:** Please speak strictly on the Bill.

**Shri Nambiar:** Therefore, you should remove this. After my amendment, the clause will read like this:

"(a) for the first offence, with imprisonment for a term which may extend to one year, or with fine, or with both;

(b) for the second or subsequent offence, with imprisonment for a term which may extend to two years and also with fine."

Do not dictate terms to the Judge, this is my point. This he can accept.

**Shri U. M. Trivedi:** Here also, although Mr. Nambiar's argument is a limited one, my point is very simple. I say that we have got the normal law. In the Criminal Procedure Code also there is a provision that the first offender cannot be sentenced to imprisonment if he is of a particular age. We have got another law, which is known as the Probation of Offenders Act. Under that law also, the first offender under a particular age and of a particular age cannot be sentenced. The general law of our land and the principle of interpretation of law is that a special law does not derogate from the general law. If that is the position, this provision of law is redundant and such redundancy must not be created in law. When it is an offence relating to properly easily identifiable with sections 379 or 380 of the IPC, for identical offences making a discrimination without reasonable grounds and providing for the first offence and other offences different sentences of five years is illegal. This legislature should not make illegal laws which are illegal *ab initio*. The Home Minister is here and the Law Minister may also be called for and asked to submit his opinion whether such a law could be enacted in this House; we should not enact this law knowing that it is an illegality in itself. Therefore, I say that this sub-clause must be omitted and there must be a general provision where there should not be such a heavy fine. Our Cr.P.C. and I.P.C. say that if the offence is of a particular type the sentence can be such, the fine can go up to a particular amount. That is a very wise piece of legislation which had stood the test of time and it should not be interfered with simply some sentiments of ours come into conflict with the ideas of anti social activi-

[Shri U. M. Trivedi.]

ties of human beings. Anti-social activities exist; thieves are thieves and they will remain thieves for all times to come. Social activities will not change them; More deterrent punishments will not do and in the present stage of penology such sentences are not inflicted.

**Shri D. C. Sharma** (Gurdaspur) : Sir, I must admit that the gentlemen who had argued about this clause from the other side have taken into account a hypothetical case, a hypothetical person and a hypothetical court . . . (*Interruptions.*) They have also taken into account an imaginary person and some imaginary judge awarding an imaginary sentence to an imaginary criminal . . . (*Interruptions.*) have heard you patiently. Does a law deal with imagination or hypothesis or does it deal with facts? I think it deals with facts and if so, this clause is perfectly right.

The hon. Minister has said that this Bill is brought into act as a deterrent to anti social offences. If you accept the plea of Mr. Nambiar the very basis of this Bill is gone. If there is not to be deterrent punishment, it will become a namely pamby, woolly Bill. Do I want it to be like that— Certainly not.

They say that this Bill gives direction to the judge. Well, what is our IPC and Cr.P.C.? They are in the nature of directions That is all that is being done in this Bill. You can award a person five years imprisonment. You can also fine him Rs. 1,000. Or there can be both. If you do not give this punishment, and you give less, you can give reasons. What is wrong with it? I think we are giving the judge discretion and why should it be objected to?

It has been said that one year should be for the first offence and two years for the second offence. I do not think that this should be done. According to Mr. Nambiar, a very good friend of mine (*An Hon Member*: Not very good) this Bill should be withdrawn. But we have not withdrawn this Bill. I believe that the provisions contained in clause 3 of this Bill are very whole-

some and will serve a very useful purpose and the amendments proposed by Mr. Nambiar are the result of heated imagination and not of cool judgment and therefore these amendments should be withdrawn.

**Shri S. K. Patil** : I would first take up clause 3(a) and (b) and then I would reply to the other part The first amendment of Mr. Niambar says that five years is too much. Five years is the longest sentence; that is the farthest limit to which a judge can go. But so far as the first offence is concerned, the minimum punishment is one year and Rs. 1,000; for the second offence, 2 years and Rs. 2,000 rupees. Therefore, the five years need not create difficulty. So, it can remain as it is. If there is anything wrong, Acts are always amended. I am saying this to Mr. Trivedi for whose judicial knowledge I have got the greatest respect, that the maximum is the same but the minimum is different. If there is any lacuna it can be corrected. But five years is the farthest; it is the ceiling; more than five years could not be given. But the minimum is one year and Rs. 1,000 and then two years and Rs. 2,000.

So far as the other amendment is concerned, this clause reads: "Whoever is found or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall . . . be punishable—" That is the onus of proving that it is railway property is on the railways. Shri Trivedi spoke and Shri Nambiar also spoke. The reply was given by Mr. Bade. I welcome his speech because he come to my rescue; it shows his legal talent. After the railways charge a man; they have to prove that it is railway property. It does not end with the railways; it is before a magistrate. It is not a kind of common property bought from some one man as has been said because all consignments have railway markings which are given at the time of consigning or booking. It is possible that criminals may remove those markings but in many cases the markings may be there, If they

are there, there is no difficulty to prove that it is railway property.

**Shri Ranga:** It must be stated then.

**Shri S. K. Patil:** It need not be stated. It is not like any property that any respectable citizen will possess. It has not happened and that cannot happen. It is railway's responsibility to prove that it is railway property when it goes to the magistrate. That cannot be changed by any law by us. I would appeal to them to give a chance for this enactment to operate and to find out whether there are any questions of this type which arise. I give this assurance on the floor of this House and if it is found to be there, I shall myself come forward to amend this enactment. I am unable to accept these amendments.

**Mr. Chairman:** You present your amendments 2, 3 and 4. I shall put all of them.

**Shri Ranga (Chittoor):** Put the first amendment first.

**Mr. Chairman:** I shall put the amendments one after the other. I shall put first amendment No. 2 to the vote.

*Amendment No. 2 was put and negatived.*

**Mr. Chairman:** I shall now put amendment No. 3 to the vote.

*Amendment No. 3 was put and negatived.*

**Mr. Chairman:** I shall now put amendment No. 4 to the vote.

*Amendment No. 4 was put and negatived.*

**Mr. Chairman:** Now, I shall put the clause to the vote. The question is:

"That clause 3 stand part of the Bill."

*The motion was adopted.*

*Clause 3 was added to the Bill.*

**Clause 4—Punishment for connivance offences)**

**Mr. Chairman:** There are no amendments to this clause.

**Shri Nambiar:** I do not have any amendments to this clause but I have some remarks to make on this clause. If I bring an amendment, again this feeling of dejection or rather disapproval of whatever amendment that I bring, is expressed and the hon. Minister therefore does not want to agree to the amendments. Therefore, I have not brought in any amendment to this clause.

This clause is very ambiguous and is very badly worded. I shall read it:

"Any owner or occupier of land or building, or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both."

This is very sweeping.

**Mr. Chairman:** Are you giving your own version of the clause? I am not suggesting any; I am just putting a question.

**Shri Nambiar:** I am opposing this clause. Now, not only "any owner or occupier of land or building" but "any agent of such owner or occupier" shall be punishable. All these people are covered in this provision. It is something like the hand or the tentacles of an octopus stretched all over the world or at least all over our country so that they can find fault at anybody at any corner and haul him up. And then who is to haul up such people? Not even an officer; any constable or any person of that rank in the RPF is enough to do that.

[Shri Nambiar]

He can enter the building and arrest anybody! This is something unknown. Why should such a sweeping provision be brought in? If there is theft, you must stop it and punish the thief. I can understand that. For that, you cannot make a law so comprehensive, so omnipotent and omnipresent. That is unknown, and it cannot be accepted. So, it will be graceful on the part of the hon. Minister if he brings an amendment and puts the clause in the normal way. As it is, it is an abnormal clause. Therefore, I humbly submit that the hon. Members, without considering party affiliations and realising that this is a clause which is so worded that it may be challenged in the courts tomorrow, will kindly make the hon. Minister bring in certain necessary amendments, or, if he does not do it, I would request hon. Members and the hon. House to reject this clause.

**Shri Bade:** With all respect, I disagree with my hon. friend Shri Nambiar, because, if the law is there it should be all pervading. It should be complete. There should be no lacuna. If there is a lacuna then there is no law. Here the words are "wilfully connives". It is very difficult to prove in the court that a person connives wilfully, as in so many cases and particularly the excise cases. This will defeat the provisions of clause 4. When I read this section, I thought it was a very good thing for the lawyer or the advocate to plead that this is such and such a thing and that the person has not wilfully connived. If you are asking the prosecution to prove it, the prosecution miserably fails when the onus is on them to prove that a person wilfully connives. I request Shri Nambiar that he should not be afraid in this case. On the contrary he should thank the hon. Minister Shri S. K. Patil for using the words "wilfully connives".

**Shri Heda (Nizamabad):** Sir, if you look into the conditions of the

country today, the fact remains that persons are present at the time when the offence takes place. Many times the people are present and they see that the offence is taking place before their eyes, but they do not want to interfere with it and they think that it is wise to remain aloof. This is very derogatory to the progress in any established society. From this angle, if the owner or the occupier of the land in whose presence the offence takes place connives at it and keeps quiet and does not help the law, it is just possible that there may be proceedings against him. This will be such a deterrent on him that he will not allow any offence to take place. This will be helpful not only to the proper conduct of the law but also to the people who feel that they can do anything they like. Therefore, this provision is good.

So far as the punishment is concerned, the person will not be punished unless he wilfully connives. It is not easy to prove, as Shri Bade said, wilful connivance. Therefore, this clause is nicely drafted and is necessary.

**Shri U. M. Trivedi:** When I look into clause 4, I feel that there is no necessity for this provision. The Indian Penal Code provides for abetment; if it is a question of abetment in taking away any stolen property, then the offence of abetment can be there.

**Shri Heda:** There is a difference between connivance and abetment.

**Shri U. M. Trivedi:** According to him there is; according to me, there is none. Whoever abets before or after any commission of offences, is as liable to punishment as the man who commits the offence. So, this provision appears to me to have been worded by somebody who was over-intelligent, and overintelligent in the sense that he wanted to save some

scoundrels in Sabarmati and in Ahmedabad, where they enter into this business of storing the stolen property of the railway, and the railway is entirely impotent to do anything with them. Their approach is so great that even if a report is made to the police, the Divisional Superintendents see to it that any station master who wants to enforce any provision of law against thieves gets an order of transfer within a month; ordinarily, a station master remains in his station for five years; but the moment that he takes into his head that stealing should not take place in the station and that the scoundrels should be caught hold of for keeping the stolen property of the Government, of the railways, and that they should be dealt with, then, those persons exert their influence and get the station master transferred. Therefore, the word "wilfully" is used. I therefore suggest that you should not give this protection of "wilfully connives". If you think that they have connived, they have connived; that is enough. In this case, I want to be a little harder than Shri S. K. Patil himself. I want that because this is an anti-social activity of such a grave nature which is causing serious loss to the railways—

**Shri Ranga:** Out Heroding Herod!

**Shri U. M. Trivedi:** Whether or not it is so, when you make the law you have to make the law which is substantially correct and logical. Otherwise, do not make it. If you want to make it, make it a correct law. And in making the law, it will be proper to see that this word "wilfully" is embodied, or, in the alternative, omit the whole provision, because the law of abatement is there. Either it is redundant, or it appears that these words "wilfully connives" have been wilfully put in.

**Shri Priya Gupta:** I have got two submissions regarding this clause. There are some lands or buildings in close proximity to the railway area

from where theft of railway property is possible. Suppose a man passes by that side carrying certain materials—switches, batteries or some conduit pipes—are not marked as railway property. Then, the man remaining in that land or building has got to ask everybody, whosoever is carrying such things,

"क्या लिये जा रहे हो, दिखलाओ"

That is one thing.

Secondly, as Mr. Trivedi said, there are gangs of hooligans. The Minister knows that when the wagons or coaches come out of the workshop, they are stripped of their fittings like switches, batteries, etc. by gangsters who sell them again to the railway contractors or railway stores. If somebody is forced, under threat of death or something like that, to conceal the fact and not divulge it, I want to know whether that is also tantamount to connivance or not.

I also feel that such a long-range clause embracing everybody without specifically making any provision is not good in law.

श्री ह० च० सोय (सिंहभूम) : सभापति महोदय, जहाँ मैं इस विधेयक का समर्थन करता हूँ, मैं एक बात मंत्री महोदय के विचार के लिये रखता हूँ। अभी जैसा नियम है परमानेंट वे इन्स्पेक्टर के जिम्मे लाखों रुपयों की प्रॉपर्टी रक्खी जाती है। अभी अपने काम के अलावा दूसरे दूसरे कामों का सुपरविजन उस के द्वारा पकिये जाने का भी नियम है और उस में उस को बड़ी दिक्कत होती है। उस की ड्यूटी में यह होता है कि वह छः महीने पर इतने परसेन्ट का फिजिकल बेरिफिकेशन कराये। लेकिन फल यह होता है कि छः महीने के भीतर या एक साल के भीतर भी वह फल बेरिफिकेशन नहीं कर सकता है। जिस स्टोर की जिम्मेदारी उन को सौपी जाती है उस के बारे में उन को ठीक-ठीक पता नहीं होता कि

[श्री ह० च० सोय]

आखिर उन की जिम्मेदारी है क्या। इस के लिए कुछ इन्तजाम होता चाहिये। परमनेन्ट वे इन्स्पेक्टर के पास काफी काम होता है इसलिये मैं चाहता हूँ कि टूर वर्गरेह के सुपरॉवजन से उस को बरी किया जाये। नहीं तो ऐसा किया जाये कि एक अलग आदमी परमनेन्ट वे इन्स्पेक्टर रखा जाये जिस का काम सिर्फ स्टोर को देखने का हो, फिजिकल वेरिफिकेशन का हो। कई काम उस को नहीं दिये जाने चाहियें। अगर ऐसा नहीं किया जाता तो उस को पता ही नहीं रहता कि कितना सामान इश्यू होता है और कितना नहीं होता है। वह सिर्फ अन्दाज लगा लेते हैं कि शायद इतना सामान इश्यू हुआ होगा।

सभापति महोदय : इस कानून की जो दफा है आप उस के ऊपर बोलिये।

श्री ह० च० सोय : मैंने ध्यान खींचा है कि रेलवे मंत्री जी इस सम्बन्ध में कुछ विचार करें। वैसे मैं इस क्लोज का समर्थन करता हूँ।

**Shri S. K. Patil:** I am grateful to Mr. Bade for pointing out that if we want this to be a deterrent, this clause should be there. Mr. Trivedi asked why this word "wilfully" should remain here. Sometimes it may happen that a man has the railway property, but he does not know that it is stolen property. If a man is honest and if the property has come into his possession in the ordinary manner and he has not wilfully connived at it, he should not be punished, because he did not know that it was stolen property.

**Mr. Chairman:** The question is:

"That clause 4 stand part of the Bill."

*The motion was adopted.*

*Clause 4 was added to the Bill.*

**Clause 5—(Offences under the Act not to be cognizable).**

**Shri U. M. Trivedi:** This provision is inconsistent with the general provisions made in Cr. P.C. There is a provision in the Cr.P.C. which provides that any other offence which is punishable with imprisonment for more than 3 years becomes a cognizable offence. In this case, the punishment of imprisonment can extend upto 5 years. So, it passes my apprehension why this offence has been made non-cognizable.

For the purpose of argument, let me revert to clause 6 which says that any superior officer, as defined in clause 2(e) or a member of the Force, as defined in clause 2(b), may arrest any person without a warrant. That means, any constable can arrest. Why should there be this discrimination between a constable of the RPF and an ordinary police constable? Really this is a matter for deep consideration and it requires proper application of law. As I said before, I do feel that in framing this law, either there has been hurry or the person who did it has not got legal knowledge and has not understood the principles of law and the provisions of the Cr.P.C. and the Penal Code. I say this because although the offence is punishable with five years of rigorous imprisonment, yet it has been shown as non-cognizable. Why? It is not an offence of a peculiar nature under the Defence of India Act. It is an offence under an Act which is going to be on the permanent statute-book. So, this must be changed. It is not yet too late if my friend Mr. Patil agrees to omit this whole clause 5. Clause 5 may be deleted and clause 6 may remain as it is.

**Shri Bade:** This clause does create difficulties in the minds of lawyers. It is not cognizable; so, no police officer can take cognizance of it. But a superior officer or a member of the RPF can take cognizance of it. If a man commits an offence, he commits it under the Penal Code and under the Railway Act. Does the Minister want that this offence should not taken

cognizance of by the police under section 379 or section 411 of the I.P.C. and the police should not interfere? Is it his intention? If a member of the RPF can arrest the person without a warrant, it means it is cognizable, because under section 25 of the Evidence Act, any officer or chowkidar who can arrest anybody is called a police officer. So, the superior officer or member of the RPF is also a police officer. What is the meaning of this. I think there is some jumble in the mind of the hon. Minister's department or subordinates. They have not properly drafted this clause. Therefore, I request the hon. Minister to solve our difficulty.

**Shri S. K. Patil:** These are, Sir, legal difficulties that are pointed out. But there is a difference between the two. In clause 5 we have said:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable."

This applies, as far as my understanding goes, to offences under the Bill and not I.P.C. offences. Therefore, there is no ambiguity. It is for those offences that this applies... (*Interruption*). I understand the hon. Member's difficulty. But we have gone further in clause 6 where we have said: "Any superior officer". Here it is not a constable or a rakhshak. Then it says: "or a member of the force". A member of the force means, as hon. Member Shri Trivedi has pointed out, as given in (b) of clause 2, a person appointed to the force other than a superior officer. That distinction has been made here as cognizable procedure for non-cognizable cases as to ensure effective enforcement of the provisions in the Bill. The power of arrest without warrant is already there in the Railway Protection Force Act, 1957.

**Mr. Chairman:** The question is:

"That clause 5 stand part of the Bill."

1641 (A) LSD—6.

*The motion was adopted.*

*Clause 5 was added to the Bill*

*Clause 6—(Power to arrest without warrant)*

**Mr. Chairman:** Then we take up clause 6.

**Shri Nambiar:** I beg to move:

Page 3,—

(i) line 1,—

(a) omit "or member of the Force"

(b) for "without" substitute "with"

(ii) line 2,—

for "without" substitute with"  
(5).

Clause 6, as I said, Sir, is the kingpin of the whole Bill. Clause 6 reads like this:

"Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest, any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned."

Here, arresting without warrant is done not by any superior officer because it is said: "by a member of the force" which is defined as a person appointed to the force other than a superior officer." It means a rakhshak himself can be a member of the force. Then clause 6 reads like this:

"Any superior officer or a rakhshak can arrest without an order from a Magistrate and without a warrant...."

Whom can he arrest? He can arrest a person who has been concerned in an offence. He need not be himself a culprit. It means that this becomes



[Shri Nambiar]

a cognizable offence according to clause 6. According to this clause its straightaway becomes a cognizable offence. We have just passed clause 5 which says that it is not cognizable. Clause 5 says:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this Act shall not be cognizable."

By this clause 6 you allow a rakshak or any member of the force to arrest a person, without an order from a Magistrate or without a warrant, who is concerned with the affair. It means it automatically becomes cognizable. Therefore, clause 5 and clause 6 are in juxtaposition, one is quite reverse to the other. This is absolutely wrong. If it goes to the Supreme Court—it need not go to the Supreme Court, even a High Court will finish it—they will finish with it and all our labours here, the several hours that have been spent on it which in terms of rupees will run into thousands, will all be wasted. This will become a dead letter. I cannot understand why the hon. Minister is so persistent in passing a legislation which will be of no value legally, because even a layman—no lawyer is required—can understand that clause 5 and clause 6 are opposite to each other. How can it be done? Therefore, in consonance with the provision that has already been passed—clause 5—I have moved my amendment No. 5 which says that the words "or member of the Force" be deleted." So that, the superior officer will get the right to do it. Since clause 5 makes it non-cognisable, I am moving my amendment so that there will be sanity between clauses 5 and 6 and there will also continuity. With my amendment, the clause will read "any superior officer, with an order from a Magistrate and with a warrant arrest any person who has been concerned in an offence..." Then, there will be connection and similarity between clauses 5 and 6. It is a simple thing and self-explanatory. I need

not elaborate it further. A person of the calibre of our Railway Minister can very easily understand it. So, I would request him, for Heaven's sake, if not for the sake of Lok Sabha, to accept my amendment.

**Shri Bade:** Clause 6 makes the offence cognisable. What is the meaning of cognizable? I would request the hon. Minister to explain what is cognizable. There should be no ignorance or vagueness in enactments. Here cognizable means a rakshak or a constable cannot arrest. Under the normal law "cognizable" means any constable can arrest without a warrant; if it is "non-cognizable", not even a high officer can arrest. But in this Bill the position is different. Why should it not be explained? It is just like the saying that a magistrate, new from college, said: if it is a warrant case, issue a warrant; if it is a summons case, issue a summons. Such colossal ignorance is sometimes shown in courts. But that should not find a place in our enactments. The definition of words should be clear and unambiguous.

**Shri S. K. Patil:** This clause has been drafted with full knowledge and "sanity", as mentioned by my hon. friend.

श्री जगदेव सिंह सिवान्ती (झज्जार) :  
पंजाब विभागांनाईजेगन बिल क्या प्रस्तुत हो  
गया है ?

सभापति महोदय : यह काम हो रहा  
है। मैं कुछ नहीं कह सकता हूँ।

**Shri Kapur Singh:** Apart from the point which has already been made by my hon. friends against this clause, showing some kind of legal incompatibility between clauses 5 and 6, I have another objection to raise, and that objection, according to me, is even more serious.

**Mr. Chairman:** Clause 5 has already been passed. He need speak only on clause 6.

**Shri Kapur Singh:** In clause 6, there exists the word, "concerned", in the last line—"against whom a reasonable suspicion exists of his having been so concerned." This expression, "concerned", is incapable of judicial precision. It is not already part of the accepted repertoire of legal terminology and it is not capable of being so accepted. "concerned", in the ordinary dictionary sense, may have two meanings—one, he may be mentally seized of the fact of theft; if a person is mentally seized with the factum of theft, he may be 'concerned' with it. Another meaning of "concerned" might be, having any relation, subjective or objective, whatsoever with the factum of theft. These are the dictionary meanings by which this term, "concerned", is accepted. It is a very loose term and

its retention in this section is likely, not only to defeat its object, but to create a certain type of confusion and also inconvenience for the public. Therefore, either some more precise word should be introduced in this clause for, "concerned", or this clause should be dropped.

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

**Mr. Chairman:** I will now put amendment No. 5 of Shri Nambiar to the vote of the House.

*Amendment No. 5 was put and negatived.*

**Mr. Chairman:** The question is: "That clause 6 stand part of the Bill."

*The Lok Sabha divided:*

## Division No. 32]

## AYES

[16.50 hrs.

Akkamma Devi, Shrimati	Krishna, Shri M. R.	Ranjit Singh, Shri
Alva, Shri A. S.	Lakshmikanthamma, Shrimati	Rao, Shri Jaganatha
Aney, Dr. M. S.	Laakar, Shri N. R.	Rao, Shri Muthyal
Babunath Singh, Shri	Laxmi Bai, Shrimati	Rao, Shri Ramapathi
Bajaj, Shri Kamalnayan	Majithia, Shri	Reddi, Dr. B. Gopala
Balmiki, Shri	Malsichami, Shri	Reddy, Shri H. C. Linga
Basappa, Shri	Malaviya, Shri K. D.	Roy, Shri Bishwanath
Besra Shri	Mali Mariyappa, Shri	Sadhu Ram, Shri
Bhanja Deo, Shri L. N.	Mellick, Shri Rama Chandre	Samanta, Shri S. C.
Bhanu Prakash Singh, Shri	Maniyangadan, Shri	Satyabhama Devi, Shrimati
Borooh, Shri P. C.	Marandi, Shri	Sen, Shri A. K.
Chanda, Shrimati Jyotsna	Matcharaju, Shri	Shah, Shrimati Jayaben
Chandrabhan Singh, Shri	Mathur, Shri Shiv Charan	Shankarsiya, Shri
Chaudhry, Shri Chandramani Lal	Mehrotru, Shri Braj Bihari	Sharma, Shri A. P.
Chaudhuri, Shrimati Kamala	Mehta, Shri Jashwant	Sharma, Shri D. C.
Chavde, Shrimati Jorabai	Minimata, Shrimati	Shashi Ranjan, Shri
Daljit Singh, Shri	Mirza, Shri Bakar Ali	Sheo, Narsin, Shri
Das, Dr. M. M.	Misra, Shri Mahesh Dutta	Shinde, Shri
Das, Shri B. K.	Mohanty, Shri Gokulananda	Shree Narayan Das, Shri
Das, Shri N. T.	More, Shri K. L.	Siddanajappa, Shri
Dasa, Shri C.	Muthiah, Shri	Sidhanti, Shri Jagdev Singh
Deshmukh, Shri B. D.	Nanda, Shri	Sinha, Shri Satya Narayan
Deshmukh, Shrimati	Naskar, Shri P. S.	Sinha, Shrimati Tarakeshwari
Vimalabai P	Pandey, Shri Vishwa Nath	Snatak, Shri Nardeo
Elayaperumal, Shri	Patil Shri M. B.	Soy, Shri H. C.
Gajraj Singh Rao, Shri	Patil, Shri S. K.	Swamy, Shri M. P.
Ganga Devi, Shrimati	Pratap Singh, Shri	Tiwary, Shri D. N.
Gupta, Shri Badshah	Puri, Shri D. D.	Tula Ram, Shri
Harvani, Shri Anwar	Rai, Shrimati Sabodra Bai	Ukey, Shri
Hem Raj, Shri	Raju, Shri D. B.	Upadhyaya, Shri Shiva Dutt
Jadhav, Shri M. L.	Ram Sewak, Shri	Vajshya, Shri M. B.
Jadhav, Shri Tulshidasa	Ram Subhag Singh, Dr.	Venketasubbajai, Shri P.
Jamunadevi, Shrimati	Ram Swarup, Shri	Wadiwa, Shri
Joishi, Shrimati Subhadra		Yadava, Shri B. P.
Khan Veer, Shri	Rao, Shri	

## NOES

Alvarez, Shri  
Buta Singh, Shri  
Chatterjee, Shri H. P.  
Gopalan, Shri A. K.  
Gupta, Shri Priya  
Kachhavaiya, Shri H. C.

Kandapen, Shri  
Kapoor Singh, Shri  
Nambiar, Shri  
Roy, Dr. Saradiah  
Seahyan, Shri  
Trivedi, Shri U. M.

Umanath, Shri  
Vishram Prasad, Shri  
Warior, Shri  
Yashpal Singh, Shri  
Yudhvir Singh, Shri

**Shri Sidheswar Prasad** (Nalanda): I am for "Ayes".

**Shri P. Kunhan** (Palghat): I am for "Noes".

**Shri R. Barua** (Jorhat): I am for "Ayes".

**Mr. Chairman:** The result of the division is:

Ayes	102.
Noes	17.

The motion is carried.

*The motion was adopted.*

*Clause 6 was added to the Bill.*

**Clause 7—(Disposal of persons arrested.)**

**Shri Nambiar:** Sir, I beg to move:—

Page 3, lines 8 and 9—

for "officer of the Force" substitute

"Police Station".

As per this clause—

"Every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force." (6).

My amendment seeks that he must be forwarded without delay to the nearest Police Station. I am trying thereby to bring the normal Police Force of the State into operation. Here what is meant is that anybody, who is apprehended for conniving at or involved in the theft of railway property, can be arrested by a member of the Railway Protection Force

and it provides that that culprit must be produced before another officer of the Railway Protection Force. I do not think that can be correct. Whenever an offence is committed, according to the law of the land, one is to be produced at the Police Station before a Police officer who must prosecute and not a member of the Railway Protection Force. There is no law which prevents anybody from catching a thief. Even an ordinary citizen can do that. Thieves are not caught only by the Police. The police is not so big a force in the country that they can stop every theft. Theft is stopped or prevented or a thief is arrested or apprehended by a citizen. Every citizen has got a right to arrest or apprehend a person if he is found in the act of thieving. Therefore when a thief is apprehended, he must be brought before the police officer so that he can prosecute him under the law and the culprit will have the advantage of legal shelter and defending himself. He can move a writ petition before a magistrate, get bail and come out. He can arrange for his defence. This is required for normal prosecution and normal defence in any criminal proceedings. But here, if he is arrested and produced before an officer of the Force, what is the safety of the person so apprehended? What is the defence that he can arrange? Therefore, an ordinary citizen's fundamental right is in jeopardy. He is being handed over to a person who is not authorised at all. It is very clear. Supposing a person has committed an offence and he is produced before an illegal person, he may beat him, he may assault him and he may do anything to him. There is no defence for the other person. So he must be taken to the nearest police station and produced before a police

officer so that he can be dealt with under the law of the land and that the culprit will have every opportunity to defend himself and avail of the fundamental right that is guaranteed by the Constitution.

**Mr. Chairman:** Before we proceed further, may I take the sense of the House that we may sit for half-an-hour more today, that is, upto 6 O' Clock?

**Several hon. Members:** No, no.

**Mr. Chairman:** All right. Shri Bade.

**Shri Bade:** I have got an objection to this clause. It says:

"Every person arrested for an offence punishable under this Act shall, if the arrest was made by a person other than an officer of the Force....".

Now, suppose an arrest is made by a person, that is, by a constable or by a sepoy, is he compelled to produce him before an officer of the Force? It says, 'a person other than an officer of the Force' and that means an arrest or a seizure can be made by a private person or a constable of the town, the sub-station may be just near the town, and the nearest officer of the force may be far away from it. Under this clause, even the constable is compelled to take that man to the nearest officer of the Force. On the contrary, it ought to have been to take him to the police station. Instead of that, this provision compe's the constable to go to the officer of the Force. That is something like creating double Government in the country. That is very objectionable. It will create anomaly and more hardship. Therefore, I have got objection to Clause 7.

**Shri Kapur Singh:** I had an objection to Clause 6 and so is my objection to Clause 7 also. It does not seem to have been screened by legally trained persons inasmuch as there occurs an expression, "...be forwarded without delay to the nearest officer of the Force".

"Without delay" is a loose expression and it is not capable of

judicial precision. "Without unreasonable delay" or "without undue delay" would be so capable, but "without delay" is not so. "Without delay" is only a subjective concept, while "without unreasonable delay", or "without undue delay", is an objective quantum. Therefore, the Clause as it stands, is not a judicially phrased Clause.

**Mr. Chairman:** Would the hon. Minister like to say anything?

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

**Mr. Chairman:** Clause 7, along with Amendment 6, is before the House.

I now put Amendment No. 6 to the vote of the House.

*Amendment No. 6 was put and negatived.*

**Mr. Chairman:** The question is:

"That Clause 7 stand part of the Bill."

*The motion was adopted.*

*Clause 7 was added to the Bill*

**Clause 8.—** *Inquiry hour to be made against arrested persons)*

**Mr. Chairman:** Now Clause 8 is before the House.

**Shri Nambiar:** I move:

(i) Page 3, lines 12 and 13,—

for "proceed to inquire into the charge against such person".

*substitute*

"handover the case to the nearest Police officer for investigation and prosecution." (7)

(ii) Page 3,—

Omit lines 14 to 31. (8)

**My amendment No. 7 is this. Clause 8(1) read as follows:**

"When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under

[Shri Nambiar]

section 7, he shall proceed to inquire into the charge against such person".

Instead of:

"..... he shall proceed to inquire into the charge against such person".

I want to introduce:

"..... he shall handover the case to the nearest Police Officer for investigation and prosecution."

".... he shall proceed to inquire into the charge against such person" should be deleted.

I take strong objection to the handling of the case by the Railway Protection Force. They are not trained for that purpose. The culprit does not get the advantage of legal persons. It is also wrong because the Railway Protection Force is not, after all, a Police Station. What is the jurisdiction under which an officer of the Force can arrest the citizens? Unless and until a person is proved to be a culprit by a competent court, he continues to be not at fault. Fundamental rights are guaranteed to the citizens under the Constitution. But under this specific provision, he does not get the fundamental right. Whenever a person is arrested, according to the Constitution, he should be taken to the nearest Police Station and within 24 hours he must be produced before a Magistrate. Here all those provisions of fundamental rights do not exist. He can be produced before a Protection Force. What shall he do? All these are questions of fundamental rights, and fundamental rights cannot be deprived so soon or in so sweeping a manner as he wants. Therefore, I move that he must be handed over to the nearest Police officer for investigation and prosecution.

My next amendment is number 8, which reads:

"Page 3—

Omit lines 14 to 31."

Sub-Clause 2 and proviso (a) and (b)—the whole thing—should be omitted.

**Mr. Chairman:** Order, order. Under clause 8, his amendment is number 7. He may speak only on that. 17 hrs.

**Shri Nambiar:** Number 8 is also there. That is, according to my amendment 7, the Clause gets completed, namely,

"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 handover the case to the nearest Police officer for investigation and prosecution."

It is the police officer's job to investigate and prosecute. Therefore, all that is provided here namely that the officer of the Protection Force could investigate and prosecute etc., does away with that normal practice or normal procedure. So, my amendment No. 8 is in continuation of my amendment No. 7 which goes to show that the whole proviso should be removed. I have my argument against this proviso. Even a cursory reading of this provision will convince you. Sub-clause 2 says:

"For this purpose, the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case."

Under this provision, the moment a case is brought before the Protection Force, the officer concerned assumes all the powers of a police officer automatically and he is to be treated as a police officer under the Code of Criminal Procedure, 1898. The powers of the State police are taken over by him, and they are automatically handed over to him. That is an infringement of the Constitutional provision. Under the Constitution, the State police has got certain powers....

**Mr. Chairman:** The hon. Member is repeating his arguments.

**Shri Nambiar:** How can this provision automatically hand over all the powers of the State police to the railway protection force officer?

**Mr. Chairman:** He has made that argument also already.

**Shri Nambiar:** My submission is that this provision is against the Constitution. Powers cannot be automatically transferred in that manner. There must be an amendment to the Constitution before such a thing can be done.

**Shri U. M. Trivedi:** He may continue tomorrow.

**Shri Buta Singh (Moga):** Let him continue his speech tomorrow.

**Shri Nambiar:** Am I to continue tomorrow?

**Mr. Chairman:** The discussion on the clauses of the Bill will be resumed tomorrow. The hon. Member may continue his speech tomorrow.

17.03 hrs.

#### \*GRIEVANCES OF CHS DOCTORS

**Shri D. C. Sharma (Gurdaspur):** I am going to raise this half-an-hour discussion not to embarrass the Union Minister of Health or the Union Government, but I am trying to say something on this point in view of a proverb—that proverb need not be taken literally—which is well known in the English language, namely that 'I appeal from Philip drunk to Philip sober'; that is to say, I appeal from the Union Health Minister to the lady doctor that she was and that she might be again.

**The Minister of Health and Family Planning (Dr. Sushila Nayar):** I have not ceased to be; I still am.

**An Hon. Member:** At present, she is a Minister.

**Dr. Sushila Nayar:** There is no question of 'might be'. I am a Minister I still am a doctor.

**Shri Umanath (Pudkottai):** What the hon. Member means to say is that she may be a Minister today but tomorrow she may not be.

**Dr. Sushila Nayar:** In spite of being a Minister, I am a doctor and will remain a doctor till the end of my days.

**Shri Umanath:** There is no power of contract for her to be a Minister and yet be a practising doctor. That is what he wants to say.

**Shri N. Sreekanatan Nair (Quilon):** Nobody will go to her for being....

**Shri Nambiar (Tiruchirapalli):** She is an efficient doctor.

**Dr. Sushila Nayar:** Whether the hon. Member knows it or not I am a doctor still and they do come to consult me.

**Shri D. C. Sharma:** I would submit very respectfully that I want to appeal to her sense of justice, to her broad-based sympathies, and to her love of fair-play and to her love of the profession to which she belonged, to which she belongs and to which she might belong in the future.

But this is a very sorry state of affairs to which I am referring. The whole thing started in May 1963 and we are now in the month of September 1966. This thing has gone on like an Indian epic which has no end. It has gone on from one session to another without finding redress of the grievances of the doctors.

What has happened is that when the doctors have raised any question about their salary or emolument or promotion or transfer, the hon. Minister of Health has only one reply to give. Unfortunately that reply has been not very unequivocal and categorical. She has tried to postpone the thing from day to day.

\*Half-An-Hour Discussion.