

RAILWAY STORES (UNLAWFUL
POSSESSION) BILL

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Shri Alagesan on the 5th March, 1955, namely:

“That the Bill to provide for the extension of the law relating to the punishment of the offence of unlawful possession of railway stores, as now in force, to the whole of India and to re-enact its provisions, as passed by Rajya Sabha, be taken into consideration.”

As the House is aware, 2 hours have been allotted by the Business Advisory Committee for this Bill. Out of this 43 minutes have already been availed of and 1 hour and 17 minutes now remain. This would mean that the Bill will be disposed of by about 1-15 p.m. when the Medicinal and Toilet Preparations (Excise Duties) Bill, 1954, will be taken up.

The amendment of Pandit Thakur Das Bhargava is also there for discussion.

Pandit Thakur Das Bhargava (Gurgaon): Yesterday, I indicated briefly some of the grounds why according to me the Bill should be referred to a Select Committee, and should not be allowed to be passed in its present form. With your permission, I will briefly elaborate some of the grounds.

In the first place, as I submitted yesterday, the original Ordinance was passed in 1944. In those days, Ordinances could be passed by the Governor General in Council, without any reference to the Legislature. And this Ordinance was passed by the Governor General in Council, and it was passed in consequence of an emergency. Now it is common knowledge that so far as emergency goes, “emergency knows no law.” Even in our own Constitution, we have enacted that in case of emergency, even the fundamental rights sections will

be ignored. So, when there was emergency, and when it was considered that perhaps one drop of petroleum was more valuable than the blood of an Englishman in those times, the railway stores were also considered in the same light, and they were given priority in this manner that even the ordinary laws of the land were ignored and this emergency legislation was passed. But it does not follow that the same principles which were adopted in 1944 should apply now. In fact, all these Ordinances were hated in the country, and by Congressmen particularly. Further, it was said that these Ordinances were in the nature of lawless laws, and taken as so many impositions by an alien Government. I do not want that in my country such an ordinance should remain on the statute-book a minute longer than it was absolutely necessary then. Now, so many years have passed, and I am very sorry to say that the Railway Ministry did not come up before this House to see that this Ordinance was repealed. Now that it has fortunately come before the House, I would respectfully urge the House to kindly look at this Ordinance with the same kind of bias with which we look at all other Ordinances, and particularly when this contravenes the general law of the land, and all the accepted principles of jurisprudence and the principles of the Indian Evidence Act.

Therefore, I would submit that this Ordinance should be looked at on its own merits. This argument is not open to the hon. Minister in charge now, namely that this Ordinance has been in existence for the last several years. I would have been happy if the hon. Minister had given us some figures to us showing how many cases were *chalaanned* under this Ordinance, in how many cases people were acquitted, and how it has worked so far. In my humble opinion, if this Ordinance were allowed to have its force, then there will be a very large number of acquittals. I believe from the very nature of the Ordinance,

that no conscientious court will see that persons are brought into its meshes who will not be brought into the meshes of the ordinary law.

Apart from that, as I submitted yesterday, this is a lawless law, in so far as it makes a new offence which is not known to the general law of the land. We all know that there is a section in the Indian Evidence Act, which runs thus:

"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

According to this provision of section 110 of the Indian Evidence Act, possession is the main thing; it is nine points of law. This section does not relate only to immovable property, but it relates to both kinds of property, and if a person is in possession, the rightful presumption is that he is the owner of that property. Unless and until you displace that presumption, you have no right to go to a court of law and say that the property does not belong to the person in possession. Just to strengthen my argument, with your permission I would read some short portions from page 1239 of N. D. Basu's *The Law of Evidence*. This is what we find there under section 110 of the Indian Evidence Act:

"The fact of possession, in the eye of law, suggests always ownership, and whether it is put in Latin as *potior est conditio possidentis*, or in colloquial Anglo-Saxon that "possession is nine points of the law", it goes without saying that proof of the possession of property is *prima facie* evidence of title to it, both with regard to movable and immovable property. Indeed it may be said that the presumption has attained its full growth. *Pollock* says: "It has been said that

there is no doctrine of possession in our law. The reason of this appearance, an appearance capable of deceiving even learned persons, is that possession has all but swallowed up ownership; and the rights of a possessor, or one entitled to possess, have all but monopolised the very name of property."—*Webbe's Pollock on Torts*, 417. The same learned judge, in comparing the status of owners in olden time and now, says that the "owner in possession was protected against disturbance, but the rights of owner out of possession were obscure and weak. To this day, it continues so with regard to chattels. For many purposes, the true owner of goods is the person and only the person, entitled to immediate possession."—*Ibid.*, 416. This presumption of ownership from possession is founded on the theory that such possession is rightful. Among other grounds which have been assigned for this presumption are these: that it is in accord with the general principles of law to suppose, until the contrary is shown, that possession is lawful rather than unlawful; that since the rightful owners of property are not likely to consent that their property remain in the continued possession of others who assert title thereto, it is natural conclusion that possession of this character is authorised by some grant or licence; and finally, as stated by *Judge Story*, "presumptions of this character are adopted from the general infirmity of human nature, the difficulty of preserving the muniments of title and the public policy of supporting long and uninterrupted possession."

[MR. DEPUTY-SPEAKER in the Chair.]

Mr. Deputy-Speaker: The hon. Minister does not dispute this position of law. He only says that this Bill is intended to safeguard an exceptional difficulty. This is an exception to the rule.

Pandit Thakur Das Bhargava: Let me examine what the exception is. Yesterday you yourself were pleased to point out to me that in regard to the Posts and Telegraphs Department, we had passed a similar legislation, and I submitted yesterday that I accepted the principle of this legislation, that I supported this legislation, so much so that after my speech, the hon. Minister said that he did not want to make a speech himself. Even today, I might just make this offer to the hon. Minister in charge that if he wants to build his case on that argument, it is perfectly open to him to do so, and the entire House will support him. But as you yourself pointed out yesterday, sleepers are disposed of, and many other railway store articles are disposed of. The Railways purchase articles from the market, for instance, from brick-kilns etc. The railways purchase food also; and they purchase many other things from the same source from which the public buys.

After disposal, these articles purchased by the railways go into the open market. Then the question of identity comes. You know that in many rulings it has been held that ordinary things like food, cloth etc. cannot be identified. Unless and until the identity is established that it is railway property, how will they be able to secure conviction? I have heard an adage which is so current now "सब मूलि गोपाल की" but I have yet to learn that 'all property belongs to the railway without any proof.' They say 'if there are reasonable grounds for believing'. What is the reasonable ground for believing that such a property belongs to, say, A? It is possession. If I am in possession, I am entitled to say, under section 110, that I am the owner of that property, not the railway. But what will the railway do? What is the reasonable presumption? As I submitted yesterday, if the railways have got their own factories where they have got their own brands and they do not dispose of that property, I can understand the railway property will

be stamped with that brand. If in respect of that property, they want to make a law, they have certainly my support. But that is different from a law of this nature, that every kind of railway property wherever found, will be deemed to be railway property and the person possessing it will be regarded as being in unlawful possession of that unless and until he proves or accounts for the possession. This is going against the generally accepted principles of criminal law. As I submitted, sections 379 and 411 are the two sections which deal with unlawful possession of property taken in a dishonest manner. Now, supposing a person is in unlawful possession, the question of dishonesty does not come. The question of the very existence of a crime, the question of *mens rea*, does not come in at all. What is unlawful possession? If the railways say it is their property, if the courts have reasonable ground for believing that it is their property, then it becomes unlawful. This is not the way in which possession can be come unlawful.

If you kindly look at the section, as I read out yesterday, even the railway has not to prove that the property belongs to the railway. I humbly submit that the present rule is that if I am in possession of a property, I cannot be deprived of that property. The person complaining will have to go to court and ask the court to put me to account for possession of the property, and ask the police to have a sort of inquisition into my property. If I am in possession of a property, the law assumes that I am the owner. The railway cannot claim that the property belongs to it unless it proves it. Now, what is the railway going to do? A person will go and search a person's house. He will find some property and then ask him 'How do you account for this?' This is the way in which it would work in the ordinary course. In the case of a private person, he has to prove that it is stolen property, he has to prove that the property was his before he can hold another to account. Now, the railway

has not even to prove that. It will be assumed in their case. How can it be assumed? How can it be assumed in the case of the railway that in regard to certain property found in possession of others, it is theirs? This law will be worked in such a way that people will be harassed. After all, even in regard to stolen property.

Mr. Deputy-Speaker: Even in a warrant case, *prima facie* evidence has to be placed before a charge is framed.

An Hon. Member: Here there is no evidence.

Mr. Deputy-Speaker: Here it is 'reasonable ground for believing such article to be.', that is, on the date when the property is apprehended or taken. Is it not necessary under this clause to establish that till that date it belonged to the railway?

Pandit Thakur Das Bhargava: No, they have not to prove it. Ordinarily, in every case the person has to prove that it was his property which has been stolen or which has gone into the unlawful possession of another.

Mr. Deputy-Speaker: That is what they have to prove also.

Pandit Thakur Das Bhargava: So far as the railway is concerned, the question of ownership does not arise. Here it is said: 'reasonable grounds for believing such article to be or to have been'. What is the reasonable ground, ordinarily? Take the case of a fan, a bulb, a sleeper or something else. What is the reasonable ground? The old property is there. It has been purchased by way of disposal. How will you distinguish a property which is twenty years old from a property which is ten years old? How will you say that the bulb which I have purchased from a contractor or a particular company is different from the one which they have also purchased? How will you say that the brick which I purchased from some kiln is different from the ones which they have purchased? Only by putting the words 'N.W.R.' on the brick. Then they can say that according to the definition,

this property was intended for them. Even if the property is intended for the railway, if it does not come into its possession, I suppose I purchase it from the contractor—the same thing which the railway had intended to purchase. Even then the railway can say 'the property is ours'. This is the present law. Now, you know that in cases under section 411, usually presumption is based under section 114, and the presumption is that if a person is found in possession of stolen property and the possession is recent, then there is a case even though the courts are not bound to draw a presumption. But in their case, what happens? If I am found in possession of a property—it may have been 50 years old, my grandfather was using it, my father was using it—if I am in possession of that property, according to this law, they can hold me and ask me to account for it. If I cannot account for it, then I will be sent to jail for five years.

The Deputy Minister of Railways and Transport (Shri Alagesan): The Ordinance was promulgated in 1944. There is no meaning in saying that property held 50 years back will be brought under this law. The hon. Member is unnecessarily exaggerating things.

Mr. Deputy-Speaker: 50 years from now.

Pandit Thakur Das Bhargava: With due respect to the hon. Minister, I would ask him to kindly read the operative part and then say whether I am wrong:

"Whoever is found, or is proved to have been, in possession of any article of railway stores shall, if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration, unless he proves that the article came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both".

[Pandit Thakur Das Bhargava]

Where is the question of 1944? Suppose it is proved that in 1940 or even before that, I was in possession of railway property. If it is proved, then of course, so far as I am concerned, I will be sent to jail, according to the wording of this section. I know that when my friend rises to reply to this criticism, the criticism has gone home and he has felt that as a matter of fact unless some words are there to say that it does not relate to cases before that date, even possession long before 1944 will come under this. I would respectfully beg of him to kindly consider the ordinary meaning, the ordinary sense of this. It appears grotesque that if a person comes into possession of an article even before 1944, he could be hauled up before a court of law for that. But these are the very words.

Shri Alagesan: There is no retrospective effect given to the Act.

Pandit Thakur Das Bhargava: There is no question of retrospective effect at all. We have to go by the words here.

Mr. Deputy-Speaker: There is no question of retrospective effect. After the passing of the Bill, if anybody is in possession of railway property, even though he might have got possession before the Act was passed, it will be covered by this and the Act will apply. It is not a question of retrospective effect. But I am asking the hon. Member whether it is not obligatory on the Railway Administration or the prosecutor to show that down to the day of prosecution it continued to be the property of the railway. The court says 'reasonable grounds for believing such article to be or to have been the property of the railway'. Therefore, they must exhaust all possibilities of its being in rightful possession or of its having been transferred or sold.

Pandit Thakur Das Bhargava: The words 'to be or to have been'. Therefore, both cases must be considered.

Mr. Deputy-Speaker: Let me take the first one. So far as 'to be' is concerned, is it not obligatory on the Railway Administration to say that the property at one time belonged to the railway? Secondly, that it continues to be the property of the Railway Administration? That is, that the property may have been stolen and that it did not sell this property. Then the burden is shifted.

Pandit Thakur Das Bhargava: I humbly submit it is not obligatory on the Railway Administration to say that they continue to be the owners or that they continue to be in possession, because the words are—both things are culpable—if a person is found to be or found to have been in possession.

Mr. Deputy-Speaker: That is another thing. Here it is 'believing such article to be the property of the railway administration'.

Pandit Thakur Das Bhargava: 'Or to have been at any time railway property'.

Mr. Deputy-Speaker: 'To be' means the present, down to the present day—not only was, but continues to be.

Pandit Thakur Das Bhargava: Does it mean that if it is not proved that the railways are in possession even up to the present day, no offence is committed?

Mr. Deputy-Speaker: Railways are not in possession. When the railways lose possession, then the section is invoked.

Pandit Thakur Das Bhargava: If the person is in possession for several years, then he is not guilty...

Mr. Deputy-Speaker: The first thing is that the Railway Administration has to prove that it was its property at some time. The second is that the Railway Administration did not dispose of it and it continues to be its property.

Pandit Thakur Das Bhargava: At what time will they prove? At the

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time when the property was found in my possession, they will have to show that they were in possession of it. At what time? How can they possibly show? Suppose the property was in my possession for the last 10 years, will they be asked to show that before ten years they were in possession of it. If it were done, it would have been correct. What defence today is there? This property was in my possession, in my father's possession or in my grandfather's possession and this was in my possession, say, for the last 12 years. They have only to show that at one time it was their property or it was in their possession and that will be quite sufficient.

Mr. Deputy-Speaker: It will not be taken to be a reasonable ground.

Pandit Thakur Das Bhargava: Even if the possession of a property is not a reasonable ground, what then is a reasonable ground? Even their registers will show that property of this particular kind was in their possession. Otherwise, it is impossible for them to identify the property, and in all these cases, identity is the most important thing. I will read out to you some illustrations from section 114.

Mr. Deputy-Speaker: How is it going to improve the position in the Select Committee?

Pandit Thakur Das Bhargava: Only such things as are conclusively proved to belong to the Railway Administration can come here. For example, the copper wires of particular weight and description belonging to the Post Office are things which nobody else can manufacture and which are not disposed of and which always continue to be the property of the Government. If there is any other person in possession of the property, it is assumed that he has come to be in possession in some way which is not the right way. We are departing from the ordinary rule of Law, but we are departing from it for some good reason or on some good grounds as we did in the case of the Post Office. But in the

case of the railways, this is an absolutely unjust law and it is impossible to work it. For instance, foodgrains are railway property. How are you to distinguish one foodgrain from another? What is the reasonable ground for a foodgrain? I purchase from the same market in which they purchase and yet they will be in a position to see that the persons are challaned. I have got many articles in my possession and I cannot account for their possession. They have been with me for the last five or seven years. The burden of proof, as we ordinarily know, is always on the prosecution. In particular cases, on account of a recent possession, on account of its stolen nature, there may be a presumption otherwise. In this case, they have to prove that the property is not stolen and they have even to prove that the property belonged to them.

Shri Alagesan: We have to keep an eye on the clock also, Sir.

Mr. Deputy-Speaker: I have got my right eye on it.

Pandit Thakur Das Bhargava: Is he agreeable to take this Bill to the Select Committee?

Mr. Deputy-Speaker: He wants many other persons also to speak.

Shri M. D. Joshi (Ratnagiri South): May I ask for an explanation?

Mr. Deputy-Speaker: From the Minister or from Pandit Thakur Das Bhargava?

Shri M. D. Joshi: From Pandit Thakur Dasji. In the definition of "railway stores" it is stated that it includes any article used or intended to be used in the construction, operation or maintenance of a railway. Pandit Thakur Das Bhargava mentioned the instance of foodgrains.

Pandit Thakur Das Bhargava: I am afraid that it includes even such things as foodgrains. It does not mean that other properties are not railway stores. I will seek clarification from my friend if he contends that the word "includes" does not cover these things. I understand that

[L'andit Thakur Das Bhargava]

the word "includes" means "does not exclude", and therefore this will apply to each one of the several thousand stores used by the Railways. We are going to change the entire law of the land in favour of the Railways and the Departments of Government are going to fight amongst themselves; Shri Guha will fight with Shri Alagesan, Sardar Swaran Singh will fight with Shri Alagesan. They have got several common properties; the P. W. D. have got building materials and I do not know how they can be distinguished. Every Ministry is sacred to us and we want all of them to be protected, but we do not want to have a special law, because it goes against the general grain of the law of the land. Do you want to change the entire law and put the burden of proof on the accused? Should the accused show that he is innocent? This is an unknown thing and in respect of so many crores worth of property, which is not identifiable. You are going against the Law of Evidence. I would submit for your consideration the illustration (a) of section 114. There will be no presumption whatever if, for instance, a bullock is stolen or a watch is stolen. In regard to bullocks after two years there will be no presumption. For a watch even after one month no presumption may arise. Now they want to have the presumption for all time. If they once prove that there was a reasonable ground for the railways having been in possession of it, it will be all right. This kind of a drastic law has never been heard of in this House and I am rather surprised that the Railway Ministry should think of extending this law to the whole of India. Even if you do extend it, I would very much like that this point is gone into at great length by the Select Committee. I am agreeable that they should have a law of that nature so that railway thefts might disappear, that is, it should be made applicable for a particular purpose just as in the case of copper wires. But if you have a law of this nature in which you want to send every per-

son to jail and you want to change the entire law of the land, I cannot possibly agree. I do not want to take more time of the House. I wished to read to you from section 114 in which illustrations are given, but since the hon. Minister does not wish me to continue my speech, I will not take any more of the time of the House. I beg of the House kindly not to agree to the passing of a Bill of this nature which will make us the laughing stock of the whole world, which will go against the very root of the general law of the land and which will result in the conviction of every accused, however innocent he might be. They first of all sell things and after we have bought them, they come down on us and say "All right, why did you buy these things?" Only yesterday the Deputy-Speaker put a question "Do you sell things?" and the reply given was "We are selling things". After selling things, where is the question of identification?

I content myself with what I have said and beg of the House to be pleased enough either to send the Bill to the Select Committee or to reject the Bill.

Mr. Deputy-Speaker: Motion moved:

"That the Bill be referred to a Select Committee consisting of Shri Ganesh Sadashiv Altekar, Shri K. Ananda Nambiar, Sardar Hukam Singh, Shri N. C. Chatterjee, Shri B. Ramachandra Reddi, Shri Tek Chand, Shri U. M. Trivedi, Shri Nemj Chandra Kasliwal, Shri S. V. Ramaswamy, Shri K. S. Raghavachari, Shri P. R. Kanavade Patil, Shri R. Venkataraman, Shri Fulsinhji B. Dabhi, Shri C. R. Narasimhan, Shri Kamal Kumar Basu, Shri Mulchand Dube, Dr. Lanka Sundaram, Shri Hari Vinayak Pataskar, Shri O. V. Alagesan and the Mover, with instructions to report by the 31st March, 1955."

Shri Raghavachari (Penukonda): I wish to point out that my name also is probably included in the list of Members on the Select Committee. I

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request your permission, as such persons are not generally, at this stage permitted to participate in the discussion.

Mr. Deputy-Speaker: I am not adopting the practice here. If the Government makes a motion, the Government is sure of a majority. When a non-official Member makes a motion he is not sure of a majority. Why should I gag the hon. Member? It may or may not be accepted by the Government.

Shri Raghavachari: I do not wish to elaborate the points stressed by my friend. The only argument which the Minister in charge adduced was that this Act has been in force by means of some ordinance or operation of laws in India and he was simply extending it to these other States. We have now an opportunity of discussing the matter and making it an occasion to bring to the notice of Government that even the existing law itself is fundamentally opposed to the accepted general principles. You will please appreciate that the language used in this particular clause was being questioned by my hon. friend and it is really dangerous. You were no doubt putting your finger on the right thing when you referred to the clause "whether there are reasonable grounds for believing such articles to be the property of the Railway Administration."

Even the word "property" there, creates some difficulty. The point of time at which the offence is committed or when the prosecution starts, has not to be considered. If you carefully read the provision, you will understand. The clause says:

".....if the court sees reasonable grounds for believing such article to be or to have been the property of any railway administration".

So, it might have been the property of the railway company at any time. Supposing, it is a piece of iron rail. It should have been the property of the railway administration years ago. The question that the Act came into

force only in 1944 will not be of any avail at all. It might mean the beginning of the railways itself. The point of time when the offence is committed is not material at all.

Then, as my friend was pointing out, a railway company sells its own goods and on every item, as he said, there is no identification mark, nor do they maintain the details such as length, etc., for every item. The pieces may be divided into so many parts and the purchaser who gets them from the railway may go on selling them in the market, and in our country nobody insists on a voucher in which all these details are mentioned. How should a man be able to prove that he has lawfully come into possession of that property? The definition is most wonderful. Railway stores "include any article used or intended to be used in the construction." etc. Every little piece of wood can be converted into the shape of a sleeper which can then be said to be intended to be used in the construction. Any other similar article can be intended to be used in the construction. A manufacturer might intend that a thing he makes can be used, and it is not yet necessarily the property of the company. The manufacturer manufactures it and he intends it to be used in the construction of the railway and the company might purchase it. If I come into possession of that material, I will be exposed to the risk.

The title of the Bill mentions "Unlawful Possession." So, it is not that the unlawful possession must be proved. On the other hand, the man accused must prove the lawful possession. There is no unlawful possession. Whichever thing is found to be in the possession of a man and that is a thing that might be intended to be used, then it becomes unlawful possession. But here, it is really putting the thing topsy-turvy. What can the Select Committee do? Of course, it can examine the possibility of improving the language and bring about the very purpose which the Government wants. They should safeguard it and prevent innocent persons from being punished, by making the language clear.

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[Shri Raghavachari]

The Act is already in force. You have an ordinance. The matter is going to be reported upon by the Select Committee which is going to consider it early. It will not take much time. I wonder why the Government should say we shall pursue the thing as it is, and then expose even an honest man to the risk. After all, theft is an offence against possession and not the property. The Bill says that there should be reasonable grounds for believing that it is the property or "to have been the property," and all that. That property may be in one's possession and the theft may still be there. I submit that there is good ground in what my hon. friend has submitted. The language is vague and is opposed to the accepted notions of jurisprudence and evidence. I think it is necessary that the Bill should be more carefully examined, especially the language in which it is now clothed.

Mr. Deputy-Speaker: Is it the hon. Member's contention that if somebody steals railway property, he himself can invoke the aid of this section to file a complaint against another person who takes the thing from him?

Shri Raghavachari: Who is to be the complainant is not mentioned here. If it is proved that one is in possession or is proved to have been in possession of the property, certainly he can be prosecuted. It is a criminal offence.

Shri Sinhasan Singh (Gorakhpur Distt.-South): I wholeheartedly extend my support to this Bill. I was surprised to hear the learned arguments that this Bill offends against criminal jurisprudence and the law. I do not understand them. We have every law according to the needs of the country. We know these days corruption and theft are so rampant in the railways. We do not know how to safeguard the property. In the railway coaches, we find even the cloth is torn away. At Gorakhpur, the North-Eastern Railway Headquarters, there are regular smugglers smuggling articles from the workshops. They sell away the pro-

perty and if the property is recovered by the police, even the railway officers say, "We cannot identify the property". The result is that no conviction comes into operation. The theft is going on without any fear. The law was there. In spite of this law, there has been very little check on theft of the railway property. Mr. Badhwar, the then General Manager of the N. E. Railway at Gorakhpur was telling once that the bulbs stolen from that railway were selling at Madras. So these things were going on. Why should any honest person feel sorry over the Bill? If he is an honest person, he will purchase locally. There is a clause to safeguard him. He can show the receipt. When the railway sells its property, it issues receipts for the sale of property. Any person who gets the receipts can have the possession of the property. If he misses it, he can summon for the record of the property showing the number, etc., and the record will show when and to whom the property was sold, or whether it was gifted, etc. So, this is a law which requires to be welcomed by the House. We must have a strict law and the country needs such a law. Wherever we go, we are always hearing comments to the effect that this Government is unable to check corruption and theft. But when the Government is coming with a measure to check those offences, we oppose it. There are two contradictory voices in the same House. I think it does not behove us all. In this connection, I have given notice of an amendment. There is clause 3 which says:

"Whoever is found, or is proved to have been," etc. This is a clause which may lead to some difficulties, because a prosecutor may come and prove that certain property was in his possession though the property may not have been actually in his possession at the time when the offence was committed. He can be punished unless he proves his lawful possession, of the property. I think that the 'to have been in possession' clause should be deleted. I might not have been in possession

when I am prosecuted for "to have been in possession of the property". I must prove the lawful possession of it, when I might not have been in possession. How can I prove the lawful possession of the property which was never in my possession. So, this clause is really repugnant, and it is harming the honest persons who may have, somehow or other, incurred the displeasure of the police or the prosecutor. With that safeguard, I am supporting the Bill. It should have all our support, I think. It is not a Bill which the House should send for reference to the Select Committee and then take time over it. This Bill has already been passed by the Rajya Sabha.

Shri Raghavachari: What if?

Shri Sinhasan Singh: It has been passed by the Rajya Sabha. It has received the assent of one of the Houses of Parliament. We refer the Bill only to improve the language of the Bill. You can improve the language even here by moving suitable amendments, rather than giving the Bill a further lease of time and then to be brought before the House again. By that time, this session may pass away and the Bill may not be passed, and the offences may go on unchecked.

Shri R. K. Chaudhuri (Gauhati): The Railway Department has, in Chittaranjan, begun to construct locomotives and we congratulate the hon. Minister on letting us know that as many as 20 engines are going to be manufactured this year. That is one kind of engine and this legislation is another kind of engine, that is, an engine of oppression.

Shri Alagesan: Ten engines per month in Chittaranjan. Not 20 a year, as you said. Anyhow, it is favourable here for your argument!

Sardar Hukam Singh (Kapurthala-Bhatinda): The construction here would be expedited!

Shri R. K. Chaudhuri: If the hon. Minister wants to surpass others by having this sort of legislation, he might take credit to himself, but it will not be so much liked by the peo-

ple in general. I would like to convince the hon. Minister, if possible, of the futility of such legislation. My hon. friend who just spoke before me was saying that a large number of bulbs were stolen from the railway compartments and they were found in Madras. Of course, I did not know so far that Madras was a repository of stolen property.

Mr. Deputy-Speaker: Railways run into Assam also.

Shri R. K. Chaudhuri: A large number of bulbs were stolen from Assam. The railway compartments in Assam, particularly the W.C.'s were never lighted till the year 1952. So, I submit that so far as this Ordinance is concerned, it had no effect whatsoever.

Pandit Thakur Das Bhargava: It was unsuccessful.

Shri R. K. Chaudhuri: Therefore, there is no use having this kind of legislation. Take for instance the case of railway sleepers. Large quantities of railway sleepers which have become useless are sold in auction. Auctions are held by the railways and these sleepers are purchased by the ordinary cultivators in the neighbourhood. How can they prove at any time that the particular sleepers which were found in their possession were purchased by them, and not stolen? It will be very difficult for any honest man to prove how he came into possession and when he came into possession of the articles.

I would, therefore, respectfully request the hon. Minister to continue to enjoy his popularity by the methods which he has already been adopting to bring better kind of amenities in the railways, rather than resort to this sort of legislation.

If this legislation is passed at present it will be dangerous for passengers also. Now, catering will be done departmentally and therefore any food stuff will also belong to the Government. Supposing a man is found taking a piece of *rasagulla* and the railway staff say that that particular

[Shri R. K. Chaudhuri] sweet belongs to the department, how is that man who is half swallowing the sweet to prove that he bought it from a *halwai*?

So, taking everything into consideration I think this Bill had better be dropped.

Shri Barman (North Bengal—Reserved—Sch. Castes): Sir, with your permission I would like to say a few words on the Motion for sending this Bill to a Select Committee.

This is an extra-ordinary kind of legislation. Of course, we have had some such legislation for other departments also; for example, in respect of the telegraph wires, but no one can deny that these things are of extra-ordinary type and certainly some extra-ordinary type of legislation is required in such cases. But, at the same time, I would support the Motion for referring the Bill to a Select Committee because in the Select Committee, all the arguments that are being raised in this House can be gone into in a more formal and intensive manner.

One point that occurs to my mind is that the definition of railway stores in clause 2 is rather wide and it should be made a little restrictive. What occurs to me now is this: that instead of saying: "any article intended to be used" if you put some such qualifying word such as "any article specially used or intended to be used for construction, maintenance, etc." then that would further limit the scope of the articles for which this special legislation will be applied. In the ordinary course, if any railway store is stolen, certainly there is the Indian Penal Code and the Criminal Procedure Code. But, in order to protect the property of a special type, this special kind of legislation may be gone into.

Therefore, I think that nothing will be no harm and no time will be lost if this Bill be sent to the Select Committee and the Select Committee considers it in a more dispassionate and cool way to see whether any amendments are necessary with the purpose

of maintaining the true intention of this Bill as well as to safeguard the public interests as far as possible.

Shri Mulchand Dube (Farrukhabad Distt.-North): Sir, in my opinion the Bill not as bad as it is made out to be.

The definition of Railway stores in this Bill reads: "In this Act, 'railway stores' includes any article....." If we substitute the word 'means' for the word 'includes', I think many of the objections would be removed. Then it is said: "...used or intended to be used." The word 'intended' does not mean anybody else's intention. It is the intention of the railway to use that article. Therefore, the objection of my hon. friend who spoke a short time before does not hold good. The intention must be of the railways and not of anybody else. Therefore, that article, before it can be intended to be used for the construction, maintenance or operation of the railway must be in the possession of the railways.

In regard to the second point, the question arises in this way. Supposing a man is found in possession of railway stores; it has to be first proved by the prosecution that it was a railway store before any action could be taken. Once it is proved it was a railway store and further the court comes to a reasonable conclusion that it is not only railway stores, but has been in the possession of the railways, it is only then that action will be taken.

Mr. Deputy-Speaker: Was in possession how long ago? Assuming that 10 years ago it belonged to the railways and it was removed from the railway stores 10 years ago, could you throw the burden of proof on the possessor?

Shri Alagesan: Sir, in the case of ordinary theft, the burden of proof will rest on the prosecution. I want to know whether there is any such restriction that if the theft had occurred 10 years before then the man cannot be prosecuted.

Sardar Hukam Singh: Then the difference is there. The burden of proof is on the prosecution not that

Bill

it is to be assumed that the accused has come in unlawful possession of the property and that he should prove that it is not.

Shri Alagesan: I say, granting that, is there any difference.

Mr. Deputy-Speaker: It makes a difference.

Shri Mulchand Dube: The question of 10 years would be certainly an extreme case. The burden of proof should not be thrown on the accused. If it is a case of one or two years—recent possession—as my friend Pandit Thakur Das Bhargava referred to section 410 and also the Evidence Act, the burden of proof is not on the accused. The burden is left open. Therefore, to that extent it certainly goes against the general law as it exists. Even then, my submission is that in the case of railway stores the possession may not be of a particular person. The railway stores may be in the custody of one of the inspectors or someone else of the lower rank staff, but the possession would be of the Railway Administration. Therefore, what I say is, although such cases would be very few, if a person has come in lawful possession of the property, he should have some kind of record to prove that the property came into his hands by lawful means. Once it is proved that the article was railway store and if the man succeeds in proving that he came in possession of it lawfully, then there is no difficulty.

Therefore, the Bill does require some modification and if it is referred to the Select Committee, I think there should be no harm.

Shri S. C. Samanta (Tamluk): I think the object of the Minister will not be fulfilled with the Bill that is before us. The Minister intends to punish those persons who are in illegal or unlawful possession of railway property. But even if the possession is proved to be unlawful and the man is punished, the object will not be fulfilled simply because the persons who are really guilty of stealing all these things will not be punished.

What do we find on the railways? For example, when a train is going and it stops for a while. The engine driver drops coal. Some person takes it and uses it. It is proved that that man was using the coal of which he came in unlawful possession. But if the man who is making the thing to happen, this pilfering, is not punished, how can pilfering and stealing be stopped by this legislation?

So I think another clause should be added for this purpose, and I support that this Bill should be referred to a Select Committee.

Pandit Thakur Das Bhargava: How will the identity of the coal be established?

Sardar Hukam Singh: I want to pull my weight in favour of the motion for reference of the Bill to Select Committee.

My friend Mr. Dube said just now that if we substitute the word "includes" by the word "means", perhaps the difficulty might be over. But my fear is that that might not improve matters. The definition that is given here is certainly so wide that many innocent persons might be caught and then have the burden upon themselves to prove that they came by these articles quite innocently or honestly.

Leave aside those stores that are actually stolen from the railways; take the case of the manufacturer. If that position is clear I might be enlightened. Take the case of a manufacturer. Suppose he has been given an order to manufacture fans for the railways; he is putting even those words "Northern Railway" or "Eastern Railway", and he prepares them. Somebody, his own servant or some outsider, steals some of the fans or even one fan. Was it not "intended" to be used for the railways. Can we say that because it has not been delivered to the railways, therefore it was not intended to be used by the railways. As the words stand at present, certainly they would include even those things which have not even gone to the railways so far.

An Hon. Member: Suppose the manufacturer gives it.

Sardar Hukam Singh: Suppose the manufacturer gives it to a friend.

He sells it, and the man is caught. Is it intended that even in such cases the burden should be cast upon the accused to prove that he came by it innocently or honestly? And if he has stolen it from the contractor, can he ever prove that he came by it innocently?

Pandit Thakur Das Bhargava: The manufacturer may sell it to him.

Sardar Hukam Singh: That is what I say. The manufacturer may sell or give it to him.

Shri Sinhasan Singh: Why should such an honest man buy that fan when he can get another without the name?

Sardar Hukam Singh: My point is this. If it is not delivered to the Railway, so long as it is not delivered to the Railway, where is the harm and what offence does that man commit? It is no fault of his. If he goes in the bazar and buys one, does that mean that that is railway property?

Shri B. N. Misra (Bilaspur-Durg-Raipur): It does not fit in with "to be or to have been", because it is neither to be or to have been the property of the railways.

Shri Mulchand Dube: And 'intended' by whom?

Sardar Hukam Singh: Intended by everybody, who makes it or uses it. When is it intended by the railways? After it comes in possession of the articles it should be intended by the railways.

The question is whether the definition would include such a case also as I have mentioned. If it does include, I should say its catch is so wide that we have to consider all the implications. At the spur of the moment when we have fixed only two hours for the discussion of the Bill

we cannot go here thoroughly into all those implications and repercussions that these words may have. Therefore I appeal to the hon. Minister that he should agree to this motion for reference of the Bill to Select Committee where it can be considered calmly and all these phrases and their implications can be realised. It would not do any injury or harm to the time-table even. We can pass it in this session if it is so required. The Ordinance has been in operation and it is still there. No harm would be done. I appeal to him that he should at least concede this motion for reference of the Bill to Select Committee, and we will have better legislation then.

Mr. Deputy-Speaker: I shall now call the Deputy Minister.

Shri B. N. Misra: Shall we not get a chance?

Mr. Deputy-Speaker: I was only looking at the clock.

Shri B. N. Misra: Yesterday also I passed a slip to the Chair and I was given to understand that I would be given a chance. In the beginning, as it always happens, the first person is given a long latitude of time and for the rest the time is cut short. We may be given three minutes. I may be given three minutes.

Mr. Deputy-Speaker: All right.

Shri B. N. Misra: Thank you.

I will deal only with clause 3 and I may point out that the most objectionable words are "to be or to have been". Nowhere in legislation, nowhere in the Evidence Act, and nowhere in the local law have we seen such an expression as "to have the property of etc." As **Pandit Thakur Das Bhargava** said, suppose the man is in possession of a property from the time of his forefathers. Because the name of the Railway is there, the man is asked by the Railway to prove that he has got lawful possession over it. This is a very anomalous position in law. As a matter of fact it is said

in law and in legal codes that an accused is supposed to be innocent unless and until it is proved otherwise. What the Railway Minister says here is that the man should prove that the article came into his possession lawfully. In the law courts the burden of proof is always on the prosecution; here the Railway Minister wants to shift the burden completely on to the other person and he wants him to prove that he came into possession of it lawfully. I have scratched my head all the night over to find out any provision of law anywhere, in any country, but in vain. And this is what the Railway Ministry wants.

As regards these words "to have been", I have been very patiently hearing when you pointed out, as Pandit Thakur Das Bhargava was speaking, and you wanted clarification for "to be." I quite agree, "to be" is one part of it. But if we take these words "to have been" from this, then the Railway Ministry or the prosecution has to prove that it is the existing property of the Railway. If it is a question of sleepers or other things which bear the mark of the railways, they can say that "since fifty years back we have got another thing of the same gradation and specification, and this is that, and both the things match together". And it is for the accused to prove that it is not so.

I say, firstly, that this Bill as such should be rejected; it should not be put forward and should not be pressed on the floor of the House here, because we will then become the laughing stock of the whole world. Or, if that cannot be done, if the Railway Ministry is so very keen about pressing or going through the Bill, I say that it should be sent to a Select Committee.

Shri M. D. Joshi: I have followed closely the arguments of Pandit Thakur Das Bhargava. He has been very vehement in his condemnation of the Bill. Clause 3 has been bodily taken from the Ordinance. These Ordinances, we find, were promulgated in haste. They were not so much critical about the wording. When we

are legislating a measure here and thinking out the proper wording, I think there should be no case for any unsatisfactory phraseology or something that would not satisfy the legal technicalities or legal interpretations of Members who are versed in law. I do not join in any vehement condemnation of this Bill. But, I would urge for the consideration of the hon. Minister to see whether it would not be more advisable to send it to the Select Committee for being thrashed out. After all, not much time is going to elapse between now and the report of the Select Committee. Therefore it would be more advisable to send the Bill to the Select Committee.

Shri Alagesan: My hon. friend Pandit Thakur Das Bhargava has worked himself up into a sort of virtuous indignation. When he is in that state, it is a little difficult to convince him. Especially when he thinks that this bad executive is doing something to tamper with the individual's rights, naturally, he gets into an indignant mood.

I can only assure him that we are not moved by any such sinful intention or purpose.

Pandit Thakur Das Bhargava: We need no assurance from you. I know you are so sweet; you cannot go against us; the Railway Ministry cannot go against us. But, you do not know what the police and what the courts are. You are not fully cognisant of that.

Shri Alagesan: I was saying that I should only like to assure him and the hon. House that we are not moved by any such sinful intentions or purposes. As I pointed out, and as was pointed out by some of the speakers, this law was passed in the year 1944 under the India-Burma Emergency Provisions Act. Though this was called an Ordinance, it had all the validity of an Act passed by the Indian legislature. The fact is that it already obtains in all the Part A States. The immediate object of the Bill is to extend it to Part B States also. So, hon. Members would realise that this is not a new thing.

[Shri Alagesan]

which is sought to be thrust upon them suddenly without any notice.

Shri Nambiar is not here. He was referring to things manufactured in the H. A. L., in the Telephone factory, etc. It will be clear to any one that these stores are well secured. In fact I understood the other day that when some Members of Parliament went to visit the H. A. L., a woman Member of Parliament was not permitted to visit it—the Hindustan Aircraft Factory at Bangalore, because there were some rules—I am not quite sure. That was what I was told. That gives an idea as to how well secured these stores are. I do not mean that no thefts occur in those places.

Shrimati Renu Chakravartty (Basirhat): Do you mean to put women and thieves on a par?

Shri Alagesan: Not at all. I only meant that it is difficult for even Members of Parliament to gain entry. I only wanted the House to draw a distinction between stores well secured and railway stores which are more or less scattered all over the country.

Shri Barrow (Nominated-Anglo-Indians): Not between men Members and women Members.

Shri Alagesan: There are 34,000 miles of railway lines, trains and wagons go all over the country and these things are just unprotected. We have had cases of alarming thefts; as the hon. Member Shri Sinhasan Singh was kind enough to point out this evil is so rampant that we should do something to check it. It is with this purpose that this Bill has been brought before this House.

I could not understand why Pandit Thakur Das Bhargava, who says he is so kind to me, should be partial to the Communications Ministry and be angry with me when I bring forward this Bill. He himself has admitted that he supported the principle of the Bill, when the Telegraph Wires Unlawful Possession Bill was before the House. Except for the description, I find there is absolutely no difference

between that Bill and the present Bill before the House. The original Bill was more or less framed in the same language as the present Bill is.

Shri Barman: That related to telegraph wires, special type. Here, everything is included.

Shri Alagesan: I shall read the language so that it may be clear. I am reading from the original Act which was subsequently amended, section 5.

“Whoever is found, or is proved to have been, in possession of any quantity of telegraph wires which the court has reason to believe to be or to have been (same language) the property of the Posts and Telegraphs department of the Central Government, shall, unless he proves that the telegraph wires came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.”

Identical language has been used in the original Act to which somehow Pandit Thakur Das Bhargava did not object.

Pandit Thakur Das Bhargava: I objected to the original Act and made a speech here against it. When it was amended and the particular property was identifiable, as the property of the department, I supported the principle.

Shri Alagesan: The difference is this. When the Act was in this form, certainly, the burden of proving that a certain article of stores was the stores belonging to the P&T Department was squarely laid on the shoulders of the prosecution. Then, it was thought that the telegraph wires could be more precisely defined and an amendment was made which defined telegraph wires, and which gave respective gauges. When that was done, this wording was removed: “which the court has reason to believe to be or to have been the property of the Posts and Telegraphs department of the Central Govern-

ment." These words were omitted because the proof would have only to be confined to this, namely, the wires were of these gauges. If that is established, immediately, if the party is not able to show that he was in possession of wires of that gauge lawfully, he will have to suffer the penalty under the law. That was the position under the Telegraph Wires Act. The difficulty is this. Not that we are more hard-hearted than the P&T Department. The difficulty with the railway stores is that they are not capable of such a simple definition. Also, our stores are of a more varied nature and are scattered, as I said, all over the country, completely unprotected. That is the difference. But, even under the present Bill, the railways will have to establish that it was their property. Once that is established, then the other man has to prove that he came into possession of that property lawfully. That is the only obligation. That is the only departure from the normal law that is attempted here.

Shri B. N. Misra: Just now you said the Railway Administration has to prove that the property belongs to them and then the burden shifts. There, you have not to prove that it belongs to you.

Shri Alagesan: There is not much of a difference in principle between the Bill passed by the House and the present measure before the House now.

Pandit Thakur Das Bhargava said that it was conceived in an emergency. Now he does not find any emergency and so he asks why perpetuate this Ordinance. Of course, the word "Ordinance" stinks. It is not an agreeable expression and so, basing his argument on old sentiments, he wants to condemn this too. But I respectfully wish to show him that the emergency has not ceased in this sense that thefts have not ceased. They are perhaps growing. So, we have to meet this menace and this is the only device by which we thought we could meet this menace.

But, as I said in the beginning, this is not a new measure. It has been in operation for several years. On the question whether this has been put to wrong use, we have a history to show how we have worked this Act. That can be seen and examined to find out whether this Act has been put to all the imaginary abuses that hon. Members conjured up.

Shri Barman: Could the hon. Minister give us some idea about the actual uses to which this has been put?

Shri Alagesan: I am coming to that point.

I should like to say that the extent of the thefts is very alarming. I can give a few figures. On the Central Railway it has been calculated that in the year 1952-53 the theft has been to the extent of Rs. 3½ lakhs roughly.

Mr. Deputy-Speaker: What are the items of theft generally?

Shri Alagesan: I shall come to that point.

In the next year, 1953-54, it rose to Rs. 4½ lakhs. Then, taking another instance, of the Southern Railway, in 1952-53 it was Rs. 4.29 lakhs and in 1953-54 it rose to Rs. 6.19 lakhs.

Shri Sinhasan Singh: Against how much of watch and ward expenses?

Sardar Hukam Singh: In spite of the Ordinance.

Shri Alagesan: That is true. Exactly. So, it is not such a sinful instrument in our hands. So, you cannot have it bothways.

Then, I have got some figures with reference to the second half of 1954 on the Eastern Railway. The total loss comes to Rs. 4.47 lakhs for the halfyear.

You wanted to have an idea about the quantity stolen. I shall give

[Shri Alagesan]

some figures:

Belting	1,72,709 ft.
Kent couplers	...424
Wiring for coaches	1,04,869 ft.
Cells	..229

This list can be continued. I can give the items that are being stolen.

Mr. Deputy-Speaker: Is this on a single railway?

Shri Alagesan: On a single railway for six months.

So, this is the magnitude of the evil which we have to tackle, and I should like the House to extend its full co-operation in this respect instead of finding fault with us for bringing forward this measure.

Then, as to the way in which this Act has been worked, as I said, this came into effect in the year 1944. Now, I shall give you the number of prosecutions launched and the number of convictions. In the year 1944 the number of prosecutions was 132 and number of persons convicted 59 only. In the next year, there were 437 prosecutions and 206 convictions. Then there was a decline. I mean, the States forgot that this measure was in their armoury and they forgot to use it, or they very rarely used it. Then, in 1946 there were 178 prosecutions and 30 convictions—such a small percentage. Then, coming to the year 1949, the number of prosecutions was 102 and number of persons convicted 26. Only a quarter of the cases could prove successful in the court. And so, all the imaginary fears that the hon. Members conjured up before the House are baseless.

Pandit Thakur Das Bhargava: Therefore, the Ordinance has been useless.

Shri Alagesan: Shri Nambiar was harping upon the words "five years." Now, I shall try to give figures from last year onwards. We again reminded the State Governments that this was there and that this could be used and they started making prosecutions. From 10.5.54 upto date 68 prosecutions have been launched.

After we alerted them last year it is going to be nearly a year now and in only 68 all prosecutions have been launched.

Mr. Deputy-Speaker: In the whole of India?

Shri Alagesan: In the whole of India.

The number of cases convicted comes to 37. Now, let us have an idea of the convictions. In one railway the quantum of punishment awarded ranged from one day's simple imprisonment to six months rigorous imprisonment and fine up to Rs. 500. Then, on another railway, it ranged from simple imprisonment till the rising of the Court to two years rigorous imprisonment. That was the maximum awarded. Then, in another railway one accused was convicted and released under the Probationary Offenders Act, and another was convicted for two months rigorous imprisonment.

Shri Sinhasan Singh: What were the articles stolen?

Shri Alagesan: I read that list before, but I do not relate the conviction to any article stolen because I do not have that information with me. I only wanted to point out that merely putting in the words "five years" did not take away the discretion of the Court in this matter, and they awarded punishments as I just now pointed out, which are less than five years.

I should like to tell the House that we are not making any big innovation in this, and I shall proceed to give a few examples. I do not want to go into the Evidence Act which I have got before me for fear of taking the time of the House. Wherever the object is to prevent public stores or essential supplies being stolen, the law imposes a burden on the accused to prove that he has come by possession of the article lawfully. The principle in all these cases is that because of the difficulty in proving the offence, the burden can quite legiti-

mately be placed on the accused to show the circumstances by which he came into possession of the articles in question as the circumstances relating thereto would be within his special knowledge. Pandit Thakur Das Bhargava read section 109 of the Evidence Act, but section 106 of the Evidence Act itself....

Pandit Thakur Das Bhargava: How can section 106 apply? It would mean that every accused has special knowledge and therefore the burden should always be on the accused.

Shri Alagesan: Please wait until I finish.

Section 106 itself recognises the principle when it says that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. Now, I was quoting the Telegraph Wires (Unlawful Possession) Bill and pointing out how the principle embodied in the present Bill is exactly similar to the one embodied there. By way of further illustration, section 15 of the Essential Supplies (Temporary Powers) Act—I think it has again come before the House now—may be cited. It says:

“Where any person is prosecuted for contravening any order which prohibits him from being in possession of a thing without lawful authority or permit, the burden of proving that he has such authority, permit or licence, shall be on him.”

Similarly, section 24 of the Foreign Exchange Regulation Act, 1947, provides:

“Where any person is prosecuted for contravening any provision of the Act which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him.”

There is a similar provision in the Madras Coffee Stealing Prevention Act made as early as the year 1878. These few examples would go to show that

we are not making any violent departure in principle, as far as the present measure is concerned.

I should also like to place another consideration before the House, and that is the evolution of the socialistic pattern of society, and the context of the expanding public sector. I should like to say that our approach to public property is not so morally informed as it is with respect to private property. We are shocked if there is any violation of private property, but we are not so shocked, our moral conscience is not so shocked, when it is the question of public property. This House, and this Parliament, will be able to decide both the extent and content of the public sector which is a growing one. Viewed from this point of view, it is very necessary for us to create a moral conscience or rather a moral consciousness in the country that public property is at least as sacred as, if not more sacred than, private property. I will go a step further and say that public property is doubly sacred, because it is not only your neighbour's property, but it is the property of the neighbour raised to the power of 'n'. So, public property should be held more sacred than even private property. Perhaps, we may have to translate it in the legal sphere also. We may have to amend the Indian Penal Code also. Theft of private property will entail a certain quantum of punishment; if it is theft of public property, perhaps we may have to say that it will entail more punishment or that the quantum of punishment will be more. Viewing it from this point of view, I should like the House to give its full co-operation to this measure and see that the object in view is achieved.

Having said all these things, I should grant that there have been very honest misgivings about this measure in the minds of hon. Members. As I have already pointed out, this Act is in operation, so far as the Part A States are concerned; just now, it does not extend to the Part B States. Several legal difficulties were pointed out both in the definition of 'railway stores' as

[Shri Alagesan]
also in the wording of clause 3, which is the operative provision of the Bill. So, I naturally react to what has been said on the floor of the House, and I should like to say that I accept the motion for reference to Select Committee, which has been moved by my hon. friend Pandit Thakur Das Bhargava.

Mr. Deputy-Speaker: The question is:

"That the Bill be referred to a Select Committee consisting of Shri Ganesh Sadashiv Altekar, Shri K. Ananda Nambiar, Sardar Hukam Singh, Shri N. C. Chatterjee, Shri B. Ramachandra Reddi, Shri Tek Chand, Shri U. M. Trivedi, Shri Nemi Chandra Kasliwal, Shri S. V. Ramaswamy, Shri K. S. Raghavachari, Shri P. R. Kanavade Patil, Shri R. Venkataraman, Shri Fulsinhji B. Dabhi, Shri C. R. Narasimhan, Shri Kamal Kumar Basu, Shri Mulchand Dube, Dr. Lanka Sundaram, Shri Hari Vinayak Pataskar, Shri O. V. Alagesan and the Mover, with instructions to report by the 31st March, 1955."

The motion was adopted.

MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) BILL

The Minister of Revenue and Defence Expenditure (Shri A. C. Guha):

I beg to move:

"That the Bill to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic, be taken into consideration."

This Bill is intended to help the pharmaceutical industry, which is rather an important industry in the country with an investment of about Rs. 25 crores, and which has been experiencing some difficulties in the manufacture, and more particularly in the sale of their articles in different States.

According to the Government of India Act, 1935, excise duties on me-

dicinal and toilet preparations containing alcohol or any narcotic drugs were the charge of the Provincial Governments. And the Provincial Governments have been imposing varying duties according to their varying circumstances or requirements. I would like to point out here the nature of the difference in the duties levied in different States. In such an important article as chloroform, for the spirit contained in it, the rate of duty ranged from Rs. 5 to Rs. 40 in different States, while the duty on absolute alcohol and rectified spirit varied from Rs. 17-8-0 in certain States to Rs. 70-5-0 in certain other States, per gallon. So, you can understand that it was very difficult for the industry to maintain any uniform price scale for their products, and the prices naturally had to vary from one State to another. India, which is one country, having one industrial and economic policy, cannot allow this state of affairs for long, without prejudice to the industry, and to the economy of the industry.

When the Constitution was being framed, this matter was brought to the notice of the framers of the Constitution, and they put this item in the Union List; that is Entry No. 84 in List I of the Seventh Schedule. At the same time, under article 277, the rate of duty prevailing before the framing of the Constitution was protected until Parliament might choose to alter the rates of duties or bring in legislation for some uniform rates of duties. Further, by article 268, the Constitution has provided that any duty collected on these articles would go to the State. The Centre can only impose the duties, the collection will be done by the States, and the revenue also will go to the States; the revenue will not form part of the Consolidated Fund of the Government of India. So, while piloting this Bill, I can say that the Finance Ministry or the Central Government has no revenue motive in bringing forward this Bill.

It is simply to help the industry that we are piloting this Bill. In 1949, the Central Government convened an All India Excise Conference. That