

[Shri Satyanarayan Sinha]

"That this House agrees with the Third Report of the Business Advisory Committee presented to the House today"

Shri Naushir Bharucha (East Khan-desh) Sir, before you put it to the House for adoption, may I submit that four hours allotted to the Wealth Tax Bill is a very small period? So, it may be extended

Mr. Speaker. We have allotted four hours for Wealth Tax Bill and four hours for the Expenditure Tax Bill. It was stated that between the two, six hours might be taken. Anyway, the Business Advisory Committee allotted one more hour for each Bill. If we are able to save time on one Bill, we may try to use it on the other. Let us see. I shall now put the motion to the vote of the House.

The question is

"That this House agrees with the Third Report of the Business Advisory Committee presented to the House today"

The motion was adopted

RAILWAY PROTECTION FORCE BILL

Mr. Speaker. The House will now proceed with the further clause-by-clause consideration of the Railway Protection Force Bill as passed by Rajya Sabha.

Shri Kasiwal (Kotah) How much time will this take?

Mr. Speaker. We spent five hours and nineteen minutes. Then, we spent another hour beyond the schedule. We will finish it in half an hour. I think the hon. Minister has to reply.

Shri Tangamani (Madurai) There is an amendment.

Mr. Speaker: He has tabled an amendment after the discussion is over.

Shri Tangamani: Yesterday, I gave notice of fifteen amendments to clauses 1 to 20. Today, only amendment

No. 59 alone which relates to clause 20, has been circulated.

Mr. Speaker: All right. The Minister has not yet started. He may move his amendment if he wants.

Clause 20—(Protection of acts of members of the Force)

Shri Tangamani: Sir, I beg to move:

Page 6,—

omit lines 1 to 5

By this amendment, I seek to delete sub-clause (2) of clause 20 which reads

"Any such plea may be proved by the production of the order directing the act, and if it is so proved, the superior officer or member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order."

I have already said that the powers given to this new Force are extraordinary. Having given those powers, if this clause is not deleted, then any act done, whether lawful or otherwise, will be exonerated. Incidents may happen where a person may not only be detained and searched, other things may also happen like opening fire. If he can show that there has been some order of the superior, he will be exonerated. I do not know wherefrom this clause has been taken. If I am right, the hon. Deputy Minister, when introducing this Bill, said that these clauses were found in the Navy Bill or the Army Bill. Pandit Thakur Das Bhargava has also tabled an amendment to the same effect. I would like to endorse all that he said yesterday when he opposed clause 13 as it existed. Whatever he has said regarding that clause, its spirit applies equally to this clause also and as such, I move that this clause be deleted.

Mr. Speaker: Amendment moved:

Page 6,—

omit lines 1 to 5

The Minister of Railways (Shri Jagjivan Ram): This clause is not a novel clause. It finds a place in several Acts—in the Police Act and in the Frontier Constabulary Act. We must not forget that, if a person carries out certain orders which an authority is ordering and the order is proper

Pandit Thakur Das Bhargava (Hisar): There is not the word 'proper' before the word 'order'. If the word 'proper' is there, there will be no difficulty.

Shri Jagjivan Ram: I am prepared to make it 'proper order'. I propose to go a step further. I think that 'the authority is proper and the order is proper'. But, there may be some defect in the jurisdiction. There is as I said earlier, a clause in the Police Act, Section 43. If it is proved that a person acted under proper authority and order, this clause provides that he will have the benefit of having acted under that order and he will be let off. But, if any authority has committed a mistake and issues an order which it is not competent to issue, it should be called upon to explain or it should be held responsible for that act which was committed under that order. This is what the Police Act provides. I am also prepared to make a proviso which will read something like this:

Provided always that any remedy which a party may have against the authority issuing such an order shall not be affected by anything contained in this section."

If this provision is there, there will be no necessity for these amendments.

Mr. Speaker: In the Police Act, the wording is like this: "In any suit or proceeding against any member of the Force for any act done by him in pursuance of a warrant or order of a competent authority."

It is not as if a duty is cast upon him. He merely acts and says that there is this authority or order.

Shri Jagjivan Ram: Such an act was done by him on a proper authority or order. It shall be lawful for him to plead that such an act was done by him under the authority of such an order.

Mr. Speaker: Evidently, the draftsman wanted to make it shorter by removing the words 'in pursuance of a warrant or order of a competent authority' and so he has said 'under proper authority'. If there is no intention to depart from this, why not we adopt the wording used in the Police Act unless the intention is to give more powers?

Shri Pattabhi Raman (Kumbakonam): There is also the question of jurisdiction.

Mr. Speaker: We may keep the expression contained in the Police Act. Why should the railway people have greater powers than the Police?

Shri Naushir Bharucha (East Khairatpur): And greater immunity too.

Shri Jagjivan Ram: If we include that expression I do not think that it will make any substantial difference. I am prepared to put in "in pursuance of an order of a competent authority" instead of 'in the discharge of his duties'.

Mr. Speaker: We may also change the last line to read "such act was done by him under orders of a competent authority."

Shri Jagjivan Ram: We may say "it shall be lawful for him to plead that such act was done by him under the orders of a competent authority."

Shri Naushir Bharucha: Then sub-clause (2) also will have to be modified.

Mr. Speaker: We will come to that later on.

Pandit Thakur Das Bhargava: The question of jurisdiction arises only there. We shall have to amend the second sub-clause. At the same time,

[Pandit Thakur Das Bhargava]

the order itself must be a proper one; a proper authority may issue a wrong order

Mr. Speaker: The Police Act only says. "competent authority" If a constable receives orders to fire at a crowd he must find out whether the orders are from a competent authority It is not open to him to question whether the authority exercised its discretion in the right way When the culprit is likely to escape he has only to obey the orders if they are from a competent authority It is very difficult for a soldier on the battle field to see whether the orders issued by a competent authority are correct

Shri Jagjivan Ram: At that moment the constable will have to obey the orders

Pandit Thakur Das Bhargava: Will an order issued by a competent authority become proper also?

Mr. Speaker: It may or may not be proper, but a subordinate will have to obey the orders of a competent authority

Pandit Thakur Das Bhargava. Then, what is the effect of saying that a soldier who obeys his officer is bound to be sent to gallows by the Senior Judge because the order that he obeyed was illegal? This is the law in England and in India If an officer obeys the order of a superior officer who has no right to give such an order he will be sent to gallows There are sections 78 and 79 of the Indian Penal Code which are general exceptions and no other exceptions are legal

Mr. Speaker: It has been there in the Police Act

Pandit Thakur Das Bhargava The Police Act may be wrong

Shri Jagjivan Ram: In the Central Reserve Police Act, 1949 also there is such a section It reads

"In any suit or proceeding against any member of the Force for any act done by him in pursuance of a warrant or order of the competent authority "

It does not say "proper" or "legal", it only says "of the competent authority" It further reads

" it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order "

Only the authority should be a competent authority, the order may be legal or illegal, may be proper or improper He is not to judge whether the order is proper or improper, he must carry out the order so long as it comes from a competent authority To judge whether an order is proper or improper and decide what action should be taken against the authority which issues a wrong order is beyond his jurisdiction That comes in the proviso Here the question is only about the authority, whether the authority is competent or not

Shri Naushir Bharucha Is that your amendment?

Shri Jagjivan Ram The Chair has suggested it I do not think it makes any difference I will accept that The sub-clause will now read

In any suit or proceeding against any member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority "

Pandit Thakur Das Bhargava Is it suggested that an illegal order of a competent authority is bound to be obeyed by his subordinate, an order illegal to the knowledge of the person who is asked to obey? Though the authority is competent, should that be obeyed? I submit it is a wrong proposition

Mr. Speaker: If it has been obeyed all along since the passing of the Police Act, let it remain

Pandit Thakur Das Bhargava: Police Act of the British Regime is no authority. The substantial law is given in sections 76 and 79 of the Indian Penal Code and it is in consonance with sound principles of jurisprudence

Mr. Speaker: All that I am saying is if in the Police Act this provision has been found quite legal for all this time since its passing, let it remain

Pandit Thakur Das Bhargava: The Indian Penal Code is a much better statute than the Police Act. Supposing a competent authority passes an illegal order and the person who obeys also knows that it is an illegal order, then the person who obeys is bound to be punished under the law

Mr. Speaker: It shall be lawful for him to plead that such act was done by him under the orders of a competent authority. After that we come to sub-clause (2). It is only open to him to plead, whether that pleading will exonerate him is to be seen. Let us assume that orders are issued to catch a man from his house and to shoot him if he does not yield

Pandit Thakur Das Bhargava: That is exactly the example given in the Indian Penal Code. Supposing a superior officer asks his subordinate to catch hold of a person and if he does not agree to be caught to shoot him, the subordinate knows that shooting is not allowed and a competent officer cannot issue an order like that, then he is liable to be punished

Mr. Speaker: Here it says "for any act done by him in the discharge of his duties". It is in the discharge of his duties that he is shooting and that too under the orders of a competent authority. The act must be done in the discharge of his duties and, secondly, under the orders of a competent authority

Shri Naushir Bharucha: May I suggest, Sir, that we may also take up

sub-clause (2) and see whether it fits in with sub-clause (1) as amended now?

Mr. Speaker: Is there any corresponding provision in the Police Act corresponding to sub-clause(2)?

Shri Jagjivan Ram: Yes, Sir. It says

"Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved, the member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order."

Mr. Speaker: It is not stated "notwithstanding the fact that it is not in the discharge of his duties". Therefore, I think it covers everything

So, I shall put the amendment, as suggested by the hon. Minister, to the vote of the House

Amendment made

Page 5, line 39—

for "proper authority or order" substitute "the orders of a competent authority"

—[*Shri Jagjivan Ram*]

Mr. Speaker: So far as sub-clause (2) is concerned, it is taken verbatim from the Police Act. Whatever defects there are in the Police Act, they will continue here

Pandit Thakur Das Bhargava: When you have been pleased to amend the first sub-clause to read "under the orders of a competent authority", the words "notwithstanding any defect in the jurisdiction of the authority which issued such order" will have to be deleted. We will be stultifying ourselves if we accept the sub-clause as it is after having made the amendment in the first sub-clause. The whole thing will not be reconcilable. We must take away these words from sub-clause (2). If these words "notwith-

[Pandit Thakur Das Bhargava]

standing any defect in the jurisdiction of the authority which issued such orders" are allowed to remain, the authority will become incompetent.

Shri Jagjivan Ram: It has been copied from 2 or 3 acts.

Mr. Speaker: Pandit Thakur Das knows very well that a defect or the wrong exercise of jurisdiction is not so bad as being without any jurisdiction. In the exercise of jurisdiction some excesses may be committed. That is all that is meant under sub-clause 2. Then I shall put amendment No. 59 to the vote of the House.

The question is:

Pages 6—

omit lines 1 to 5.

The motion was negatived.

Pandit Thakur Das Bhargava: I have moved amendment No 51 standing in my name

Mr. Speaker: The hon Member wants only that portion alone to be omitted. I shall put it to the vote of the House

The question is:

Page 6, lines 4 and 5—

omit "notwithstanding any defect in the jurisdiction of the authority which issued such order".

The motion was negatived

Mr. Speaker: Is it necessary to put the other amendments?

Pandit Thakur Das Bhargava: I have moved an amendment which is 54 in the list

The words of the clause are: "notice in writing of such proceeding and of the cause thereof shall be given to the person concerned or his superior

officer". Suppose the notice is given to the superior officer and he does not convey the subject-matter of the communication to the person concerned, what is the use of giving notice to the superior officer?

Shri Jagjivan Ram: You are dealing with sub-clause (3)?

Pandit Thakur Das Bhargava: Yes. The offence may not be discovered and three months may be over and nobody may be punished and after that a notice should be given to the person concerned I am not concerned whether you give notice to the superior officer or not. He may be remiss himself and may not communicate to the person concerned. What is the use of making a provision which would stultify the effect; the superior officer may not communicate to the person concerned.

Mr. Speaker: For the word 'or' he wants 'and'

Shri Jagjivan Ram: I do not accept that '3 months' should be changed to 6 months' but I have no objection to substitute 'and' in the place of 'or' in line 14

Amendment made.

Page 6, line 14,—

For "or" substitute "and"

—[Shri Jagjivan Ram]

Mr. Speaker: Now I will put other amendments to the vote of the House.

The question is

Pages 5 and 6—

omit lines 36 to 39 and 1 to 5 respectively

The motion was negatived

Mr. Speaker: The question is:

Page 5, line 39,—

for "under proper authority or order" substitute—

"under lawful orders".

The motion was negatived.

Mr. Speaker: The question is:

Page 6, line 11,—

for "three" substitute "six".

The motion was negatived.

Mr. Speaker: The question is:

Page 6, line 12,—

after "committed" insert "and discovered".

The motion was negatived.

Mr. Speaker: The question is:

Page 6, line 14,—

omit "or his superior officer".

The motion was negatived.

Mr. Speaker: The question is:

"that Clause 20, as amended, stand part of the Bill"

The motion was adopted.

Clause 20, as amended, was added to the Bill

Clause 21—(Power to make rules).

Pandit Thakur Das Bhargava: I beg to move

Page 6, line 29,—

omit "or the revision of".

The clause reads as follows:

"regulating the punishments and providing for appeals from, or the revision orders of punishment or the remission of fines or other punishments;"

We have got a provision in section 9(2) which provides for an appeal. A person who is punished under clause 9 can appeal under clause 9(2) but there is no provision whatsoever in this Bill about any revision and no revisional powers are given to the superior officer in respect of these punishments. So far as clause 17 is concerned there is a magisterial conviction; but so far as clause 9(2) is

concerned, the Government can make rules whereas in the Bill there is no provision for revision. How can there be revision in the rules if there is no substantive provision in the act itself? Without any provision in the Bill, I am afraid it will not be right to give any power to make rules in regard to revision. The hon. Minister must see that the rules should provide for revision also. It is most unusual. Take it away; let it remain for appeal only. I do not understand how the revision will be justified.

I beg to move:

Page 6, line 36,—

add at the end "or at any other time"

I want to make a departure from the usual provision. The Members of this Parliament have power to object to any rules in the session or in the coming session. I used to see that provision used to be made that within 8 days the Members of Parliament could object to the rules but now I find that there is ampler provision and in the next session the rules can be changed. I must submit that this is a wrong provision. After all, Parliament is the sole custodian of these rules. It is delegated legislation which Government have, whereas a delegate can change the rule at any time it pleases, the parent body, the Parliament cannot alter them except in that session or in the coming session. I do submit that whenever Parliament shall find that a rule has not worked well, it should be within the powers of the Parliament to amend the rules and the power to amend the rules should not be restricted in this manner, that in this session or the next session this power may be available. Therefore, I have given notice of an amendment that if the Parliament feels or any member feels a rule has worked wrongly or has played a havoc, we should be enabled to put an amendment at any time whenever we feel that a rule is not right. A.

[Pandit Thakur Das Bhargava]

member can bring a Bill to repeal the entire statute

It is not a matter relating to this Act only, but he cannot change a rule except in specified time. I would therefore appeal to the hon Minister to be much more generous so far as the rights of the Members of Parliament are concerned now and in the future also.

Mr. Speaker: How long is it to be then? Are the rules to be nebulous?

Pandit Thakur Das Bhargava: The rules will be there for all times. Government will be able to change the rules at any time.

Mr. Speaker: They have to place the changed rule also before the House.

Pandit Thakur Das Bhargava: Suppose Government does not put any rule. But if I or ten Members feel that a particular rule has worked havoc, suppose after six months we discover that it has worked so badly, we should be able to amend the rule.

Mr. Speaker: How?

Pandit Thakur Das Bhargava: By putting a motion in the House. Today also we do it by a motion by a Member.

Mr. Speaker: For all eternity? Or soon after?

Pandit Thakur Das Bhargava: "Soon after" means, we do not know how it has worked. With regard to punishments etc., suppose we find that the rule has not worked well. What is the remedy?

Mr. Speaker: The remedy is by way of a resolution in this House. If an Act is passed, what is the remedy? Can we just at any time modify the Act without a Bill to amend the Act? Likewise, when rules are framed, they are placed before the House, and opportunity is given to the House to modify them in that session or in the next session. If any rule is hard and

requires to be modified, or a new rule has to be added, Parliament has this right of passing a resolution here, calling upon the Government to frame a rule. And if they refuse to do so—well, in a democratic State the Government must abide by the decision of the House. A resolution can always be moved at any time, as any other resolution is moved, saying that such and such a rule should be inserted or that such and such a rule should be modified. What is the difficulty?

Amendments moved

(i) Page 6, line 29—

omit "or the revision of"

(ii) Page 6, line 36—

add at the end "or at any other time"

Shri A. C. Guha (Barasat): Yesterday the hon Minister gave me an assurance that as regards recruiting he would set up Service Commissions, particularly for Class III officers. But in clause 21, in the subjects on which Government will frame rules there is no particular mention about recruiting and appointment of officers. I do not know whether there should be any specific mention of that in this clause. I think it is better to make a specific mention. But if the hon Minister feels that the phrase "without prejudice to the generality of the foregoing powers" would also cover the framing of rules for appointment and recruitment, I am not particular about putting it specifically. Still I think the hon Minister may examine it and, if necessary, put it specifically that rules should be framed for appointment and recruitment of officers, including Class III and Class IV.

My hon friend Pandit Thakur Das Bhargava has mentioned about the power of revision. In clause 9(2) we find the provision, "Any member of the Force aggrieved by an order made under sub-section (1) may appeal against the order to such authority as

may be prescribed, and the decision of the said authority thereon shall be final."—which means that there is no scope for any revision petition for the officer concerned who might have been punished. So I think that should also be provided. In several cases, after the appeal, the aggrieved officers have to make revision petitions and even petitions to the President. But here it has been put that the decision of the said authority shall be final. I think this also requires to be examined properly whether some modification is to be made or not, so that the aggrieved officer may file a revision petition to the Government, as also to the President.

Shri Jagjivan Ram: Sir, after what you have observed, there is not much for me to say. In this clause 21 we have followed the general pattern that we have been following in this House practically in all the Bills. We do not include only those items which have been specifically included in the sections.

Then, **Shri Guha** referred to revision by higher authority. Review usually is by the authority himself at a subsequent stage, if he finds that the orders which he has given

Shri A. C. Guha: The aggrieved officer may file a revision petition.

Shri Jagjivan Ram: So it is an enabling provision and it will be useful.

Shri A. C. Guha: There is no provision for revision. According to clause 9(2) the decision of the authority who might have heard the appeal is to be final. So there is no scope for revision.

Shri Hajarnavis (Bhandara): In law, revision is always regarded as a form of appeal.

Shri A. C. Guha: It is quite separate from appeal. And it is the next stage after appeal.

Shri Hajarnavis: Revision is always part of appeal.

Mr. Speaker: We know an appeal is preferred under the Civil Procedure Code. Invocation of that section can

be made for a revision or where no appeal is competent. Now, there is no specific provision here for revision. What they say evidently is that in the body of the Bill an appeal is provided for and it is said that the decision of the authority on the appeal shall be final, but in the rules reference is made to revision, and it is not referred to in the body of the Bill. So, firstly, under what circumstances can the authority to revise be exercised, and, secondly, whether—when the order on the appeal is final—, there will still be any right to revision. It will be governed by the general provisions. Even though it is not referred to in the body itself, rules can be framed. They have been framed. If we give powers for particular things, there is always a section.

Pandit Thakur Das Bhargava: If they provide like this in the Bill, then the revision may be made to the Government. The appeal is to the authority.

Mr. Speaker: If it is an appeal, it is final when once an appeal is preferred. He must take the chance of appeal or revision.

Shri Dasappa (Bangalore): May I suggest that the rules may provide for some period within which an appeal is to be preferred? If for any reason a member of the force who is punished or dealt with is unable to file his appeal within the time, the question is whether he should still have a remedy or not. If, for instance, by reason of any difficulty or disability, he cannot file the appeal in time, there should be some remedy here for him to go by way of revision. If that clause remains there, there is nothing that will prevent the securing of justice.

Pandit Thakur Das Bhargava: In the Third Reading we may add a clause under clause 13(2) giving some power for revision by Government.

Shri A. C. Guha: Clause 9(2) or 13(2)?

Pandit Thakur Das Bhargava: I am sorry, I mean clause 9(2). That will solve all the difficulty. Then Government can make the revision.

Mr. Speaker: It will all be governed by the rules. It is not necessary to add it on to clause 9. But the rules may provide for it.

Shri Jagjivan Ram: That is the opinion of the Law Ministry, that it is not necessary that everything mentioned in the rule-making section should be mentioned in the body of the Bill. And we have followed that procedure.

Shri A. C. Guha: My only apprehension is regarding the wording of clause 9(2) where it is stated that the decision of the said authority shall be final. The question is, whether even after this wording, there will be scope for revision and for somebody to hear the revision.

Sardar Hukam Singh (Bhatinda): Sir, as you have yourself remarked, when an appeal is provided, then there is no revision. But even if there is no revision, the petitioner has a right to approach the authorities that they might revise their decision—they might or they might not, that is different. But if in any case, they find that there is sufficient cause, Government might revise it. If the rules provide that it will be considered in such and such circumstances, there is no harm. Even if no provision is made in the body of the Bill, there will be powers for revision. Those powers will remain, they are inherent, and Government can revise the orders. So there is no need for making a specific mention in the Bill.

Shri Patabhi Raman: I wish only to invite attention to what the hon. the Deputy Minister said yesterday, namely, that this is more or less on an army footing. They want to have a finality about the order. You will remember, Sir, that yesterday there was some little argument about the powers of the superior officer, and it was stated by the hon. the Deputy Minister that it should be on an army footing. Therefore, there is going to be no revision but only an appeal. The revision may always be there. Section 9 provides only for appeal ..

Mr. Speaker: The point is this. It is said that there can be an appeal and the order on the appeal is final; the revision is sought thereafter. They want to have a revision even after a final order is made on the appeal. That is a matter of substance, which it is open to the House to accept or not. Another point raised is whether, without providing for a revision in the body of the Bill, provision can be made by rules only. We were under the impression that there must be a provision in the body of the Bill itself, but we have departed from that. Clause 21 is as much in the body of the Bill as any other clause. It is asked whether we should add sub-clause (3) to clause 9 providing that a revision can be preferred under conditions which are to be laid down in the rules, I do not think that is necessary. I think clause 21 is sufficiently wide.

I will now put amendments 55 and 56 of Pandit Thakur Das Bhargava to the vote of the House.

The question is

Page 6, line 29—

omit "or the revision of"

The motion was negatived

Mr. Speaker: The question is.

Page 6, line 36—

add at the end

"or at any other time"

The motion was negatived

Mr. Speaker: The question is.

"That clause 21 stand part of the Bill"

The motion was negatived

Clause 21 was added to the Bill.

The Schedule clause 1, the Enacting Formula and the Title were added to the Bill

Shri Jagjivan Ram: I beg to move:

"That the Bill, as amended, be passed"

Shri S. A. Dange (Bombay City—Central) rose

Mr. Speaker: Does the hon. Member want to say something?

Shri S. A. Dange: Yes.

Mr. Speaker: All right.

Motion moved:

"That the Bill, as amended, be passed".

Shri S. A. Dange (Bombay Cr'y--Central): Mr Speaker, I am opposing the third reading of this Bill. It looked that you wanted straightaway to go to the third reading, expecting that there should be no remarks offered during the third reading. But I would have liked to suggest that after all this debate and after some amendments had been made, if we had been given some time to consider how the Bill stands after the second reading and then gone over to the third reading with some mature thought, it would have been better. Anyway it cannot be done now and even as it is I want to say a few words about this Bill.

I do not know whether the seriousness of this Bill had been really grasped by people outside or even by this House. But the seriousness was discovered during the course of the debate on the amendments. I should like to refer to that in short. This Bill introduces a very dangerous precedent in the machinery of the State and I draw your attention to the dangerous principle that is being enunciated. What is the principle that is being enunciated by this Bill? Certain thefts are taking place, which are very serious, of governmental property. The thefts amount to, say, Rs 2½ crores or so. Nobody certainly supports the thief either here or outside. Everybody agrees that thieving ought to be stopped. Now, in order to stop this thieving which takes place ordinarily in the whole society in India today, we have got the ordinary law and order departments both of the Centre and of the States. The introduction of this Bill is first an admission that neither the Central machinery in the law and order department nor the State machinery is capable of so functioning that theft of railway property can be stopped. A complete nullity of the usefulness of the law and order

department, either of the States or of the Centre, is reflected through this Bill, because this Bill comes forward on that very basis that the law and order departments are unable to check thefts of railway property. Therefore, one department of the State, which is based upon a heavy force of law and order, comes forward and says, since the ordinary law and order department cannot function, my department must have its independent force, its independent army and its independent jurisdiction, which is not only what obtains in the ordinary army and law and order force, but with powers to shoot. What is this leading to? It is leading to militarisation of the railways. Power is given practically to establish martial law on the railways and create independent armies for each department. This is the beginning of the breakdown of the State machine as such as a composite whole.

I do not think this aspect of the matter has been at all discussed here or attention drawn to it. Each department can say that its property is being stolen. Just now we heard a Minister saying that copper wires are being stolen from the telephones department. Then another department comes round and says that in Bhakra Nangal steel is being stolen, cement is being stolen and so on. What will it amount to then? It means that since the Home Ministry is failing to restore law and order or to carry out its duties, each department comes forward and says, "I want a protection force for myself". The railway department demands an army for railway property. The communications department demands a force for its property. The prohibition department has got its police force. Gold smuggling requires its own force. Only the Finance Minister has not so far come with a demand for a police force to arrest some tax evaders, he might do so later on. What is it amounting to? It means that the State is dissolving itself into different departmental armies in order to guard the particular property in the name, of

[Shri S. A. Dange]

course, of that being national property. Because the national law and order force fails to function, a departmental force, a departmental army and a departmental law and order come into existence. Thus, the State breaks down into a form of mediaevalism, where each department has its own armed force. This is what is going to happen through this Bill and nobody seems to have realised this theoretical aspect, this aspect of principle, that the State is dissolving itself into departmental armies and departmental forces. The communications department wants a force, the railways want a force and the prohibition department wants a force. Smuggling wants a force and all these forces together are incapable of doing anything good to the society. The anti-smuggling force found some gold hidden in some *mahant's* house in Kathiawar. What is our experience with the prohibition force in Bombay? The prohibition force has not done anything. The force is there and sometimes we find that the boot-leggers have some of the officers of the force on their pay rolls. This is the experience in Bombay and the force is not able to prevent smuggling of liquor. The customs force is not able to prevent smuggling and Rs 6 lakhs worth of gold was found hidden in a big man's place in Kathiawar. Is this force going to attack real sources of corruption and theft? It is not a bag of rice in a waggon which five thieves burgle which really matter. The real burglars are hidden in big places and in those big places such forces are altogether ineffective and cannot do anything.

12 58 hrs

[SHRI BARMAN in the Chair]

While speaking on the budget, I had suggested that the real remedy is not to go on adding to different forces. The real remedy is to make the people have their own committees—works committees, trade union committees, etc—and ask them to guard property, then property will be guarded. Instead of that a principle is now being en-

unciated in this country that for the protection of departmental property, departmental armies will be born. If two of such departmental armies were to clash, then God save this country and its national unity. The nation may not be dissolved into different States with sovereign powers, but at this rate the nation might be dissolved into different departmental armies clashing with one another. This is what we are finding in this Bill.

13 hrs

What is happening here? Along 40 000 miles of railway lines we are going to have 36,000 men, a strength of three divisions of an army which is going to be posted along the railway lines running through the whole country side from forest stations to village towns and cities—one gunman for each mile.

The Deputy Minister of Railways (Shri Shah Nawaz Khan): All of them are not going to have guns.

Shri S. A. Dange: Then why the power to shoot? Are they going to shoot without guns? I have to learn that new invention.

Not only that. About a month back there was a report from Sholapur that the Watch and Ward Department in trying to catch a thief ran after some people and shot not the thieves but a woman in the field and wounded her. I do not know who is going to compensate that woman. This was a report which appeared in the papers even before this force had come into existence. What is going to happen with a law creating an army of 36 000 people with wide powers to detain to search to arrest and to shoot at the least suspicion. The moment you dip under a table it is ground for suspicion that you are hiding yourself, result? shoot. This is the meaning of the Bill. I am sure this Bill is being brought forward not so much with the object of protecting railway property. Perhaps it is being brought forward to deal with other matters, maybe to deal with strikes maybe to deal

with workers, maybe even when a man pulls the chain because there is congestion, as used to happen in Calcutta and Bombay, or when people get disgusted with the number of accidents that take place. If ordinary petitions do not help and people squat on the track, the protection force would be used against them in the name of danger to movement of railway property, because an engine is railway property and it must run. So, I am very serious in my opposition to this Bill.

My first point is one of principle. If you want to establish real law and order, give powers to the hon. the Home Minister, give more forces to the other law and order departments. But why should each department run about with its own army and armed police force? That I do not understand. So, on the point of principle I am vehemently opposed to this Bill.

My second point is that it is ineffective. Perhaps at the end of the year at the time of the next Budget we may be told that the force had done wonderfully well and that the incidence of theft has gone down by about five lakhs. Today the ordinary thief would only run away with the property tomorrow after this force is sent against him he may have to find some more cost for hiding that theft by other means that is by using this force itself. I do not mean to say that all the officials in the force are corrupt. I do not wish to cast any reflection on the services as such. I wish to make that very clear. No doubt there is corruption. Everybody admits that. In regard to the Prohibition Department of Bombay, an hon. Member of the Bombay Assembly the other day said that in spite of the vigilance of the Prohibition squad he could produce any brand of liquor within five minutes.

Pandit Govind Malaviya (Sultanpur) It is so all over the world, perhaps here it is not more.

Shri S. A. Dange. I thought the Gandhian word should be "better". That is why I said it.

Pandit Govind Malaviya: You are thinking of thought, I am mentioning facts.

Shri S. A. Dange: Anyway you do not know your own country, perhaps. What can I do?

On the point of principle, on the point of effectiveness, I am opposed to this measure, because it would really mean having departmental armies in various departments.

My third objection is that the powers given here are very wide. Over 40,000 miles of track running throughout the country, over which 10,00,000 workers are working and millions of people are moving, an ordinary constable is entrusted with the power of arresting and shooting. What does it come to? It will mean harassment to the villagers, harassment to the workers and harassment to the passengers, if this force is allowed to function with all the powers it has got.

I am not opposed to giving powers to the police to protect national property, to prevent its being stolen away. I am objecting to the method of it. The other thing which I want to point out is the callousness with which the whole thing has been done. It was very painful to see yesterday's sight when my hon. friend Pandit Thakur Das Bhargava was fighting for protection of individual liberty, when the gentlemen on the opposite benches were making jokes about that liberty. If an ordinary Member does not appreciate the seriousness of the situation he can be excused; he does not know the law. But what was the scene? Even the Law Minister who is expected to know the provisions of the law well would not come to the help of individual liberty. He was joking about the thing. It was said here is a Bill either you pass it or we do not care. The answer to it can also be given outside the House, if this is the way in which legislation is going to be handled.

Ultimately it was by chance that the Prime Minister dropped in. I must congratulate my hon. friend

[Shri S. A. Dange]

Pandit Bhargava though he belongs to the opposite party for having fought doggedly for individual liberty, until the Prime Minister was good enough to intervene and the Chair also was good enough to intervene and agreed to the insertion of the word "forthwith". My hon. friends opposite wanted at least twenty-four hours detention for the man for the sake of prestige, and therefore, they did not want search "forthwith". What is the conclusion from this?

People very often ask: What after Nehru? Let that be. But this is what happens when Mr. Nehru is absent even from the House. My hon. friends on the other side would not agree to the insertion of the word "forthwith" and the Prime Minister had to intervene asking "why not accept it, it is a simple amendment". Then the Minister comes round and says it might be done. What does it mean? It is not my intention to sow any seeds of division in their ranks. There is no division between the Prime Minister and the other Ministers so far as running of the Government is concerned. I am just recalling the scene to show the way in which bureaucracy sticks to a draft and rejects even reasonable amendments.

There should be no question of prestige on this matter. It is a question of individual liberty being protected. You should have been more careful about individual liberty; you should have been more liberal in accepting amendments. What I say is that the attitude, their approach to individual liberty exhibited in this Bill is extremely vicious and will lead to dangerous situations. It is not merely a question of faulty draftsmanship, though the drafting of this Bill is a little shoddy. What can the poor draftsman do when he is given directions to take away every liberty that is possible through this Protection Bill. He says all right, I shall attack with all the words at my command and he has done it. Departmental armies or forces is a most

dangerous principle to be introduced. It means that the ordinary law and order machinery is incapable of functioning.

The effectiveness of this force is going to be more or less nil. Thirdly the way in which it is being done shows that in spite of the presence of men of goodwill on the other side the approach of the ruling party to the question of individual liberty smacks of police approach. Nothing but this is in this Bill. It is a manifesto not of democracy, which exists only for propaganda or election, but for action it is a police state, every department suppressing the liberties of the individual in the name of protecting national property. National property is not going to be protected by this. Not because we do not want it to be protected; we want it to be protected. We are the protectors of national property. All these forces in all the States are not able to protect it whether it is Bhakra Nangal or D.V.C. or any of these schemes. Therefore, this is not the way to do it. My appeal to the Government would be, please do not carry on with this. My appeal would be, go to the trade unions, go to the works committees, go to the people, take their co-operation and hand over the protection of property to them. Let the Ministers talk to them and argue with them instead of threatening deprivation of liberties. Then, something good will come. I hope that they will take that course instead of having such a dictatorial measure.

Shri Jagjivan Ram: I have not much to say. I was not intending to speak but for the enthusiastic pleading by my friend for individual liberty. That was rather a strange and anomalous thing, individual liberty being pleaded so enthusiastically by a person who represents a party which cares so little for individual liberty. He made so much of the word 'forthwith'. He pinned his faith on that. I will refer him to the proceedings and the speeches of

yesterday's debate on that clause and request him to refresh his memory whether at any stage he suggested this word 'forthwith' and whether there was resistance from this side to that word. He is making too much of that. I myself said that where the word 'detain' has been used, it may be for 10 minutes or half an hour at the most. As soon as the word 'forthwith' was suggested it was accepted. It was not suggested from that side, it was suggested from this side.

Then, he said, go to the workers, go to the employees, go to the masses, as if he has the only monopoly of approaching the masses and workers,

Shri S. A. Dange: I have

Shri Jagjivan Ram and this side does not

Shri S. A. Dange: Because the hon. Minister does not recognise any works committees because they are to his distaste. Take for example Chittaranjan workshop.

Shri Jagjivan Ram: We also know to approach the masses. I make bold to say that we enjoy better the confidence of the masses and working classes than the hon. Member.

Shri S. A. Dange: Very doubtful.

Shri Jagjivan Ram: He does not believe in the democratic principle. That is why he says he will go outside and see. What does it mean? If you are here in this Parliament and if you really believe in the democratic processes and democratic principle, you have to decide here. What is the meaning of saying that if we do not listen here, he will go and make us listen outside?

Shri S. A. Dange: That is a democratic right.

Some Hon. Members: Democratic principle.

Shri Jagjivan Ram: In a democratic way, we also approach the

workers. That is democratic, of course. I would request him again to go to the basic principles of democracy. We are doing it here with the consensus of the majority of the House. That is exactly the democratic principle. He may try to win more the confidence of the masses of the country. That can be done if he changes his methods. If you really believe in democratic principles, if you believe in individual liberty, then you should do it.

To say that each Ministry wants to create a force of its own is farthest from the idea. We have on the Railways the Watch and Ward. We are expending more or less the same amount which we are now proposing to spend. From the nature of the railways, extending over so many thousands of miles, and the properties scattered all over and properties of the public being entrusted to us, it has not been possible to check and protect them effectively by methods that have been followed up till now by the Watch and Ward. We are not assuming all police powers. We are assuming certain powers for protecting these properties. It is never the intention to supersede the powers or authority of the State Governments or the police. That is evident from the Bill itself.

Then again, regarding entrusting it to the workers and employees, I assure my hon. friend that I am always prepared to take the full co-operation of the employees in the Railways. I make bold to say that I am getting that co-operation and I try to enlist it more and more so that with their help we can protect railway property, the property of the nation and give efficient service to the nation. There is no word in the Bill which may give cause for the apprehension which my hon. friend has in his mind that his party will not get enough opportunity to engage in that type of activity for which it is keen. The cat was out of the bag. He said that this force may be utilised in checking undesirable activities or some other activities.

Shri S. A. Dange: In dealing with strikes, I said not undesirable activities

Shri Jagjivan Ram: So long as a strike is sought for on genuine trade union lines where we fail to meet the genuine grievances of the workers, I will be the last person to use any force

Some Hon. Members: Thank you for the assurance

Shri Jagjivan Ram: But, if there are undesirable activities by persons who do not believe in democratic principles, who think that subversive activities are the only way to establish supremacy, of course all the forces of the Government will be utilised to suppress them. I do not want to make a secret of it

Some Hon. Members: Now the cat is out of the bag

Shri S. A. Dange: That is what makes independent workmen *(Interruption)*

Shri Jagjivan Ram: Why does it pinch my hon. friends so much? If they believe in the methods of this Parliament why are they so much perturbed by the mention of the word subversive activities?

I have not much to say. There was not much in what my friend Shri S. A. Dange said. When he rose to speak I thought that he was going to contribute to the debate but I was disappointed. I commend the motion to the House.

Mr. Chairman: The question is

"That the Bill, as amended, be passed"

I think the 'Ayes' have it

Some Hon. Members: The 'Noes' have it.

Shri S. A. Dange: I claim division.

Mr. Chairman: We shall have to defer it according to our convention. At what time shall we have it?

Shri S. A. Dange: Four o'clock, or, as you like

Some Hon. Members: Four o'clock

Mr. Chairman: The voting is deferred to 4 o'clock.

BUSINESS OF THE HOUSE

Mr. Chairman: Now, we have to take up items 4 and 5 in the agenda. Here, I want to mention to the House that it has been suggested to the Chair that both the motions may be moved one after another and placed before the House. The time allotted is four hours for the first Bill, that is, the Wealth Tax Bill and four hours for the Expenditure Tax Bill. If that is acceptable to the House, we shall get a sum total of eight hours.

Shrimati Renu Chakravartty (Basirhat): On a point of clarification

Mr. Chairman: I am asking the opinion of the House

Shrimati Renu Chakravartty: I just want a clarification. If the two Bills are moved does it mean that the discussion on the Bills is taken together?

Mr. Chairman: That is the point.
Some Hon. Members: No, no

Shri Naushir Bharucha (East Khadesh): That is not acceptable at all

Mr. Chairman: So, that is not acceptable. So, I call upon the hon. Finance Minister to move his Bill.