

[16 December, 1999]

RAJYA SABHA

**MESSAGE FROM THE LOK SABHA**

**The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Bill, 1999.**

THE SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Bill, 1999, as passed by Lok Sabha at its sitting held on the 15th December, 1999."

Sir, I lay a copy of the Bill on the Table.

THE VICE-CHAIRMAN(SHRI ADHIK SHIRODKAR): Thank you, Mr. Chaturvedi. We shall break for a lunch. I personally feel that we should have a 45 minutes' break.

कुमारी सरोज खापर्डे : एक घंटा करिए सर। वन आवर करिए।

SOME HON. MEMBERS: Sir, the House should be adjourned for an hour.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I adjourn the House for lunch. We will reassemble at 2.45 P.M.

The House then adjourned for lunch at fifty two minutes past one of the clock.

The House reassembled after lunch at forty-eight minutes past two of the clock, The Deputy-Chairman in the Chair.

THE DEPUTY CHAIRMAN: We will take up the Trade Marks Bill, 1999. Shri Murasoli Maran.

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**THE TRADE MARKS BILL, 1999**

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI MURASOLI MARRAN) : Madam, I beg to move:

"That the Bill to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks, be taken into consideration."

Madam, the proposal before this House to consider the repeal and replacement of the Trade and Merchandise Marks Act, 1958 and to enact a new legislation to be called the Trade Marks Bill, 1999 is part of the Government's initiative to modernize the laws relating to intellectual property and make them more user-friendly. It is intended to bring in some new elements into the legislation in order to meet the demands of industry and also to harmonize the legislation with other legislations.

The law relating to the registration and protection of Trade Marks in India is the Trade and Merchandise Marks Act of 1958. In the four decades since the statute came into force, the Act has not been amended even once. The growth of trade and commerce have necessitated that the legislation undergo some amendments to take into account the developments and to amend the existing legislation to bring it in line with world-wide developments.

The proposed legislation seeks to amend and consolidate the law relating to trade marks in order to provide for the registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. As it is a replacement Bill, the Act of 1958 will stand repealed and replaced by the Bill. I may mention here that the existing Act of 1958 has served its purpose over the last four decades. Changing trading and commercial practices and increasing integration of trade and industry now require a comprehensive review of the existing law. Further, there is an imminent necessity to simplify and harmonize the existing trade mark management system and to give effect to important judicial decisions. Market conditions presently prevailing in India have undergone a radical change. Most importantly, there has been a demand from the industry to modify the present legislation in line with the requirements of the trade and to protect consumers against new forms of fraudulent merchandise. Hence the need to replace the existing Act.

The proposed Bill seeks to introduce protection for registration of trade mark for services in addition to goods. It also seeks to extend protection for well-known trade marks and to do away with the system for registration

in Parts A and B and to provide for a single computerised register with a simplified procedure for registration with equal rights. The Bill also seeks to introduce protection for registration of collective marks owned by associations. It further seeks to provide for an Appellate Board for the speedy disposal of appeals and calculation of applications which presently lie before the High Courts.

The proposed Bill has a greater advantage for the trade mark owners than the Trade and Merchandise Marks Act, 1958, in as much as protection IS now extended for services, collective marks and well-known marks, and the provisions relating to offences have been made more stringent.

We need to provide adequate protection for our own commerce, trade and industry to prosper in a competitive world and we should not be the ones losing benefits and protection for want of a proper legislation. The proposed legislation will provide a simplified and more accessible user-friendly framework for the administration of trade marks law and also protect commercial and consumers' interests. It also provides for reciprocal protection of Indian trade marks by all countries.

A Trade Marks Bill was introduced in the Lok Sabha in April, 1993. It was referred to the Department-related Parliamentary Standing Committee on Industry, which presented its Report on April 21, 1994. All the recommendations of the Committee were accepted by the Government. In fact, the Trade Marks Bill, 1999 is much the same as the Bill of 1993. However, as per the suggestions of the Ministry of Law, some changes, from the drafting point of view, for example, introduction of some clauses and things like that, and a change in the composition of the appellate body, have been incorporated. Other than those, there are no changes in the Bill.

I, therefore, seek the support of the August House in considering the Trade Marks Bill, 1999 and recommend it to the Lok Sabha.

THE DEPUTY CHAIRMAN: There is one amendment by Shri Jibon Roy for reference of the Trade Marks Bill, 1999 to a Select Committee of the Rajya Sabha. The Member may move his amendment.

SHRI JIBON ROY (West Bengal): Madam, I beg to move:

"That the Bill to amend and consolidate the law relating to trade marks, to provide for registration and better protection of

trade marks for goods and services and for the prevention of the use of fraudulent marks, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:-

1. Shri K.R. Malkani
2. Shri Vayalar Ravi
3. Shri Jibon Roy
4. Shrimati Kamla Sinha
5. Shri Prem Chand Gupta
6. Shri J. Chitharanjan
7. Shri R. Margabandu
8. Prof. Ram Gopal Yadav
9. Dr. Alladi P. Rajkumar
10. Shri Fali S. Nariman
11. Shri Sanatan Bisi

with instructions to report by the first day of the next Session.

The questions were proposed.

SHRI JIBON ROY: Madam, while moving the motion, I will take five minutes to speak.

THE DEPUTY CHAIRMAN: Actually, you may not speak now.

SHRI JIBON ROY: Then I will speak later.

THE DEPUTY CHAIRMAN: Either you speak now or you speak later. You decide.

SHRI JIBON ROY: Madam, I don't want to go into the substantive issues. I think the Hon. Minister had referred to those during the earlier discussion. I don't want to go into the substantive issues. I simply want to say a few words in support of the motion. I don't want to go into the substantive issues. When I speak later, I will not speak on those points.

The point is this. Though I am moving the motion to refer the Bill to a

[16 December, 1999]

RAJYA SABHA

Select Committee, you know, Madam, This is the consensus of the House. This House had discussed the Trade Marks Bill on 31st July, 1995.

THE DEPUTY CHAIRMAN: Jibon Royji, the rule is that the mover of an amendment or of a motion, for sending it to a Select Committee can give the names he wants to be included in the Committee. Then, later on, you can speak; not on the issue. Why do you want to...*(Interruptions)*

SHRI JIBON ROY: Madam, I will go by your direction, but, generally, you have allowed in some cases.

THE DEPUTY CHAIRMAN: Not generally. I cannot allow because I, generally, or, normally, or, always follow the rule.. *(Interruptions)*. Then you will not get....*(Interruptions)*

SHRI JIBON ROY: I will go by your direction, Madam. ...*(Interruptions)* In all cases, when a Member moves an amendment, he has the right to speak... Anyway, I do not want to go against your direction.

THE DEPUTY CHAIRMAN: It is not done. But..*(Interruptions)*

SHRI JIBON ROY: I was allowed to speak, for example, on the Insurance Bill, Madam.*(Interruptions)*

THE DEPUTY CHAIRMAN: The whole trouble is that you do not listen to the directions of the Chairman. In those circumstances, the Chair becomes really helpless. I have no other way except to ask you to follow the rules. You will have a chance to speak. It is not that you are being deprived of your right to speak in the House. Everybody has a right to speak at the right time. Then it has some meaning. Your name is also there. You will have the right to speak when it comes for voting. It will come to voting after the debate is over. You will have the opportunity to listen to other speeches and then you can formulate your thoughts. You can either press for sending it to a Select Committee or you may withdraw it also. This is the reason behind all this. You should rather speak later on, and it will be in your interest too.

SHRI V.N. GADGIL (Maharashtra): Madam, I shall be very brief. I will take only a couple of minutes. I am glad that a comprehensive Bill has been brought. But I wish to draw the attention of the Hon. Minister to only one clause, that is, clause 35. That clause says, "Nothing in this Act shall

3.00 P.M.

entitle the proprietor or a registered user of registered trade mark to interfere with any *bona fide* use by a person of his own name or that of his place or business" etc. This is reproduction of Section 34 of the old Act. Now, a peculiar situation has arisen in India. The only benefit the poorest man gets is, the inheritance of his father's name, or, his family name. That is the situation in our society. What has happened in recent cases is that a person with a particular name or surname obtains an injunction against a person carrying the same family name when he starts some business. That is treated as "passing off". The Mumbai High Court has given a couple of judgments to that effect. I think it is basically unfair to any citizen. The case relates to Kirloskar. Another enterprising person, having the name Kirloskar, wanted to start a business. The High Court gave an injunction that 'you cannot use your name, although his surname was Kirloskar. He has been prohibited from using his own name', just because some other important person with the name Kirloskar has already acquired status in the society. He stops using that surname. There I have given an amendment - which will later come up for consideration to remove this anomaly, this injustice being done to an ordinary citizen. Therefore, I request the hon. Minister to have note of it. I have done it. But the hon. Minister may also consult some practitioners or lawyers specialising in Trade Marks. I have already consulted two in Bombay. They agreed with me that this was very unfair to the citizens of India. You cannot use your name just because somebody else is using it. I am not saying that my amendment is so good that it will take care of every situation. If the hon. Minister can come out with some other amendment to get rid of this anomaly, I will be happy. Therefore, my only request is that he should reconsider Clause 35 and tell us whether something else can be introduced or substituted or added to it so that the problem that I have mentioned, can be taken care of. Thank you.

SHRI T. N. CHATURVEDI (Uttar Pradesh): Madam, I rise to support the Trade Marks Bill, 1999. The Hon. Minister, Shri Maran, has very lucidly explained as to why it has become necessary to bring a comprehensive Bill, rather than tinkering with the earlier Trade and Merchandise Marks Act, 1958. This has been found useful to the period and environment that we have had so far. Some changes have taken place in the country. The trade and industry within the country and in the

international context has undergone a radical change. Therefore, it has become necessary to bring this comprehensive Bill, which, of course, has some of the beneficial and useful features of the earlier Act. It has taken into account the recent advances and the present imperatives and has introduced some new features. It has also tried to rationalize some procedure. I would also like to congratulate the Minister because he has resurrected the old Bill. But he has freshened it up, updated it and has ensured that this Bill broadly takes into account the various suggestions that had been made by the Standing Committee. In view of this, any suggestion to refer it again to a Select Committee does not hold much ground or has any particular justification. I would also like to point out that, as the Minister has said, it is an effort to modernize it and make it more user friendly, and, at the same time, bring it in conformity with the international economic climate which he has pointed out in the context of globalization. Some people, of course, say that they are opposed to globalization. That is a different matter. Somehow, the fact that we are living in a world of increasing globalization, cannot be wished away. Very often, we have talked in this House that for our infrastructure requirements and so on we need so much of investment if the country has to develop. As the Minister has mentioned, this will certainly help encourage the flow of investment and also facilitate the transfer of technology. Actually, there is another ground on which I would like to congratulate the Minister. He has already taken into account the sense of the House, the sense which the trade and industry had also opined before the Standing Committee when he tried to bring in some of those features in this particular Bill; except that, as he has pointed out, because of drafting some verbal changes were introduced. I find that this Bill has been well-conceived and well-structured, particularly, the Minister has taken pains to ensure that the Ministry gives the Statement of Objects and Reasons in quite a bit of detail, and this is important. Madam, I don't want to read out the Statement of Objects and Reasons as it is there before us. But, when we look into this, we find that the entire scheme of things has been worked out in a way, has been so designed, that it achieves these broad objects. Here, I would also like to mention that this is one of the few Bills that I have seen in the recent past, which has notes giving the rationale, the reasons for the various clauses, the reasons for the revision of various Sections in the original Act of 1958. A fair amount of labour has been involved in the framing of this Bill. Madam, there is always a talk of transparency; there is always a talk of the common people

understanding the legal things, and, I think, the notes, which are appended to the various clauses, are quite explanatory.

Madam, to start with, I would say that as regards clause 1, this clause, as usual, has the provision for fixation of different dates for the commencement of different provisions of the Act. My only suggestion to the Hon. Minister is that he must expedite this particular process if the purpose of this Bill is to be achieved because after all the Bill or the Act will have its impact only when we have a holistic approach and timely application. Otherwise, some time or the other, many of these things get delayed. I would say this, particularly, as regards appointment of the tribunal, where there is a need that all the supportive services which are required in order to have the Appellate Tribunal are placed in advance so that needless delays are avoided.

I would also say something regarding clause 2 of this Bill. I do not go in to this in detail. But I wish to point out two things. The new definitions, which have been added, are worthwhile. Of these new definitions which have been introduced, some relate, of course, to administrative or judicial machineries, as has been indicated in the Act. But the others are very substantive matters. For example, collective market is a new concept. The definition of the well-known 'trade marks', and more than that, the definition of the expression 'services', are quite essential. We are in the changed climate of international trade and commerce, and, as indicated, services are quite sometimes more important than goods. And, that is why, the Bill envisages the legislation of trade marks not only for goods but also for services. They may comprise advertising, business, insurance, finance, construction, repairs, transport, storage, boarding, lodging, education, entertainment, etc., and these are of considerable importance to us.

Madam, I would also like to refer to clause 5 very briefly. This clause deals with Trade Marks Registry and Offices. This, of course, corresponds to Section 5 of the earlier Act of 1950. But, here again, my submission to the Hon. Minister is that the working of the Trade Marks Registry is also to be much more different from what it was so far. It has to be activated. It is not just the machinery, but it is also the attitude and the approach that matters. It is more so in the present climate of opinion when we have to compete in this ruthless internationally competitive world and we also want



[16 December, 1999]

RAJYA SABHA

to invite foreign investment, or, even otherwise, say, we want to have a Government which is quite expeditious in the despatch of its business. There may be situations when goods and services may be mixed. That has also been provided and taken care of in the Bill. I would like to say that there has been a fair amount of rationalisation, if we look at clause 11 and the subsequent clauses regarding the related grounds for refusal of registration. This could be one of the points for harassment and complaint and so on. I think a fair amount of legal ingenuity and the kind of political sense that Mr. Maran commands has had its impact on it.

I would also like to draw the attention, Madam Chairperson, to clause 29 wherein there is a mention of rationalisation about infringement of trade marks and so on. I think this is a very good thing, and this rationalisation will help to achieve the ends which this clause has in view. Clause 30 specifically excludes certain acts which do not constitute infringement, and this also broadly corresponds to section 30 of the existing Act. Probably, there is not much legal dispute on these points. Mr. Gadgil has drawn attention to clause 35. I am afraid that the kind of amendment that Mr. Gadgil has suggested, with due respect to the judgment which he has referred to, probably, the Minister may in due course think about it, but because of the family name, if we again allow somebody else to register in the same name, it can be said; but after all, it is the person who has taken a thing earlier, or, it may be the breaking of the same joint family. This can mean five persons or ten persons and so on. But like the goodwill, the whole thing is to be divided amongst themselves. Sometimes, the goodwill is quantified and divided, but if we allow this in the registration or in the trade mark, I think we allow it to be shared among the co-sharers. This is likely to cause more confusion than...

SHRI V.N. GADGIL : I am not talking about joint family. Two totally different persons, no connection with the family, but carrying the same subject! Nowhere in the world does such a situation exist.

SHRI T.N. CHATURVEDI : See, somehow, the practice of naming also is different. This question can arise in certain parts of our country. Even there can be many Chaturvedis and so on, but the point is, one who has taken the initiative first. But other ways and means can be found. The spirit in which you have made the suggestion is good, but the Bill should not be held up. I know that is not your intention either. But this is a matter

which can probably be considered by the Minister in due course. In the light of your suggestion, he can consult some legal experts. Perhaps, he may like to do so.

Then, I take Clauses 61 to 68. I consider these Clauses very important because they deal with collective trade marks. That is very important end which we have to get used to in the present climate.

Madam Chairperson, there is one item on page 32 regarding appointment of Appellate Board. Of course, the concept of Appellate Board is very sound in order to expedite it. As regards the Chairman, I can understand that he should be a judicial member. But, with due respect, too much of judicialisation of everything is not good. In order to expedite things we make it exclusively for the judges of the High Court or the likely judges of the High Court. I think that goes too far. I think there should be a proper understanding of the environment in which the entire thing functions. When the Act is there, I think, anybody who is appointed to any of these bodies will have to conform to the parameters of the Act.

But more than that, Madam Deputy Chairperson, even about Members, I find that the Vice-Chairman is again a judicial member, a technical member. This actually restricts the pool of choice. There are many others, from Indian Economic Service, Indian Statistical Service, etc. There are umpteen types of people who have come in the area. They too deal with the same thing. The other day, in another context, I referred to Audit and Accounts Service. I fail to understand one thing. You can appoint people from law, if you want, which many of us have. You can add it. Then, there are other wider areas which relate to this. I think, in framing this Bill, most of the Ministers, with due respect to Mr. Maran, think of only Indian Legal Service. Why not from Indian Management pool? Madam Chairperson, as I said, this Bill, which keeps in view the spirit of the changing times with regard to expansion of trade and industry in this country, and the requirements of investment in this country as also the compulsion of facing the international trade, needs to be supported. From this angle, since it meets all the yardsticks, I hope, the House will support it ungrudgingly. Thank you very much, Madam.

SHRI JIBON ROY : Madam, I rise to oppose the Bill. Madam, everybody knows that we, the Left, differ from the economic policy of the Government and the Congress too. So far as this Bill is concerned, all of us

could have united and taken a united position. Why do I say so? When the Select Committee was constituted, some deliberations took place and so far as my memory goes, there was a consensus. Dr. Ashok Mitra, Dr. Murli Manohar Joshi and the Congress Party all had agreed on a common draft. It is sad to note that that consensus is not given a trial here, possibly because the Lok Sabha was dissolved and the Committee could not submit its report.

Secondly, none of the consensus recommendations are accommodated in this Bill. I feel sorry for it. The talk of consensus is a hollow thing now and it is getting proved beyond doubt. Consensus means consensus of the Left and the Right in this House. Madam, practically, there was an overall consensus against the Bill. Let me read out a portion of the speech delivered by an eminent speaker in this House, when it was taken up in July-August, 1995. The speaker, while addressing the then ruling party, the Government said, "तो अगर आपके ट्रेड मार्क कानून का यह मतलब है कि हिंदुस्तान के लोगों का व्यापार चौपट हो जाए, उद्योग-धंधे चौपट हो जाएं तो फिर हम ऐसे कानून से इस देश को बचाना चाहेंगे, हम ऐसे कानून का समर्थन नहीं करना चाहेंगे जो भारत के उद्योग, व्यापार और वाणिज्य को नष्ट कर दे। मुझे हैरत होती है कि कोई सरकार अपने हाथ से यह अधिकार छोड़ देगी कि वह हिंदुस्तान की इंडिजिनस इंडस्ट्री को, स्थानीय उद्योगों को, यहां के लोगों के उद्यम को, यहां के लोगों के व्यापार और उसकी क्षमता को इस तरह से बिलकुल नेस्तनाबूद करना चाहेगी। क्या यह बिलकुल विदेशी व्यापारियों के सामने, बहुराष्ट्रीय कंपनियों के सामने आत्म-समर्थन का एक दूसरा नंगा उदाहरण नहीं है?"

**उपसभापति :** यह किसका भाषण है ?

**SHRI JIBON ROY:** Now he has been elected to the other House. *...(Interruptions)...* He is a Minister now. *...(Interruptions)...* This is what Dr. Murli Manohar Joshi said in HIS speech in this august House on 31st July or 7th August in favour of referring this Bill to A Select Committee. *...(Interruptions)...*

**SHRI T.N. CHATURVEDI:** He has taken note of it. *...(Interruptions)...*

**SHRI JIBON ROY:** Madam, I know and I appreciate that we are in a regime where nobody can form a Government unless he surrenders to multinationals. I do not go against what Dr. Murli Manohar Joshi said. There was a general consensus at that time as I felt. He was right at that time. Everybody knows that trade mark regime is an instrument for

allowing corporate houses to monopolise the market machinery and to monopolise the product market. Everybody knows this. The small producers may get some benefit out of it. Now, when the country is opened up you will appreciate that you have done so many things at Seattle. In 1993, a Bill was drafted. In 1993 we were just opening up. In 1994, the Standing Committee gave its report. At that time, the WTO was not constituted. It was the idea of this House that let us put our heads together and see how far we can save the Indian products and indigenous products. His speech originated from that point of view. Madam, so far as the clause relating to registration is concerned, it remains the same. It was there in the Trade Mark Act and in the Merchandies Act. It is available here also. At that time a very few products were coming to our country. A very few number of products were coming to our country. Gujral Sahib while intervening in the debate at that time pointed out that previously goods were imported and permission for it was given by the Government. But when it is opened up, it will be decided by the registrant himself. Madam, you know better than I know as to what this reciprocity is. Their trade mark was not registered in our country. Now, why do they allow our trade marks get registered in their country? This is a comparison between a chicken and a horse. How long can a chicken fight in the current situation? Therefore, that discussion was relevant at that time. There was almost a consensus in this House. I remember what Shri Ravi said about bringing the services sector into the trade mark regime. Madam, I am quoting a news item which appeared in the Pioneer of 30.11.1999. The caption is, "It's one, big patent lie! The curry is only ours" It further states, "Indian curry could not be Japanese because it might be, well...British. That claim arose in Britain in the face of an application in Tokyo to patent the curry as a Japanese invention. The patent has been claimed by the House Foods Corporation in Japan which argues that the curry was invented by two Japanese chefs." And about Britain it states, "The British Tourist Authority guide tells visitors: There are those who say Britain has no national dish." It further states, "They are all wrong. Britain has a national dish all right, and it's world-beater, the Indian curry."

Now, they are bringing the service sector within the Trade Marks regime. Curry will be patented in Japan or in Great Britain. And, from there, they will get India patented. What the strength of your regime in India is? Trade Marks! What is the strength of your Trade Marks regime in India?...

[16 December, 1999]

RAJYA SABHA

**THE DEPUTY CHAIRMAN:** We should register our curry immediately.

**SHRI JIBON ROY:** Madam, you can register your curry or my curry. But there are hundreds of curries in India. You know, I am connected with a children's organization and that children's organisation is registered. This organisation is having a symbol i.e. 'mark.' I am sure, the day the bill is passed, a multinational company or other company will steal my 'mark'. Madam, thousands of small companies and State organizations will lose their 'marks.' What are they bringing in the into service sector? Construction and repair. Both will be coming under the Trade Marks. I can understand if it is 'construction.' But why 'repair?' Thousands and millions of our boys are working in repairing jobs and in services. It is a country of 100 crore population. Our regime is not yet raised to that age. We cannot give jobs to them. Only, now-a-days, a kind of entrepreneurship is developing. In this Bill, it is there. Of course, it is there everywhere - the owner of a Trade Mark, even if he is not producing any goods he can become the owner of all products in the entire globe which comes under his Trade Mark. He may or may not produce a little bit. But he can become the owner of the product all over the world. Connected to this, not a single Indian product can enter the international market unless it is linked with the chain. And the chain is owned by them. With a single patent, they can own everything. In the earlier law also, there was a provision, and even now, in the current law, there is a provision. The provision is: Assignment of trade and the transfer of Trade Marks. Even in the case of transfer of Trade Mark, it is without the permission of the Registrar. It is there. Therefore, you should be cautious. Madam, in the original Bill, the Registrar of Trade Marks and Controller of Patents and Design was the same person. Now, the world's scenario has changed. For a patent regime, a scientific person is required. For a Trade Mark regime, a judicial person is required. Can a single person act as a judicial person and also as a scientific person? Is it possible? Is it feasible under the current regime? Therefore, we suggest that some changes are required. We may agree with them. I have got a point. Madam, I would not repeat a single point. I am not the only person. Some of my friends from the Left may speak. I would not repeat a single word...*(Interruptions)*... This Bill grants power to the Registrar. It is a statutory power. The Registrar can act at his will. Madam, I draw your attention.

THE DEPUTY CHAIRMAN: I am listening to you.

SHRI JIBON ROY: In this Bill, it is provided that the Government will appoint the Registrar, and all powers are vested in him. The Registrar will enjoy all statutory powers. But the Government has no authority to remove the Registrar. Under Section 91, one can go against the judgment of the Registrar, but neither the Government nor the President or anybody can remove the Registrar. His interpretation is final. In India, we have four bodies - the President, the Parliament, the judiciary, and independent power. Now, we are creating the fifth power - Registrar - through this Bill. According to the Bill, he is not accountable to any one. He is not accountable to the Parliament. He is not accountable to the Government. He is not accountable to the President. And, he is not accountable to the people. The day it will be passed, it means there will be an easier registration of trademarks of multinational products, and stringent control on the registration of indigenous products. Seizure will take place. I can remember seizure of goods in some countries. Seizure of goods will be flooded all over the country because of the charge that many companies are using the trademarks of foreign countries. Seizure will take place in a massive way throughout the country. Please be cautious, be careful! You can take more time. It does not matter.

Then, so far as an appeal is concerned, as per the previous law one could go to the district courts. That right has been withdrawn now. They will have go to the appellate court. In the appellate court, the power of the Chairman is discretionary. If there are two opinions, the decision of the Chairman will be final. Secondly, in the appellate court the proceedings do not go according to the proceedings of civil courts. So, there is a discretionary power. Nobody can go to a High Court against the decision of this court. The beneficiaries will be multinational companies and big corporate houses. The losers are the people, small producers. Okay, the Government can take more time. You have raised the issue, you cannot accept the Select Committee overnight. I understand your prestige also. I realise it. As you had permitted last time, Madam, some more time may be taken. First it was discussed on 31st July, and then it was again discussed in mid-August. They will get some time. There was a consensus. Dr. Ashok Mitra, Dr. Murli Manohar Joshi, and the Congress Party had agreed to it. Mr. Kishore was the Chairman of that Committee. He could not submit his report. But he had agreed to a consensus. I urge upon the

[16 December, 1999]

RAJYA SABHA

Government to give it a trial. Let there be a consensus on this Bill. Whatever is agreed in that Committee, we will try to go by that. With these words, I conclude, Madam.

SHRI V. KISHORE CHANDRA S. DEO (Andhra Pradesh): Madam Deputy Chairperson, this Bill was first introduced in this House about five years ago, when my party was in power. This Bill was passed in the Lok Sabha, after the Standing Committee had given its report on the Trademarks Bill. The Bill was prepared and then passed in the Lok Sabha. It came to our House. At that time due to the composition of this House, the Bill was forced to go to a Select Committee.

THE DEPUTY CHAIRMAN: Was it a Select Committee, or, a Rajya Sabha Committee?

SHRI V. KISHORE CHANDRA S. DEO: It was a Rajya Sabha Committee.

THE DEPUTY CHAIRMAN: Then how was it that the report could not be submitted? If it was a Joint Committee, then it would be both the Houses. So, if the Lok Sabha was dissolved then...*(Interruptions)*

SHRI V. KISHORE CHANDRA S. DEO: Madam, this is a bill which originated in the Lok Sabha. Therefore, when the Lok Sabha was dissolved, the Bill lapsed, and the Committee could not submit its report. The Committee could not submit the report, not because it had not prepared the report, the report was ready much before the Lok Sabha was dissolved. Well, the hon. Minister may not have been there on that Committee, but he may be aware of this. He is part of the Cabinet, which is being led by that party, which opposed this Bill tooth and nail. You heard what the comrade of my Left Party said just now. Cabinet functioning is one of collective responsibility. Mr. Chaturvedi was paying glowing compliments to the hon. Minister for this Bill. Not even a single word has been changed in the Bill that has come before us. The only difference is the time and the situation, which has made you accept the Bill so readily and anxiously now. Madam, we introduced the Bill then. So, we support the Bill now. But what is it that has brought this change? Madam Deputy Chairperson, this just reflects the ethos of the ruling party; one policy when you are in power, and another policy when you are out of power; one ideology when you are sitting on this side of the House, and another ideology when you are sitting on that side of

the House; one visible agenda, and one invisible agenda; one speech in this House, and another speech in that House, tenor and tone completely different. It only reflects the real ethos and culture of the ruling party to which our country's affairs have been entrusted today. Madam Deputy Chairperson, we all know that after the World Trade Organisation was formed, the world has been shrinking in size due to the developments that have been taking place. In that confusion, Madam, some sections of the politically motivated people are trying to set up a link between patents and trade-marks. Let me first mention, Madam, that patents and trade marks are two different things. While patent deals with a new invention, an innovation, a design or something that has been non-existent before, a trade mark only relates to a logo, an insignia, a symbol which signifies a symbol of goodwill between the customer and the person who owns that trade mark. Madam Deputy Chairperson, a trade mark need not be registered for you to get a right over it. The Trade and Merchandise Act of 1958 provided for the registration of trade marks. But it does not include services. In fact, this is now introduced to include the services sector into the trade mark regime. Madam, as the Minister himself has said, the changes were being brought in. Probably, the Government had thought it proper and fit to incorporate other changes which it thought were necessary after the experience of 48 years that we had. But let me again mention that a trade mark need not be registered for it to be used, whether it refers to the services sector or to the consumer goods sector. Trade mark is something over which you get a right over usage. Madam, without registration you get a right. What happens if somebody has used your trade mark which you have been using for a long time, you go to the court and then you get what is known as passing off order in your favour. You have to prove that it is a symbol of goodwill between you and your customer. It does not have to be registered. Madam Deputy Chairperson, by not allowing registration of trade marks, whether it is for the consumer goods sector or whether it is for the services sector, you will be giving a long handle to the multi-nationals who can afford to go to Court and get a passing order in their favour. In our country, there are thousands and millions of small traders, small businessmen who have their one insignias, logos and symbols, can they go to court? Can they all afford to go and fight the case in the Appellate Authority or in the High Court in that particular State, and get a passing off order in their favour? In fact, the advantage will, on the contrary, goes to those who have economic resources at their command.



So, it is a totally wrong conception to think that registration of trade mark is going to let somebody come and run over or steal your trade mark. On the contrary, I think this is a measure which will protect many of our people within the country to retain their logos or symbols of goodwill which you have. This is why we brought it five years ago, and Madam Deputy Chairperson, the country must realise that this process has been delayed for five years, for no fault of ours. Today, my hon. colleague and Member Shri T.N. Chaturvedi, whom I hold in the highest esteem, was full of praise for this Bill. The House is different from what it was, whether it relates to the situation or whether it relates to the Bill. So, Madam, it is ridiculous for us to see red in everything, as it was when it was brought by the Congress Government. This has absolutely nothing to do with patents. This may be a part of one of the intellectual property rights, but that is different. Trade mark has nothing to do with patents, with designs or with inventions. This is only a symbol over which you can get a right even without registration. Even now in the services sector, you can still get a passing off order in your favour without registration.

So, I do not know why these fears have been expressed. I would like to alley all those fears. Having gone into the details of the Act which we have been having for the last 40 years and also having interacted with various sections from trade, commerce, industry and various Bar Associations in different parts of the country, well, I don't think anybody should express any fears about patents coming and taking all your trade marks. It is absolutely ridiculous or preposterous to think that patents are going to take all your trade marks and symbols that are being owned by different companies or organisations. Madam, I want to say that at that particular time, as my colleague has rightly put it, normally, what goes on in a Committee, is not discussed in the House. But this is a Committee that did not finalise its Report. We thought of certain things to improve the Bill still further.

You know that the Bill was not adopted. Most of us at that time felt that we could have a separate Registry of Trade Marks. Now you have a Controller-General for Patents, Designs and Trade Marks. As my friend rightly put it, the person who is in charge of patents, has to have some scientific knowledge because it has to do with designs, inventions and engineering goods whereas, as far as trade marks are concerned, it is more of a judicial or a quasi-judicial function.

Apart from that, with the opening up of our economic frontiers, the volume of work is going to increase. When the volume of work increases, I think, it is also time for us to have a separate Trade Marks Registry, more so because there is no interaction between the two. Probably, Madam Deputy Chairperson, because it is the same Controller- General that we have for patents, designs and trade marks, today, we are faced with this confusion where people think that trade marks are also something like patents where multinationals or big businessmen from outside will come in and monopolise the whole thing, which is not actually the case.

Madam, well, with a new Registry of Trade Marks, you must also computerise it, increase your staff and have branches in different regions of the country. They must be accessible not only to big businessmen, big industrial houses, but also to smaller people who have been carrying on some kind of a business for many, many years.

Madam, there are some amendments which, I think, the Minister has got. Except for the amendment to clause 3 for having a separate Registry of Trade Marks, well, it would not be very difficult for the Minister to accept other amendments because there is nothing objectionable or nothing against the trend or the purpose of the Bill. I would request the hon. Minister, through you, to go through these aspects and to adopt them, by bringing Government amendments.

This is a Bill which, I as I said, we had brought, and we are going to support this Bill. I only wanted to dispel the misgivings that people have in their mind.

Thank you, Madam.

SHRI PREM CHAND GUPTA (Bihar): Thank you, Madam Deputy Chairperson, for giving me this opportunity.

Madam, this Bill has been pending either in the Lok Sabha or Rajya Sabha for the last 7 or 8 years on one ground or the other. My friend, Shri Jibon Roy, has expressed various apprehensions about this Bill.

Madam, in the changed scenario of international trade, I know that the old Bill is no more valid. It definitely requires modifications, amendments and improvements, and that is how we are considering this new Bill today.

[16 December, 1999]

RAJYA SABHA

Madam, one thing must be understood that this Bill has a lot of complications. It is not that it has no complications. I will give you one example. The representatives of an Indian company from Jaipur went to participate in a trade fair in France in October November this year. This company is an authorised vendor of a French automobile company, called, "Pengot."

[THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) in the Chair]

This company supplies some auto products. That is why in the fair they exhibited their products mentioning the Pengot models. The Phizo company filed a complaint with the French police, get the Indian company officer arrested and produced him before the Magistrate within 24 hours. The Pengot company demanded 100,000 French Francs as compensation. They said that that was a violation of the Trade Mark Act. The Indian Company explained to the court that they were manufacturing and supplying these products to Pengot company. It just exhibited the products that were being spued to the Pengot. So, it had not done anything wrong.

The French court refused to listen to this plea. The Indian Embassy officials, also perhaps, intervened. The legal representative of the company made an offer to the court saying that they can keep the officer's passport and also a bank guarantee amounting to 100,000 French Francs to release the officer on bail till the date of next hearing. The next hearing was to take place after 30 days. Since the Company's representative said that he needed to study the documents. The French court refused to accept even this plea. Ultimately the officer of the Indian company was sent to jail till 12th of November this year.

Kindly look at their bias attitude. Along with the Indian company officer, two other company officers were also arrested on the similar grounds. One was from Taiwan while the other was from Belgium. The Belgian officer was released on bail without any bout gurantee deposit passport or any other condition. The Taiwani company officer was released on bail after depositing, 30,000 French francs. And our citizen was not released even after an offer of 100,000 French Francs as bail deposit. Sir, it is that we have to survive in the international trade, we have to accept certain international norms. But the question is how we are able to protect ourselves abroad and how efficient is our system. If today a multi-national corporation violates any of our Patents, Design or Trade Mark

Act, and if we go to the Police, the police would not act for months and years together, whereas the enforcement agencies in the Western and other countries are very efficient. They act immediately like the French Police did.

Sir, you would be surprised to note that in the United States and in certain Western countries there are rackets operating. I give you an example. Our Basmati rice is very popular abroad. Many Indian companies export basmati rice. If, for example, some of them put the name like Maharani and the moment that brand name is popular there brand operators in the United States would find out its substitute names like Queen, Empress, Begum.

They will register these trade marks. Once an innocent trader exported rice under one of these names. He was stuck up. He was caught. His consignment was confiscated. He was subjected to hundreds and thousands of dollars of fine. As I said earlier, we have to accept a certain system. But our people must be properly trained, proper measures should be taken so that our people are not caught in traps like what happened in Paris two months ago. All these fears should be removed; otherwise we would be doing injustice to our small traders.

Sir, one very interesting thing is in North India, we have a lot of people with their surname "Sony", Omprakash Sony, etc. So, once this Bill is passed, he cannot market products like chaat masala or paan masala or any other electronic goods under the name "Sony" because "Sony" is an established brand name. Our system is not geared up for all these eventualities. I would submit to the hon. Minister to take care of such possibilities and protect our interests. Thank you, Sir.

SHRI O.S. MANIAN (Tamil Nadu) : Mr. Vice-Chairman, Sir, I thank you for giving me the opportunity to speak on the Trades Marks Bill, 1999. Our hon. friend, Mr. Jibon Roy, has expressed his views very well. I would like to bring to your kind attention a few things in the proposed Trade Marks Bill. Clause 25 deals with duration, renewal, removal and registration. The duration of registration is proposed to be increased from seven to ten years. This is in keeping with the generally accepted international practice and to reduce the work load of the Trade Marks Office. I would like to know from the hon. Minister : Why couldn't we have a life-time single registration for the same purpose? If you have to reduce

the work-load, then, the amount of time spent on this can be best utilised for monitoring these registered trade marks.

As regards special provision for textile goods, I welcome it. I would request the hon. Minister to extend this provision to cottage products and all items of handicrafts. Cottage products and handicraft products are manufactured mostly by the villagers. They are mostly backward and uneducated people. They do not know the rules and regulations under the Trade Marks Bill. Therefore, I request the hon. Minister to exempt them from the purview of this Bill. If they are covered by this Bill, then, their business will be seriously affected. Most of the people depend on this trade, and whatever meagre income they are getting will be stopped. They will suffer a lot. Then, their day-to-day living will be difficult. Therefore, I request the hon. Minister to exempt these people from the purview of this Bill.

SHRI VAYALAR RAVI (Kerala) : Mr. Vice-Chairman, Sir, this Bill is coming to this august House for the second time. As my friend, Mr. Kishore Chandra Deo said, it had been passed by the Lok Sabha and then it was transmitted to this House. But, at that time, it was opposed by the major Opposition parties as well as a constituent of the present NDA Government. I have no quarrel with them. That is why it was delayed and had gone to the Select Committee.

Today, I am happy. At least I could see how the mind-set can be changed by a change of seats. I am glad, Mr. Maran, that you are piloting this Bill because you have come back with a feather in your cap from Seattle. You have argued our case there very well. I congratulate you on that. I feel you can take the sentiments of the country. We all worked together in a Committee which studied this subject and you had the spirit. Now, I have only one word of caution. The European Union has taken a certain strong position, especially on agriculture and other things. The developing nations also come together on the basic issues. I only suggest to the hon. Minister. This is also connected with the WTO. Please carry forward what you have done in Seattle. Don't leave it there. Carry forward this combination, this association, this coalition of the developing nations. And, also in association with the European Union, fight our cause which is dear to this country.

Now, let us look at the whole thing. The Bill has to be passed now. Naturally, it cannot be delayed further. This is not a new Bill. This Bill repeals the old Trade and Merchandise Marks Act, 1958. That also was a continuation of the 1908 Act. So, there is nothing new in it. At the same time, some important changes which are being made will help Indian entrepreneurs. In this connection, I would like to point out certain matters in respect of which we have moved some amendments. We have not exactly moved. We have only given notices. I would explain certain things for the consideration of the hon. Minister. You may take those points. If not possible now, I hope, it will help the hon. Minister on some other occasion.

My friend Mr. Kishore Chandra Deo also ably presented a case under Chapter II, Clause 3. It talks about appointment of the Controller-General of Patents, Designs and Trade Marks. I do not want to repeat the arguments. The Minister dealing with the WTO is very well aware that the work of patents, designs and trade marks would constitute three distinct institutions. Naturally, when it becomes three distinct institutions, it is necessary that three important persons who can ably deal with the subjects must be the top No. 1--either Director or Registrar or Controller-General or any name you would like to give. Now, the regime of patents is coming.

The regime of trade marks is going to come. After you open up and the WTO regime comes into force, this is going to be a heavy burden on a single man. I suggest to the Minister that at the appropriate time, the Government may consider this point, may take a decision on this point and make that person a Trade Mark Director-General or Controller-General for Trade Marks, a separate institution only for that work. I am not asking you to accept the argument today. Whenever the suitable time comes, you may do it. I am just suggesting it now.

I would now go on to clause 8. That is at page 7. I would like to know whether the word 'may' occurring in that clause cannot be changed to 'shall'. I may not speak when the amendment is taken up. So, I may be permitted to take a little more time now to explain this. The clause says,

"The Registrar may publish in the prescribed manner an alphabetical index of classification of goods and services referred to in section 7." Why 'may'? Make it 'shall'. 'May' gives an option for the Registrar. He can even avoid. I cannot forget the arguments between Pt. Jawahar Lal Nehru and

[16 December, 1999]

RAJYA SABHA

4.00 p.m

Frank Antony on this important issue. I am not quoting that here. I am only making this suggestion.

I have a suggestion in respect of clause 9 also. On the basis of geographical origin, you want to deny registration. Somebody mentioned about the case of Champagne. I believe that there is a judgment of the Federal Court of the United States on who can use the name 'Champagne'. The 'sprinkling sign' has come after that judgment of the Federal Court. Champagne is grown in a district in France. The Champagne district is growing the particular grapes. The Federal Court upheld the contention that those who produce can use it. This provision, I am afraid, may affect that point. Now, I come to the proviso to the same clause, which says: "Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark." I find that there is no need of the last words: "Or is a well-known trade mark". I am afraid, these words will defeat the whole purpose. I am just making a suggestion to you. So, I have given an amendment to delete those words, that is, "Or is a well-known trade mark." These words should be deleted. That is my suggestion. The Minister can look into that suggestion also.

Now, I come to clause 11. This clause is very interesting. If you look at it, you will find an explanation. If you go to the last chapter, you will find clause 154 at page 48, which deals with foreign companies. This clause is dealing with the foreign trade marks or something like that. This sort of explanation comes here. I would like to know whether this explanation is necessary. Clause 154 is a very lengthy one. It relates to special provisions relating to applications for registration from citizens of convention countries. That is the main point. It deals with that. So, if you keep that explanation, it may go against our interests. We have to consider that.

Now, I come to clause 12. It says: "which in the opinion of the Registrar, make it proper so to do..." What are the special circumstances? "In the case of honest concurrent use or of other special circumstances which in the opinion of the Registrar, make it proper so to do." Suppose you delete those words, that is, "or of other special circumstances" and then read it out. "In the case of honest concurrent use, he may permit the registration by more than one proprietor of the trade marks which are

identical or similar." Now, at the end of this clause, I want to add one sentence: "after recording reasons for the same." Whenever you take a decision, you must record the reasons for its acceptance or rejection. So, I want to record the reasons. Otherwise, you are giving an absolute power to the Registrar. The basic approach in this law is to give absolute power to the Registrar and there is no time-frame for it. Sir, these two reasons, that is, absolute power and lack of time-frame, always give freedom for corruption. Every petty officer can use this power because he has absolute power. As soon as these words, "never fix any point of time" are used, it means the disposal of the applications, registration or cancellation within a prescribed time have not been fixed here. So, he can drag it for long according to the wishes of the Registrar or some officers. He can drag it as much as possible. To prevent such kind of corrupt practices, it is always advisable that we should impose some kind of a check on the power of the Registry as well as provide for some kind of a time-frame. Some of my amendments speak about that. Clause 12 further says: "...subject to such conditions and limitations, if any, as the Registrar may think fit to impose." I would suggest that you please add these words after this line: "After recording the reasons for the same." You cannot simply reject the application

Sir, I am referring to clause 17(1)(a). You can have a look at it because that is the recommendation of the Select Committee. You have to only reproduce it. Have a look at it and take an appropriate decision at an appropriate time. I am not going to read it because the time is very limited.

Now I come to Chapter III. Sub-clause (5) of clause 18 says:

"In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision."

I am only suggesting to insert here the words "within thirty days".

You go down further to sub-clause (1) of clause 20. It says:

"When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the...."



I am suggesting a time limit of 15 days. That is one of my amendments. Definitely, I am putting this timeframe.

I now refer to clause 21, viz. Opposition to registration. Sir, I am reading only the first sentence, not all the sentences.

"Any person may, within three months from the date of advertisement or re-advertisement...."

Here, I want to insert "or within one month after re-advertisement." Otherwise, there is no time limit for re-advertisement. It can be delayed for a long time. So, I suggest to insert "within one month after re-advertisement." I only suggesting a time limit.

I come to sub-clause 21(2). Here also, the time limit should be reduced from two months to one month because two months is a long period. It says:

"The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant...."

Sir, I feel that it is a long period. I suggest that it should be made one month.

Sub-clause (4) of clause 21 says:

"Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time...."

What is the prescribed time? There is no time limit. You must make it one month.

Sub-clause(5) of clause 21 says:

The Registrar shall, after hearing the parties, if so required, ....."

Why is the condition "if so required" put? It means it will depend upon the pleasure of the Registrar. After hearing the parties, the Registrar, shall, if so required, decide. It is required. Why is it if so required"? If he hears the party, he has to take a decision. It means you put a condition for the Registrar to act according to his wishes. It is not a good law. That is why I am suggesting that these words should be deleted. That is my feeling.

And the last sentence is not necessary.

THE VICE-CHAIRMAN(SHRI T.N. CHATURVEDI): Mr. Ravi, I think, you are winding up now.

SHRI VAYALAR RAVI: Sir, I am finishing. I am not speaking

anything irrelevant. I am the mover of the Amendments. That is why I am explaining it.

Again, sub-clause 21(5) states:

"...considering the evidence, decide whether and subject to what conditions." or limitations, if any, the registration is to be permitted .....--and then there is a long sentence-

"...may take into account a ground of objection whether relied upon by the opponent or not."

I don't find a reason for having that sentence. There is no need for having that sentence. The Minister can look into it.

I would like to know whether it is necessary or not. Once you give the authority to the Registrar to act, why do you make such conditions? A different interpretation can be given by the court of law. Then only this thing '...you may take into account a ground of objection whether relied upon by the opponent or not...' can be deleted. There is no need for that condition. I don't agree with that. Then, see Clause 21(7). It says: 'The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement...'. Sir, then look at the other words, '...on such terms as he thinks just.' He can correct, but the Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just, with a notice. What I am suggesting is that give a notice to the party. Without giving a notice, he cannot sit in the office and correct. The interested parties must know what he is doing. You are not allowing the litigant, or, the person who has made an application, to know what he is doing. Without giving a notice to the person concerned, the Registrar makes his own decision by this law. When you put a Clause, 'serving notice on the parties', then, the Registrar cannot take his own decision. He has to inform the concerned parties what he is going to do. That is the point I want to make.

Sir, I will now come to Clause 23. I will read out Clause 23. It says: 'the Registrar shall, unless the Central Government otherwise directs,...'. The Registrar has been given the powers. I leave it to you. Here comes Government's intervention on certain matters. What is the matter?

[16 December, 1999]

RAJYA SABHA

The point is registration. Registration under Clause 23. It says: Subject to the provisions of Section 19, when an application for registration of a trade mark has been accepted and either.' Sub-section (b) says: 'The Registrar shall, unless the Central Government otherwise directs, register the said trade mark...'. Regarding trade mark, the Government is given the authority to intervene even at the point of registration. It may lead to a lot of litigation. Any Government may come. Any Government may want to intervene at the point of registration, that is; the initial stage. The intervention of the Government will come at the point of registration, that is, at the beginning. I would like to know whether it is advisable or not. I have given notice of an amendment which will come up while taking clause-by-clause consideration, but before that, the Minister may look into my amendment no. 24.

Now, I come to Clause 23 (2) of the Bill. It says: '...the seal of the Trade Marks Registry.' I am concerned only about the time-frame. I want to add only one point here. Clause 23(2) says: ' On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry.' I want to suggest that there should be a time-frame, that is, ' within 15 days.' I am only suggesting. The Minister can consider it at any point of time because, without the time-frame, he can keep it in his office till the man comes. He can meet him. And the meeting can be in different ways. It can be either under the table, or, above the table. Why do you want to give such power to the Registrar so that he can manipulate? This is only a suggestion. If there is a time-frame, then, the Government can intervene. Definitely, you can make a complaint and the Government can intervene. If you don't issue a certificate in time, the Registrar can do whatever he wants. I come to Clause 23(4). That is the same section, It says: 'The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake'. That can also be done through a notice. If you correct it, then you issue a notice.

Sir, I have already mentioned about 17A. I don't want to read it and take the time of the House. I only want to mention that. You can think of clause 17A. I know about your difficulties at the moment. That is why I am not pressing that.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): This Bill comes at the fag end. He is also fatigued.

SHRI VAYALAR RAVI: Lastly, I come to clause 26. Clause 26 mentions about effect of removal from register for failure to pay fee for renewal. Here also I am only suggesting that the timeframe should be changed from one year to two years, and in clause 26(a) the timeframe should be changed from two years to three years. I don't want to explain further. I only request that the timeframe should be changed. Lastly, I come to....

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): According to you, it was the last point. You have said twice "lastly".

SHRI VAYALAR RAVI: No, Sir. I am moving the amendments and I am finishing the whole thing. There are many amendments of mine. So, I am only briefly explaining. You know my problem.

Sir, now I come to clause 85. It is a very important clause. It is on page 32. When you were speaking, Sir, you had rightly said that the Appellate Board is a judicial body. You have a different view. I appreciate that. However, I may say in a lighter vein, a soft corner for the IAS fraternity is always there.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): I have been a much-defunct IAS official.

SHRI VAYALAR RAVI: Sir, I said it in a lighter vein. There is nothing disrespectful to you. Clause 85 mentions, "a person shall not be qualified for appointment as the Chairman unless he is, or has been, a Judge of a High Court". I fully endorse this. It is absolutely right. But sub-clause (b) says, "has, for at least two years, held the office of a Vice-Chairman". Here comes the problem. The Vice-Chairman need not be a High Court Judge. He can be a technical person or so. Once you first appoint a Chairman, after two years or three years, you can appoint the Vice-Chairman, who is not a Judge of a High Court, as Chairman. Is it not a self-defeating provision? It is contradictory. If you want all the time the Chairman to be a High Court Judge or a person with the status of a High Court Judge, or, as you have rightly put, "has been a Judge of a High Court", that provision will be defeated by sub-clause (b) because the Vice-Chairman need not be a person with the status of a High Court Judge

or has been a Judge of a High Court. If you allow the Vice-Chairman to become the Chairman, the whole purpose of your having a judicial mind in the appellate body will be defeated because the Vice-Chairman need not necessarily be a Judge of a High Court or a retired Judge of a High Court. I am afraid the provision that a Vice-Chairman can become a Chairman will defeat the purpose. If you say the Vice-Chairman can act as Chairman till a new Chairman is appointed, I don't mind. There may be a lot of political pressure, especially when there is coalition politics. A lot of things may come. There will be a lot of pressure on my friend, Mr. Murasoli Maran, to appoint someone. So, you keep yourself free from such pressures. It is better to keep such a provision that the only qualification to become the Chairman is, "a High Court Judge or a retired Judge of a High Court". As regards clause 85, I am only suggesting this. Otherwise, it will be a self-defeating clause.

Now, I come to punishment under clauses 103, 104 and 105. I had talked to the Minister. He told me that there was no problem because there was a proviso. I am not quarrelling with him on that point. My fear is about something else. Mr. Vice-Chairman, you know this better. You look at clause 103 on page 36. Sub-clause (g) of clause 103 says, "causes any of the things above-mentioned in this section to be done", "shall unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees". A proviso is there. The hon. Minister has said that the proviso would take care of this clause. That depends on the judge. The proviso says, "provided the court may, for adequate reason...". It can be either fine or imprisonment. The only thing I want the hon. Minister to consider is whether my amendment for extending it to three years can be accepted. I am interested only in that. You can add "or both" to the proviso as in the main clause. You can add "or both" like "punishment with imprisonment as well as with fine". This can be added here. It is not there. That is why I have given notice of this amendment.

Similarly, under clause 103(g), I have suggested three amendments, amendments no. 29, 30 and 31. Here also I have suggested amendments to sub-clause (g) as well as to the proviso. I have suggested imprisonment as well as fine. Now, under clause 104 (c), there is a proviso. There also, I

have suggested imprisonment and fine. This is my amendment no. 32. Similarly, through my amendments no. 33 and 34, I have made the same suggestions. That is imprisonment as well as fine. This is only my suggestion. I am not explaining it. You understand the law. I need not explain it further. These are all in regard to punishment. All these amendments, amendments no.30, 31, 32, 33 and 34, are regarding punishment. On one, I have a major doubt. But the hon. Member has clarified to me the proviso and that it will be taken care of. But I would request the hon. Minister to consider whether there could be more clarity. Then, I come to amendment no. 35. But I think I am not moving it. I have discussed it with the ...*(Interruptions)*.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Even otherwise you have not moved it.

SHRI VAYALAR RAVI: In any case, I will not be talking about it. Our Hon. colleague has told me that it is in the Cr.P.C. Therefore, it is there in the law. There is no point in talking about it. I fully agree with this advice. Therefore, I will not be moving it.

Then I come to clause 143. I have suggested that for the words "leaving them at" the word "affixture" be substituted. It is not a major amendment, but only a technical amendment.

I have suggested these amendments because I thought it was an important bill with long range applications. Of course, we are going to pass this Bill. It was brought by the Congress Government. That is why we are not asking much for a change. But as has been pointed out by Shri Kishore Chandra Deo --both of us have given notice of an amendment for insertion of new clause 17-(a)-- our basic objection comes from two points. Now, at present, there is a Controller General for Patents, Designs and Trade Marks; for all the three. Our suggestion is that there must be bifurcation and there should be a separate Controller- General for Trade Marks. This is one point. The second point is, through this Bill, wide powers have been given to the Registrar. This has to be checked. There should be a time-frame for the decisions to be taken by the Registrar. Only then we will be able to check, as much as possible, corrupt practices.

With these words, I conclude and I hope the hon. Minister will take into account the suggestions I have made and come forward with appropriate amendments afterwards.

THE VICE-CHAIRMAN(SHRI T.N. CHATURVEDI): Thank you, Mr. Ravi, for a very enlightening speech.

AN HON. MEMBER: Is he supporting it?

THE VICE-CHAIRMAN(SHRI T.N. CHATURVEDI): Yes; he is supporting it. He has been supporting it from the beginning.

SHRI FALI S. NARIMAN (Nominated): Thank you, Mr. Vice-Chairman, Sir. I wish to make only a few comments. Since I am not aware of what transpired before another Select Committee five years ago, I do not wish to say anything about it except that I would urge upon the Hon. Minister that if some light can be shed as to what that Committee had decided, as is being suggested, then we would certainly take that into consideration in a Bill of this type. My two comments are as follows. The first point is that the administration of this Act, the Trade Marks Act, ever since it is a progenitor of the 1940 Act, I am afraid, has been very, very tardy, extremely tardy. It is one of the enactments in our Statute Book which has gone by default Applications for registration of trade marks, when filed, take years, literally years, before they see the light of the day in any Gazette as to whether it has been accepted or not. After that again it takes still more years before it is registered with the result that, although the registration, when effected, dates back to the date of the original application, you find, sometimes, that a registration of the trade mark really, by the time it is actually and factually registered, has expired. This is something which has to be looked into by the Hon. Minister, since he is bringing a new enactment, since we are in an era of liberalization, of trying to do things fast, and we talk of the laws delays in courts. But I think the laws delays take place at the very initial start of a very important aspect like the register of trade marks because the register of trade marks never or hardly ever reflects the true position as it exists today. It reflects something that has taken place many, many years ago. This is what is required to be speeded up and controlled at the administrative level. It can be done and it should be done, in my respectful submission, in the form of rules because there are rules which provide for a fixed time within which they are to be accepted, they are to be advertised, and a decision taken on them. But here, if an advocate is asked, on record, to go and make inspection, he would find the record in a totally parlous state. Nobody quite knows what is the record in a Trade Mark Registry. With that first comment, I pass on to the second comment. My second comment is with regard to the point which has agitated some of the Hon. Members, namely, Clause 35. Can't I use my own name. We are a poor country. We have several names. People give

names to their children. Can a Kirloskar not have Kirloskar engines? We have nothing to do with Kirloskar. This point was made. There are two aspects of this. The old Act has taken care of it and the new Act repeats it by using the words, "To interfere with any *bona fide* use by a person of his own name." The emphasis is on *bona fide*. Let me give you an example. If I have two children, one of them I will call Mercedes and the other Benz. It does not mean I can start a shop tomorrow in the names of Mercedes and Benz because that is not a *bona fide* use of my name. Of course, it is my children's name. Till they die, they will be known as Mercedes and Benz. But to have that we go to the very essence of what a Trade Mark law is intended to protect, namely, the reputation of a particular class of goods in a particular name provided that you are not trying to encash on that name. A court or an authority must be satisfied that you are not trying to encash on that name. Years ago, when I started practice, I had been taken by my clients, Godrej and Boyce who are manufacturers of steel frame covers, which are well known steel covers, in Bombay. There was a gentleman in Rajasthan who very coolly was manufacturing the same type of steel covers. He called them Goodage and Boys. Instead of Godrej and Boyce he called it Goodage and Boys. We said, "This is absurd. You are really cashing in on trade." He said, "No, no, you see the names of the members of my family. The name of one member is Girdhari Lal and the name of the other member is Onkar Chand and so on. He went down the list and all members of his family conformed to Goodage and Boys. This is really cashing in on your name which happens to be a name which has become famous in connection with any goods or service which has already been registered. Therefore, while I accept when Shri Gadgil said that somebody should be entitled to say that "I am entitled to trade in my name", but the point is that it should not be at the expense of a reputation which has already been established. Therefore, if at all the Hon. Minister considers it necessary, I think, the line should read as, "to interfere with any *bona fide* use 'in good faith' by a person in his own name" -- the words 'good faith' have been referred to earlier also in various parts. But, otherwise, this is a very important safeguard, and the safeguard is that it must be a *bona fide* use, that is to say, not used in a way in which you have cashed in on somebody else's reputation.

The third aspect to which I wish to draw the attention of the Minister is that there are some gaps in the print, which the hon. Minister may request his staff to correct. For instance, on page 9, Clause 11 (9).



THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Yes, there are printing errors.

SHRI FALI S. NARIMAN: On page 9, it says: "The Registrar shall not require, as a condition, for determining whether a trade-mark is a well-known trade mark, the any of the following..." Something is, obviously, missing there. It is a printing error. I would respectfully submit that in an important measure like this, which is a consolidating measure, a very careful scrutiny should be made by the staff; they must sit together and see whether anything has been omitted, because the Courts look very, very strictly into the print that comes out from the Government printing office. That is all I wish to contribute to this measure. All that I would request the Hon. Minister to do is to see to it that the process of registration is expeditious followed so that the Register of Trade Marks, at any given instance, accurately reflects the true position on the ground. Thank you.

SHRI NARENDRA MOHAN (Uttar Pradesh): Mr. Vice-Chairman, Sir, I would like to support this Bill, and I would like to convey my sincerest thanks to the Minister for bringing in an enactment which will definitely improve the economic situation in the country and will also remove the various doubts which are being expressed by the multinationals who want to invest in India. That is one part. The other part is, I fail to understand why my friend, Mr. Jibon Roy, was not supporting this Bill and why he objected to this. Does he think that if the country remained static, it would bring goodwill and economic prosperity? The attempt is to change the 1958 enactment. And when the attempt is that, he should suggest some amendments, if he has got any. Instead of doing that, he has opposed it. I would like to say that times are changing so fast that even this present Bill may soon become irrelevant. We are entering an age of E-commerce, Cyber age, and so on. I know for certain that several persons in the world are registering themselves on websites. I can cite one instance. Now, 'Jagran' is a registered website. I asked the person who was owning that website: "Please, this is the name of my newspaper. Why are you using it?" What he said was, "give me a million dollar, and then I will give you the right to use that website". Another instance was, recently, Reliance had to pay a very fabulous amount because somebody registered himself as a reliance-site. Now, Reliance is a trade mark. Tata is a trade mark. 'Jagran' is registered in the records, under the Registration Act, and the name is a 'goodwill' in itself. I would like to know how this Act is going to take care

of such an infringement? You cannot file a case on websites. And, moreover, the websites are registered in America. You have to pay 75 dollars for each registration. I am only saying that these patentee's problems must also be looked into by the Hon. Minister. I want to make a point that the Bill even in the present form is somewhat incomplete because, now, you have already entered a cyber age. You have a Minister of Information Technology. It is better that these problems are to be looked into. That is the point I want to make.

Sir, there is the Statement of Objects and Reasons, and you are going to add services. It is good. It should be there, but then, in the definition of services, you are also covering "conveying news and information." That means, you are entering into the domain of newspapers; you are entering into the domain of media. I do not know how that is going to change the shape. Are you attempting, through this Bill, to give permission to the foreign media, or, are you going to protect the interests of the media barons? What is in your mind? It should be made very clear by the Hon. Minister. I would request him to please look into the definition of services where he says, "dissemination of information and news is covered under services." Well, it is a service, no doubt, but whether it should be covered under the Trade Marks Act. My simple query is this.

The other point which I would like to make is, my friend, Shri Vayalar Ravi, has been very good and explicit in saying that there should be some sort of time-frame given to each clause. It is a very important point. My friend, Fali Nariman, has just said, you file an application for registration of trade mark, and the file will lie on the table of the Registrar for years together. Nobody will look at it, and even in this particular case, where you say that you are going to eliminate the courts, the reason you have given is, you want a speedy trial or speedy justice or speedy disposal, but where is the speedy disposal? Why there should not be a clause in this Trade Marks Bill where you will compel your Registrar that any application which comes will be dealt with within a definite time frame. The Law Minister is here. The Law Minister knows full well how much time it takes when applications for registration are filed under the Trade Marks Act, and how it takes place.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : He is trying to activate you.

[16 December, 1999]

RAJYA SABHA

SHRI NARENDRA MOHAN : I request the Hon. Industry Minister to consult the Law Department as to how to cut the delay in the disposal of applications. There is nothing in this Bill which will curtail the delay in disposal. It should be there. It is a very important point raised by Shri Vayalar Ravi, and I support him, to that extent. If the Minister cannot bring immediate relief by changing the Bill, at least, he should assure the House that in future, very soon, he would put in a clause which will ensure a speedy disposal of files under the Trade Marks Act.

[THE DEPUTY CHAIRMAN in the Chair]

Madam, the simplification of procedure for registration is of no use, unless there is speedy disposal of the registrations. Moreover, this new Bill, Madam Chairperson, will take away the rights of the courts to intervene. The Registrar will become the supreme authority, in a way. There is no other Act in this country where such a situation is there. Perhaps, to my mind, this is the only Act where an officer appointed by the Government is given a super power. Is it good? Earlier, an applicant, who is aggrieved by the decision of the Registrar, could go to the court. Now, he cannot go to the court. Why this has been debarred? You say in your explanation for 'speedy disposal.' How many cases were filed during a couple of years? Not more than 30 or 40 or 50 cases per year. Just forty or fifty or sixty cases are filed every year in the country on Trade Marks. Is it a fact that our courts will not be able to handle this extra sixty cases when millions of cases are already pending? Will this extra number put a very heavy burden on the judiciary? To my mind, it does not appear. I think, there is something basically important here to look into. If possible, the right of the court to intervene should be restored. It will not do any harm to the Bill and its objective. Rather, it will give more credibility.

In India, you know, the Government offices are known for either red-tapism or corruption -- not in general, but, by and large, I would say.

THE DEPUTY CHAIRMAN: I think, you better use 'alleged' since you are not substantiating your allegation. It is better to use that word.

SHRI NARENDRA MOHAN: Madam Deputy Chairperson, with your kind permission and with your benovelance, I would like to place the real naked facts here because we know that corruption is so rampant in the country that there is hardly any Government department which is free from

it -I would say, 'alleged corruption,' I concede to you and I say 'alleged corruption.' The allegations of corruption are so many. Now, when you give such a blank right to one single person, one single authority, and that authority is so powerful that against his verdict, one cannot go even to the court! What kind of situations it may create? I will simply want to know as to why this attempt, at all, to alienate the courts? Why at all the court has not been respected? Does it mean that our High Courts and the Supreme Court have not contributed anything on the Trade Marks? Madam Chairperson, I know for certain -- Mr. Fali Nariman will bear with me and the Law Minister is also here -- that one of the reasons why this new Bill is being introduced is, so much has been contributed by our High Courts and the Supreme Court in improving our Trade Marks that it was necessitated that such a law should be brought in. When there is an agency in the system which is improving our Trade Mark activities, we should rely on it, we should not try to completely cut its roots.

My submission to the Minister is that, something has to be done to again create that situation so that one will not live in an area which is, more or less, an autocratic area. The Trade Marks Bill is cutting the litigants' rights was a comment, which, as I said, made in 1995 when this Bill was discussed. After all, we, the citizens of India, have some rights. Why are those rights being curtailed? Another point which I want to make is that the Bill has another potential jurisdiction pitfall which may give unfair advantage to the trade mark owners. Under the Civil Procedure Code and the Trade Mark Act, a trade mark owner can institute civil suits only in the area where the defendant carries or does his business. In the present Bill, the trade mark owners will file suits in their own territories. Suppose Coca Cola wants to file a suit, they will file a suit in America. There is no such restriction. The multinationals are going to have an upper-hand here. I am not afraid of multinationals to that extent. Why I am scared is these multinationals are using their trade marks to sell their products in India but with those products they will not bring that quality which they should bring. Is the Mercedes Benz being sold in India of the same quality that is being sold in Germany? There are several brands of shirts I can name which are being sold in India. But they are not of that quality. Now, once you are considering the Trade Mark afresh and you are permitting the multinationals to enter the Indian market with their trade mark names, it is good. But, you must also ensure that with the trade mark they also bring the same

quality to India. Therefore, there should be parity in quality. Otherwise, it will be something like playing fraud with the Indian people. I will not permit multinationals to play fraud in India. I will request, if possible, through this Bill or through some other Bill, the hon. Minister of Industry must see that the multinationals if they are bringing their trade marks to India, if they are selling their products in India with the trade marks which they are using in their own country, then they should bring the same quality here also. There should not be any difference. *(Time-bell)* Madam, I am extremely grateful if you can permit me just for one more minute. Madam Deputy Chairperson, the other point which I want to bring to your notice as well as to the notice of the Hon. Minister is that our trade mark policy should be such that it helps the Indian industry also. A lot of doubts were expressed earlier and even now a lot of doubts have been expressed whether this Trade Mark Bill would protect the Indian industry. I will seek a categorical assurance from the Minister that this Trade Mark Bill when it becomes an Act will be used in such a way that it helps in the growth of the Indian industry and it will not be put to any loss. Madam, I have not gone through the Bill that much thoroughly but the doubts that have been expressed by Shri Jibon Roy and others are genuine and they should be looked into. Otherwise, perhaps, we will be lacking in our duty. I may not agree with Jibon Roy, who is sitting in front of me, in many ways. But the doubts which he has expressed need clarification. Thank you, Madam.

SHRI MURASOLI MARAN: Madam Deputy Chairman, I am grateful to the hon. Members for participating in this debate and for giving valuable suggestions. Madam, the main contention arose regarding clause 35. Mr. Gadgil, a very senior Member, said that the Government should consult eminent lawyers before getting this Bill passed. Madam, the Hon. Member, Mr. Nariman, made the job easier. Here, we have one of the greatest legal luminaries of the world. So, we have got a free advice from him. Thanks to the President of India. So, he has given green signal to Clause 35 of the Bill. I think, Shri Gadgil has to pardon me because I cannot fulfil his wish. Probably, during the course of time, if we encounter any difficulty, naturally, we will look into it. Mr. Nariman has also pointed about another printing mistake. Yes. It is true. But, you know, it is always done by the Government of India press of the Legislative Department. Here, I cannot blame them. They have issued errata. It says, "at page 9, line 5, delete word 'the.'" The word has to be deleted. I think, we may not

have any problem with that. I am sorry that it has not been circulated. I am very sorry.

Madam, Mr. Ravi has given some valuable suggestions. Because of paucity of time, I do not want to go into all of them. At the same time, he is gracious enough to say that he is not pressing for his amendments. I assure him, wherever it is possible, under the rules, efforts would be made to put a time limit for the entire procedure. It is very essential in our system. If you do not put a time-limit and if you leave it open, I know what will happen. Mr. Ravi is right. I am grateful to him.

Then, Shri Narendra Mohan has made a point. He asked, "Are you going to admit foreign media into India?" I do not know. The Government has not taken any decision on this. But, I would like to mention here that foreign media has already entered the country. You see the *Indian Express*. Everyday, a page of Wall Street Journal is reproduced. You see the *Financial Express*. Everyday, a page of *Wall Street Journal* is reproduced.

SHRI T.N. CHATURVEDI: Every paper is reproducing it.

SHRI MURASOLI MARAN: No. They just publish one full page. If you switch on your computer, you get a lot of papers of the world. So, I do not think, in this world, we can close anything. I am not giving my opinion. But, this is the situation. On Internet you get all the newspapers.

SHRI NARENDRA MOHAN: The Government's policy is not to allow the foreign media into the country.

SHRI MURASOLI MARAN: But, it was entering the country through a back-door.

SHRI NARENDRA MOHAN: Well, I do not have the information. The Minister is here. Perhaps, he would like to clarify it.

SHRI MURASOLI MARAN: I am just explaining the present position. The technology is moving very fast. We cannot prevent it. Already it has entered through Internet. Already some of the Indian newspapers are merely reproducing pages. They do not want to waste time in composing it. They just scan it and reproduce it.

THE DEPUTY CHAIRMAN: The Minister is saying that you are

[16 December, 1999]

RAJYA SABHA

getting more access to Internet. Like your website is read abroad, you can read other websites here.

SHRI NARENDRA MOHAN: You are very kind to inaugurate our website. Now, we are getting more than one million heads a day.

THE DEPUTY CHAIRMAN: You want to have people hit but you do not want others to be hit.

SHRI NARENDRA MOHAN: My point is they should not misuse the Indian Trade Marks. Or, nobody should misuse anybody's Trade Mark.

SHRI MURASOLI MARAN: I do not know why Mr. Jibon Roy is opposing this Bill. We all use symbols during election time(*Interruptions*)...

SHRI JIBON ROY: I support this Bill. But, I only want consensus.

SHRI MURASOLI MARAN: It has got a sentimental attachment...(*Interruptions*)...For example, Marxist's symbol is well known. The CPI's symbol is also well known. We have a sentimental attachment to symbols. We do not want to lose them. We fight hard battles to get our symbols back. Sometimes, we happen to lose because of some kind of split in the party, I mean, official split. Therefore, trade marks are necessary, not only for business purposes but also for political purposes and even for personalities. I am in my *dhoti* and *shirt* because it is my trade mark...(*Interruptions*)...Madam, *Idli* and *dosa* have become very popular. We are going to discuss about the Bill on the Geographical Indications. There we can discuss Darjeeling tea, Madras idli and Mysore vada.

SHRI DIPANKAR MUKHERJEE (West Bengal): Madam, Jibon Roy has a trade mark on his voice.

SHRI MURASOLI MARAN: You have your trade mark in your fighting spirit. Madam, trade marks have become an atomic core of our consumer-driven economy, and fuels trade and commerce. In fact, it is like a brand mission, its name, its performance standards, its psyche, its packaging, its pricing philosophy, its marketing communication, its community relations policy, its sales force activity, its promotion strategies, and so on. In fact, the brand essence can also be firmed up which also gives its force; that is something which Chevrolets don't have. Again, for example, here is the 'Financial World'. It has given figures. In 1994, the trade mark value of 'coca cola' was considered to be 35,000 million

**5.00 p.m.**

dollars. The trade mark value of 'Marlboro' was 33,000 million dollars. These are the figures of 1994. These may be outdated now.

Now, I come to the point raised by Hon. Member Shri Fali S. Nariman. He said that inordinate delay is taking place in our system of trade mark registration. Yes, I agree with him. Trade marks registered in the last five years are 25,625, that comes to an average of 5123 trade marks per year. During the last five years alone, 2,21,470 trademarks were registered. But, I have to admit that the average time taken for registering a trade mark is 6-7 years. It is a very shameful thing. I am very sorry. The application fee is about Rs.300/-. But nobody bothers about the application fee, provided the work is done quickly. The trade mark registration applications pending as on 31 March, 1999 were about 2,40,000. It is a very big number. Therefore, the Government has commissioned a project for modernisation of trade mark system's administration with the assistance of the UNDP and the World Intellectual Property Organization (WIPO). It came into effect from 1.4.1993. The aims of the project were to establish in-house electronic data processing facility, networking of head and branch of modern data career, and to provide on-the-job training for staff and trade mark users, besides establishing a total quality-management concept in trade mark administration, based on ISO-9000 or equivalent to European standards. The UNDP project was completed on 31.5.1996. In order to strengthen the infrastructure, and to operate computer systems, a project for strengthening the infrastructure of trade mark registration has been approved under the Ninth Five Year Plan, at a total cost of Rs. 5 crores. Of course, it is not enough. We are asking for more funds. We are fighting with the Ministry of Finance and the Planning Commission. We will spend more money to make it more modern. It includes: suitably strengthening the trade mark registration, to provide adequate staff and infrastructure to expedite application processing and reduction of existing backlog of pending applications. It is hoped that there will be faster search, speedy registration, and renewal of trade marks, and improved quality of service in the trade mark registration. Therefore, I give an assurance to the hon. Member, Mr. Nariman, and also to this House that every effort will be made to make the system more speedy, just as speedy as it is in the West. Madam, trademark is an important thing and I have told you how it is almost a property.



[16 December, 1999]

RAJYA SABHA

Here, I would like to end my reply with a quotation from the literature published by the World Intellectual Property Organization. I quote, "Protection of industrial and business activities, is business property, not, of course, an end in itself. It is a means to encourage creative activity, entrepreneurship, investment, and harness the trade. All this is designed to contribute to more safety and comfort, less poverty and more beauty in the lives of men."

Madam, with these words, I make a request to hon. Members to pass the Bill without any amendments.

SHRI PREM CHAND GUPTA : Madam, I want to draw the attention of the Minister to a specific incident regarding the arrest of a person. I was expecting some comments from the Minister.

SHRI MURASOLI MARAN : I think that happened in France. From that, you can understand how seriously intellectual property right is viewed in those countries. That is why we are bringing a stringent law. But regarding the statement that discrimination was shown to our citizen in some other country, naturally, we will take up the matter through our Ambassador.

SHRI PREM CHAND GUPTA : Sir, not only discrimination; but we have to protect the interest of our people also.

SHRI MURASOLI MARAN : I think by way of this law we have done our best.

SHRI VAYALAR RAVI : There is a Controller-General of Patents and Designs and Trade Marks. The suggestion from this side is whether you will have a Controller-General separately for Trade Marks. I do not want you to comment now. You can consider it.

SHRI MURASOLI MARAN : There is a head, but there is a specialist in each field. The system is unitary, but there will be specialists in each field. Actually, the Hon. Member, Shri Chaturvedi, has also made a remark about this. It is modelled on our CAT system.

THE DEPUTY CHAIRMAN : I shall first put the amendment moved by Shri Jibon Roy for reference of the trade mark to a Select Committee of the Rajya Sabha to vote.

SHRI JIBON ROY : Madam, would you give me two minutes?

THE DEPUTY CHAIRMAN : Okay; two-three minutes are given.

SHRI JIBON ROY : Madam, I would be very specific. With due respect to Hon. Minister, I must say that none of the points raised by me are answered. First, I do not agree with the point that only services will be included in this new Bill. My point has not been made clear regarding the registration of a foreign product in our country, in the new situation, though it has been bodily lifted from the old Bill. At that time, our country was closed; now it is open. The position is changed. I do not agree with that position also that patent and trade mark has no link. A product which is patented in any foreign country, when it comes to this country, and application is made for trade mark, you will be compelled to register it and give it. There is an inter-relation between trade mark and patent. If a curry is patented in Japan, he will automatically get the trade mark in our country. The Government is not giving a answer on this. Therefore, it also has to be answered.

THE DEPUTY CHAIRMAN : You can have different trade marks in Hindi and English or in any other language. They would be doing it in Japanese also. But here, the question is different. Trade mark is one thing and intellectual property right is another thing. If it is an intellectual property right, the curry which they make in Japan, they will have to bring the same curry which they make in Japan, but not with an Indian trade mark.

SHRI JIBON ROY : Madam, they are patenting Indian curry. Registered trade mark and unregistered trade mark is not the same thing. If an unregistered trade mark is registered by someone, I cannot use my un-registered trade mark. There, I have expressed apprehension. Madam, the moment is done, many trade marks will be stolen overnight. The last question I have raised is a constitutional question. You are creating a new constitutional authority in the form of the Registrar. The statutory right you are giving. The Government has no power to control it. Government cannot remove it. In the Act, it is not there. It is a new constitutional authority just like the Election Commission, Government, Parliament, Judiciary, therefore, that has not been replied. Hence, I move the amendment. If the Minister agrees to the suggestions made unanimously by the Select Committee and accommodate them I may withdraw the amendments.

[16 December, 1999]

RAJYA SABHA

SHRI NARENDRA MOHAN : Madam, I think some clarifications should come from the Minister.

SHRI MURASOLI MARAN: Madam, the Bill has already seen a Joint Parliamentary Committee. It has been sent to a Select Committee. Almost all the suggestions have been incorporated in this Bill. It is almost like the 1995 Bill. We have added only services. We need not worry about services. What does a service mark mean? For example, "Band Box" is a service name. "TCI", the Travel Corporation of India, is a service name. "LIC", the Life Insurance Corporation of India, is a service name. "Dena Bank" is a service name. "Indian Bank" is a service name. So, it is nothing new. We want to incorporate all those things. We are including services also. That is a new aspect of this Bill.

THE DEPUTY CHAIRMAN: He is asking about the Authority.

SHRI MURASOLI MARAN: Madam, patents are different from trade marks. There are 7 categories of intellectual properties. One is copyright. That belongs to the Ministry of Human Resource Development.

THE DEPUTY CHAIRMAN: One question he asked is: Will the Trade Marks Registration Authority that you are creating, be answerable to anybody, to Parliament or to any other authority or not?

SHRI MURASOLI MARAN: To the Government, Madam. It is not a constitutional authority like the Chief Election Commissioner ...*(Interruptions)*

THE DEPUTY CHAIRMAN: Let him explain it.

SHRI MURASOLI MARAN: It is not a constitutional authority. It is another Government created body. There is an Appellate Board. After that there are High Courts. There is the Supreme Court. The hierarchy is there. So, the rule of law will always prevail...*(Interruptions)*

SHRI JIBON ROY: Madam, the Bill is a statutory Bill. The Registrar will work under the Bill. You have mentioned in the Insurance Regulatory Authority Bill that, if necessary, the Government can remove the Registrar. This has not been mentioned here for the purpose of operation of this Bill. You cannot take any action against the Registrar.

SHRI MURASOLI MARAN: Madam, in public interest, Government can intervene any time.

THE DEPUTY CHAIRMAN: Exactly. Everything comes under the Government, and the Government is responsible to Parliament.

SHRI NARENDRA MOHAN: Madam Deputy Chairperson, it was very much categorically written in the Insurance Regulatory Authority Bill that if the Government of India is not satisfied with the Authority, it can remove it. That provision was there. Here, a question is being asked whether the Authority that is being created, will be answerable to Parliament. Its report will be laid on the Table. But if, for any reason, the Government of India decides to curtail the term or tenure of the Authority, can the Government do it?

SHRI K. R. MALKANI (Delhi): Sure. The Government has the right to do it. *..(Interruptions)*

THE DEPUTY CHAIRMAN: Let him finish it.

SHRI MURASOLI MARAN: Madam, it is not a constitutional authority. Government is creating it. In public interest, any time, Government can intervene.

THE DEPUTY CHAIRMAN: Okay. I will put Mr. Jibon Roy's Motion for reference of the Bill to Select Committee to vote. The question is:

"That the Bill to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:--

1. Shri K. R. Malkani
2. Shri Vayalar Ravi
3. Shri Jibon Roy
4. Shrimati Kamla Sinha
5. Shri Prem Chand Gupta
6. Shri J. Chitharanjan

[16 December, 1999]

RAJYA SABHA

7. Shri R. Margabandu
8. Prof. Ram Gopal Yadav
9. Dr. Alladi P. Rajkumar
10. Shri Fali S. Nariman
11. Shri Sanatan Bisi

with instructions to report by the first day of the next Session.

*The motion was negatived*

THE DEPUTY CHAIRMAN: I shall now put Shri Murasoli Maran's Trade Marks Bill to vote. The question is:

"That the Bill to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks, be taken into consideration."

*The motion was adopted.*

*Clause 2 (Definitions and interpretation)*

THE DEPUTY CHAIRMAN: Now, let us take up clause 2. There are two amendments, No.2 and No.36, by Shri V. Kishore Chandra S. Deo and Shri Vayalar Ravi. They are not here. They are not here.

*Clause 2 was added to the Bill.*

*Clause 3 was added to the Bill.*

*Clauses 4 to 6 were added to the Bill.*

THE DEPUTY CHAIRMAN: Mr. Ravi, are you moving your amendment.

SHRI VAYALAR RAVI: No, Madam.

THE DEPUTY CHAIRMAN: I shall put clause 7 to vote.

*Clause 7 was added to the Bill.*

THE DEPUTY CHAIRMAN: Are you not moving any of your amendments?

SHRI VAYALAR RAVI: I am not moving any of my amendments, Madam.

THE DEPUTY CHAIRMAN: Okay, fine. So, I don't have to call you again.

*Clause 8 was added to the Bill.*

*Clauses 9 to 17 were added to the Bill.*

THE DEPUTY CHAIRMAN: If you are not moving your amendments, I can put all the amendments to vote together.

SHRI PRANAB MUKHERJEE (West Bengal): Other than Mr. Vayalar Ravi, if there are other Hon. Members, they can move.

THE DEPUTY CHAIRMAN: There are no other Members wanting to move amendments.

SHRI PRANAB MUKHERJEE: You can take up all the clauses together.

*Clauses 18 to 35 were added to the Bill.*

THE DEPUTY CHAIRMAN: There is an amendment for insertion of Clause 35A. Mr. Gadgil, do you want to move your amendment?

SHRI V.N. GADGIL: Madam, in view of the assurance given by the Hon. Minister, I am not moving my amendment.

*Clauses 36 to 114 were added to the Bill.*

*Clause 115 was added to the Bill.*

*Clauses 116 to 134 were added to the Bill.*

*Clause 135 was added to the Bill.*

*Clauses 136 to 142 were added to the Bill.*

*Clause 143 was added to the Bill.*

*Clauses 144 to 159 and the Schedule were added to the Bill.*

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

SHRI MURASOLI MARAN : Madam, I move :

[16 December, 1999]

RAJYA SABHA

*That the Bill be passed.*

*The question was put and the motion was adopted.*

THE DEPUTY CHAIRMAN : Now, we have the Half-an-Hour Discussion. I must request the Members who have given their names to participate in the Half-an-Hour Discussion to finish it within half-an-hour. If we don't finish within half-an-hour, we will prove ourselves wrong. So, let us try to finish it within half-an-hour. This is the fixed time. By 5.45 P.M. we will finish.

SHRI PRANAB MUKHERJEE : Madam, we should also take up the Geographical Indications of Goods Bill, 1999. Otherwise, we will not be able to finish it before the time.

THE DEPUTY CHAIRMAN : That is why I am requesting the Members to finish the Half-an-Hour Discussion within half-an-hour. Clarifications on the Minister's statement can come later, that is, after the Bill has been taken up. Let us finish the Half-an-Hour Discussion.

SHRI PRANAB MUKHERJEE : Madam, I would like to know from the Government, what is their view? Do they want to carry on with the legislative business or does they want the Members to have their own business? *...(Interruptions)...* There are two items in the 'List of Business'. After the Half-an-Hour Discussion is over, there are clarifications on the statement by the Minister. I would like to know from the Government whether the Government is interested in carrying on with the legislative business. The next legislative business slated is the Geographical Indications of Goods Bill.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND PARLIAMENTARY AFFAIRS (SHRI O. RAJAGOPAL): The legislative business should get preference.

THE DEPUTY CHAIRMAN : Okay...*...(Interruptions)...* For the Half-an-Hour Discussion, I am not taking any more names because we have to finish this within half-an-hour.

SHRI PRANAB MUKHERJEE : Madam, I would like to know whether the Government wanted to have this Bill passed or not.

THE DEPUTY CHAIRMAN: They wanted the Half-an-Hour Discussion, then, the Bill.

SHRI O. RAJAGOPAL : Madam, let the Bill be taken up.

THE DEPUTY CHAIRMAN : Okay. No problem. If we take up the Half-an-Hour-Discussion, then, we can finish it within half-an-hour.

SHRI PRANAB MUKHERJEE : After that, are we having the legislative business?

SHRI O. RAJAGOPAL : Now, we will take up the legislative business.

THE DEPUTY CHAIRMAN : We have the Geographical Indications of Goods Bill.

SHRI PRANAB MUKHERJEE : Madam, how can you do that? You have already decided that first we will take up the Half-an-Hour Discussion. Then, we will seek clarifications on the Minister's statement. That is why I wanted to know from the Government.

THE DEPUTY CHAIRMAN : No, Sir. But the Minister said -- perhaps, it was not heard properly -- he was wanting the legislative business to be taken up. I told him that I will finish the Half-an-Hour Discussion within half-an-hour, then, we will take up the legislative business. The clarifications on the Minister's statement can be taken up later. So, let me finish the Half-an-Hour Discussion.

SHRI PRANAB MUKHERJEE : Okay.

THE DEPUTY CHAIRMAN : Now, we will take up the Half-an-Hour Discussion. Jibon Royji, today is your day.

### HALF-AN-HOUR DISCUSSION

**The points arising out of answer to Starred Questions 1 and 5 given in the Rajya Sabha on 29th November, 1999, regarding import price of Steel items and floor price for import of Steel**

SHRI JIBON ROY (West Bengal): Madam Deputy Chairman, I rise not to criticise the Government but to seek their support for the indigenous industry. The thing is, our indigenous steel producers, both in the private sector and in the public sector are in serious trouble. It is partly because of market manipulations and partly because of Budgetary provisions. Now, my apprehension is that you do not have inter-Ministerial discussions when you formulate your policies in different Ministries. So far as the Budget is