

THE MINISTER OF EDUCATION (DR. K. L. SHRIMALI): (a) and (b). Awards will be made after the applications for scholarships are received, the last date for which (as subsequently extended) expired only on the 1st September, 1958. The scholarships are in the process of being renewed.

The award of 'Fresh' and 'Renewal' scholarships is a continuing process.

**PAY SCALES OF UNIVERSITY TEACHERS AS
RECOMMENDED BY THE UNIVERSITY GRANTS
COMMISSION**

196. SHRI M. VALIULLA: Will the Minister of EDUCATION be pleased to state the names of the Universities which have not so far given effect to the scales of pay of their teachers as recommended by the University Grants Commission?

THE MINISTER OF EDUCATION (DR. K. L. SHRIMALI) : The Universities of Baroda, Kerala, Mysore, Patna, Sri Venkateswara and Utkal.

**VIOLATION OF FOOD AND EXCISE LAWS IN
DELHI**

197. SHRI M. VALIULLA: Will the Minister of FINANCE be pleased to state:

(a) what is the number of persons so far arrested during the year 1958 for violation of food and excise laws in Delhi; and

(b) how many of them were convicted and against how many cases are still pending?

THE MINISTER OF REVENUE AND CIVIL EXPENDITURE (SHRI B. GOPALA REDDI): (a) and (b). Information regarding violation of food laws is being collected.

A statement giving the information relating to violation of excise laws is annexed. [See Appendix XXII, Annexure No. 55.]

**CIRCULATION OF RESERVE BANK'S
ANNUAL REPORT TO MEMBERS OF
PARLIAMENT**

198. SHRI M. VALIULLA: Will the Minister of FINANCE be pleased to refer to page 71 of the Minutes of the Estimates Committee for 1957-58, Vol. I, No. 3, and state:

(a) whether the Reserve Bank's Annual Report which contains all the State Budgets is circulated to Members of Parliament; and

(b) if the answer to part (a) above be in the negative, what steps are being taken by Government in this connection?

THE MINISTER OF REVENUE AND CIVIL EXPENDITURE (SHRI B. GOPALA REDDI): (a) and (b). It is presumed that the reference is to the Report on Currency and Finance published by the Reserve Bank. A few copies of this report are sent to Parliament Library every year and personal copies for the use of Members can also be obtained, free of cost, on request from the Manager, Reserve Bank of India, Delhi.

LOANS AND GRANTS GIVEN TO STATES

199. SHRI M. VALIULLA: Will the Minister of FINANCE be pleased to state :

(a) what are the loans outstanding against each State on 1st April, 1958; and

(b) what were the grants given by Government to each State in each of the last seven years up to 1st April, 1958.

THE MINISTER OF REVENUE AND CIVIL EXPENDITURE (SHRI B. GOPALA REDDI): (a) and (b). The information is being collected and will be placed on the Table of the House when ready.

12 iTOON

LEAVE OF ABSENCE TO SHRI S. P. DAVE

MR. CHAIRMAN: I have to inform Members that the following letter dated the 10th September, 1958, has been received from Shri Somnath P. Dave:—

"I have not been able to attend any of the meetings of the Rajya Sabha in the current session and I may not be able to do so during the remaining part of the session.

My presence is necessary here owing to the disturbed situation at Ahmedabad. I have, therefore, to request you to kindly secure for me the permission from the House for my absence up to the end of the current session of the Rajya Sabha."

Is it the pleasure of the House that permission be granted to Shri Somnath P. Dave for remaining absent from all meetings of the House during the current session?

(No hon. Member dissented.)

Permission is granted.

THE TRADE AND MERCHANDISE MARKS BILL, 1958

THE MINISTER OF COMMERCE (SHRI N. KANUNGO): Sir, I beg to move:

"That the Bill to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise, as passed by the Lok Sabha, be taken into consideration."

In doing so, I beg to submit that the Bill was introduced in the Lok Sabha on the 28th March, 1958. The motion for reference of the Bill to a Joint Select Committee of both the Houses was discussed on the 5th May

and on the 7th. A similar motion was discussed in this House on the 8th May. After that the Joint Select Committee held 13 meetings and the Bill with minor amendments as accepted by the Lok Sabha, is before the House.

I would not take the time of the House in recapitulating all the features of the Bill, which has been sufficiently done in the motion for reference of the Bill to the Joint Select Committee on the 8th May.

SHRI V. PRASAD RAO (Andhra Pradesh): They were not explained because it was being referred to a Joint Select Committee.

SHRI N. KANUNGO: It was mentioned also. A reference to the proceedings will show that it was explained in detail. Therefore, I do not want to take up the time of the House.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the , registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise, as passed by the Lok Sabha, be taken into consideration."

The time allotted is three hours and there is no extension.

SHRI V. PRASAD RAO: Mr. Chairman, I think the hon. Minister would have done well if he had explained to the House the changes—in fact, the important changes—made by the Joint Select Committee in the Bill. I think it is the duty of the Minister, when important changes are made, to come and explain what is the real significance and import of those changes.

Anyway, coming to the Bill proper, though some important changes are made in many respects, I think that it needs to be improved. If the social objective of this Bill is taken into consideration, the Government has not done well in not incorporating

[Shri V. Prasad Rao.]

the social objective that had been set forth by Parliament in practice and bringing it into reality in this particular Bill. Sir, it is very necessary for us to profit from the experience of highly industrialised and advanced countries. At the same time, we cannot copy the methods that were evolved by those countries. We cannot copy the principles that were evolved in an entirely different context and transplant them here. Trade mark is a type of industrial property. The ownership of the trade mark—the concept of its ownership—has developed entirely in a different context in England, in America, in Australia and other countries. When the capitalist economy was thought to be sacrosanct, when it was considered that nothing could be done against the ownership of a particular property, these principles were evolved. Here, when we have set before us the social objective of establishing a socialistic pattern of society, when we have decided to have besides a heavy industrial sector, also 'a cottage industries sector and a small industrial sector, it is perfectly obvious that we cannot transplant those principles and ideas without the necessary modifications. If we look at the Bill, it will be perfectly obvious that, though the Joint Select Committee has amended it to some extent, as far as this important aspect is concerned it has ignored the fundamental or the basic objective. Let me illustrate my point.

Here, as I have just now informed the House, our social objective is to establish a socialistic pattern of society. But we envisage also a heavy industrial sector, a cottage industries sector and also a small industrial sector. Accordingly, we visualise production to take place not only in the big mills owned either by the State or by the big capitalist industries, but also in cottage industries and small industries owned by small companies or small individuals. To achieve our social objective, it becomes imperative for us to defend these small scale people, to defend the products that are pro-

duced in the cottage and small industrial sectors. If we look into the past, if we look into their practice, we will see that the big monopolists and the foreign companies always used the power of the Government to browbeat the small industries and the indigenous manufacturers.

If only the example of the match industry is to be taken, the world-wide monopoly of the Swedish match industry has seen to it that no local indigenous match industry did try to come up till the 30s. Many attempts were made on behalf of the local industrialists to manufacture matches, but they could not withstand the competition. One of the weapons in the hands of those big monopoly companies is to use the trade mark to browbeat these manufacturers and harass them. This is not the only measure to curb these big monopolists, these foreign monopolists. We should see that this particular trade mark does not become a weapon in the hands of those big monopolists to browbeat the small industrialists. Sir, that devoted follower of Gandhiji and the present member of the All India Khadi and Village Industries Board, Shri Satish Das Gupta, has brought out in his brochure, which I think was circulated to all the Members of Parliament, as to how these big monopolists are endangering the very existence of small industries and that too especially of the hand-made and cottage industries. So, when it comes to that, no specific effort has been made by the Government to see that this particular branch of industry and the products produced by that industry are given due protection. When we brought it to the notice of the Ministry that in order to protect these products of the cottage industry and the small-scale industry some specific provision should be introduced in respect of zonal registration, our request was refused. It has been argued that since the provision has already been made for the limitation of this trade mark to a particular territory, no necessity exists for this zonal registration. But if we examine this thing, Sir, we can perfectly understand that the Regis-

trar has got <Jae power to limit the jurisdiction of a particular registration to a particular territory. By that the small manufacturer does not drive any benefit. So we suggested that some scheme for registering these small-scale products should be evolved and it should be called zonal registration. There are many manufacturers who produce for the local area and whose produce is consumed locally. There are many varieties of *bidis*; there are many varieties of foodstuffs which are locally manufactured and which are also locally consumed. Those people are mainly interested in seeing that their trade mark is registered and limited to a particular extent. For instance, Sir, many sorts of *appalams* are produced, snuff is produced and so many other things are produced. > So, producers are not interested in an all-India circulation or an all-India market, but they are mostly interested in their local consumption. Some provision must be made for such people to register their trade marks limiting their jurisdiction to their particular zones, and it should not be an all-India affair. It may be that the *pappad* manufacturer of Tanjor or of any particular district may be interested in some all-India circulation. But a particular brand of *bidi* manufacturer may not be interested in having an all-India trade mark. So if we sincerely believe that we should encourage the cottage sector or we should encourage the small-scale sector, then certainly we should accept such a scheme whereby such manufacturers' interests are properly protected, *i.e.*, by accepting zonal registration. Even at this stage I think the hon. Minister will consider this suggestion. I think the hon. Speaker had suggested in the other House that although so many amendments were necessary, still they could not be made there. Therefore, Sir, they should certainly be considered here. I think the hon. Minister will bear this thing in mind when he is going to consider our amendments.

Then, Sir, coming to the question of jurisdiction of High Courts, it has

been stated that the jurisdiction should be extended to the High Courts. At the same time it has not been accepted by the Select Committee that a Special Tribunal should be appointed for some specific purpose. But the Ministry somehow did not think it fit to extend this jurisdiction to every High Court. It has limited the jurisdiction to the High Courts of those States where the branches of the trade marks registry are located. I find no cogent reason for this particular provision. In this connection, Sir, I will read out what has been stated in Mr. Justice N. Rajagopala Ayyangar's report. On page 6 it has been stated as follows:

"I have read the report very carefully as also the memoranda and evidence and I have also had access to all the reported and unreported judgments of the High Courts ever since the Trade Marks Act, 1940 was passed out of the collection made by Shri Venkateswaran. But I am not able to discover in them any difference of opinion on the construction of the Trade Marks Act sufficient to found an argument that the difference should be resolved by having a Special Tribunal."

Sir, this thing has been accepted by the Select Committee. At the same time, while referring to the argument that if different High Courts are given jurisdiction, they might not be giving, the same interpretation, he effectively pointed out that there was no room for any such apprehension. He has also stated that—

"Past history, therefore, does not afford any justification for eliminating the High Courts from exercising their jurisdiction in the matters of appeals from the orders of the Registrar or any rectification proceedings."

That has specifically been stated by Shri Justice N. Rajagopala Ayyangar while going into the whole matter thoroughly. When we are extending jurisdiction to four or five High Courts why should we limit it to only those

[Shri V. Prasad Rao.]
 four or five High Courts? Why should it not be extended to all the 14 High Courts that are there in existence? As for the present scheme, Sir, if a particular person from Hyderabad is affected, though there is a High Court in Hyderabad, still he has to go to Bombay either for filing rectification proceedings or for any litigation that arises out of this. So if small manufacturers' case is to be taken into consideration, if the cottage industry is to be given some protection, we have got to take suitable steps for that. A small manufacturer cannot be expected to go to any other State because the headquarters of a particular trade marks registry happens to be in some different place, even though a High Court exists nearby. So I think no valid reason has been advanced for not extending this jurisdiction to every High Court and limiting it only to those High Courts where the trade marks registries are located.

Then, Sir, I come to another point which has also been commented upon by the hon. Speaker of the Lok Sabha. That is about the use of symbols of political parties and the names of political leaders. I need not say anything or dilate on the subject to show how obnoxious it will be if the names of our revered leaders are to be associated with the merchandise stuffs. It will be a pretty nauseating site if the name of Gandhiji is to be associated with snuff or Pandit Jawaharlal Nehru's name is to be associated with coffee powder, and because the Communists have come into power, Mr. E.M.S. Namboodiripad's name is to be associated with some other commodity. It is not because these particular manufacturers have any particular love for their particular ideology that they use these names, but because these names have already become popular and they want to exploit the sentiments of the people by using these names. So, Sir, there must be some provision specifically made in this Bill prohibiting the use of the names of political leaders or of political parties and also

the symbols of these recognised political parties. I do not know why this specific provision has not been made in this Bill. The hon. Minister has agreed in principle that these things should not be used as trade marks and should not be callously exploited by the unscrupulous manufacturers and traders. But still it has not been included here on the plea that it is not practicable. If the hon. Minister thinks that clause 14 provides for this particular thing, I do not think that is so, because clause 14 specifically states that if the name referred to leads to the identification of a particular person, then only permission need be obtained from him. That too, if a person dies before 20 years, then he can freely use it. It says:

"Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, as the case may be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent."

So clause 14 does not effectively check these things. Suppose Tilak's name is used. Nobody in this House likes Tilak's name to be associated with zarda but today in the market we find zarda in the name of Tilak, snuff in the name of Gandhiji, coffee powder in the name of Panditji and bidis in the name of E. M. S. So, these things should be prohibited. If they are to be prohibited, this specific provision that the names of political leaders should not be used should be incorporated in clause 11 under prohibition.

Regarding the symbols, it has been argued that since the symbols of political parties may be changing, so it is not possible statutorily to prohibit here the symbols of political parties. I don't know where is the difficulty. The Election Commission does recognise certain political parties that get a certain number of votes. So, all those symbols that are recognised by the Election Commission can specifically be prohibited to be used as trade marks. I know a particular film producer uses the sickle and hammer as his trade mark. He has nothing to do with the sickle and hammer or the Communist party but in order to exploit the sentiments of the poor people, he is using that. I know in the pre-independent days there were many unscrupulous manufacturers and traders who used the Congress symbol because the Congress came to be associated in the minds of the people with the freedom movement. So these unscrupulous traders must be curbed and they must be prohibited from using these trade marks.

Coming to the certification marks, here we state that any private party could register his certification trade mark and the only prohibition against him is that he himself should not use the certification mark. So far I think there are no applications for these certification trade marks. Certification trade mark means, it is a mark that is issued by a particular person or a company or an institution certifying that the goods marked by that particular mark contains a particular quantity or a particular quality. Take for instance the sanforised. 'Sanforised' is a sort of certificate. It states that a particular fabric is pre-shrunk; I know the Minister and some other friends are shaking their heads and I don't know why. If at all a certificate should be issued, it should be from the side of the Government or an agency authorised on behalf of the Government. There is the Indian Standards Institution that is giving a certificate that a particular quality is having a particular mark. So also there is 'Agmark'. So I can't understand when no private institution has developed to such an extent, when

these certification marks could be dispensed with, why Government alone should not take this? More and more the Government is taking upon itself to standardise our goods to a particular specification. Then certainly we cannot leave it to any private party to indulge in the certification process but it must be either a Government agency that should certify or some other agency that is authorised on behalf of the Government but certainly a private company should not be allowed to use this certification process. In India we have not developed such institutions as the good house-keeping institute or some other institute which have some meaning in U. S. A. or in other highly developed industrialised countries. There certain private institutions, of course with the support of the Government, did develop to such an extent as they can certify particular brand of things. In India no such institution has developed beyond the Government and Government-authorised institutions. So I think the provision should be that these certification marks should either be given by the Government or those agencies that are authorised by Government in this behalf.

Another point which I want to deal with is about the assignment of trade marks. In the previous enactment no trade mark, whether registered or unregistered, could be assigned to a user without goodwill but now here is a provision made that a registered trade mark could be assigned without the goodwill but only unregistered trade mark should be assigned with goodwill. I do not know why such a distinction should be made. If an unregistered trade mark could be assigned only with goodwill, why this distinction here that a registered trade mark could be assigned without goodwill. If it is not possible in the case of an unregistered trade mark to be assigned without goodwill, certainly it should be so in the case of registered trade mark also because a trade mark, whether it is registered or unregistered, is essentially the same. We also did not accept the argument of the Trade Mark Owners' Association that higher penalties should be imposed for the

[Shri V. Prasad Rao.] infringement of registered trade marks. Because we recognised the principle that a trade mark, whether it is registered or unregistered, is essentially the same. So, the penalties and other things should be the same. If we accept the principle, then I don't understand why this distinction between registered and unregistered trade mark should be made as far as assignment is concerned. Though we did not agree that any favour should be shown as far as punishment or any such thing is concerned between the registered and unregistered trade marks, we also did not say that unregistered trade mark owners could also get away with that. But here if I read clause 87 I feel as though the registered trade mark owner is under a handicap. It is stated here:

"Where the offence charged under section 78 or section 79 is in relation to a registered trade mark and the accused pleads that the registration of the trade mark is invalid, the following procedure shall be followed:"

When there is an infringement proceeding against a registered trade mark the defendant can say, for the time being that particular registration is not valid whereas the same argument is untenable in the case of an unregistered trade mark. It seems that we are putting a premium on registration. This is not correct and this clause must be recast so that no injustice is done because a particular trade mark is registered.

I shall deal at length when my amendments are taken up but here I only appeal to the Minister not to stand on prestige but to accept the reasonable amendments. It is not only our demands. The Speaker of the other House also has appealed to the hon. Minister that when it comes to this House these amendments should be carefully considered and this Bill

must be amended so that it could fulfil the social objectives which you have proclaimed. I also hope that these things will be seriously considered even at this late stage.

SHRI S. C. KARAYALAR (Madras): Mr. Chairman, I wish to make a few general observations on this Bill mainly with a view to getting some clarifications from the hon. Minister in charge of the Bill. This Bill is an important piece of legislation analogous to the Patents and Designs Act and the principle underlying this Bill is that every person is entitled to the fruits of his own labour. That is the principle embodied in it.

[MR. DEPUTY CHAIRMAN in the Chair. 1

Sir, this Bill makes some general provisions for the registration of trade and merchandise marks. It does not introduce any element of compulsion for registration. Any person who claims to be a proprietor of a trade mark need not necessarily register the trade mark. This Bill only makes enabling provisions for registration of trade marks. As a matter of fact, the main incentive for the proprietor of a trade mark to register it is that when an infringement of the trade mark takes place he is entitled to certain reliefs under the Bill. That is the main incentive. On the other hand, any infringement of an unregistered trade mark does not entitle the proprietor thereof, to any reliefs under this Bill. The point I want to make is that this piece of legislation does not provide for any compulsory registration. It leaves absolute freedom to persons, to proprietors of trade marks to register their trade marks or not. I am making this point in order to draw the attention of the hon. Minister to the provisions contained in Chapter IX which deals with special provisions for textile goods. To me it appears that the provisions contained in Chapter IX introduce an element of compulsion. As a matter of fact, it seems to me that the topic dealt with in Chapter IX is out of tune with the general scheme of this Bill. Let me

draw the attention of the House to clause 74 in that Chapter which deals with the provisions for textile goods, It says:

"Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured" etc. etc.

"shall not be removed for sale".

So you will find that the topic is the removal of the goods and not the registration or non-registration or infringement of trade mark or anything like that.

Again, Sir, *you* will find in a later place, in sub-clause (2) of this clause, the same topic is dealt with, namely \ cotton yarn, which it is said, shall \ not be removed unless certain provisions are complied with. Therefore, you will find that the topic dealt with in Chapter IX is not concerned with trade marks, but with the movement of goods. I am emphasising this point to show that these provisions are not in conformity with the general scheme of this piece of legislation. Therefore, I would say that this is outside the scope of this Bill. I am, of course, aware that provisions of this nature are contained in the existing Merchandise Act. But when the scheme is for the consolidation of the law on the subject, I suggest that this aspect of the matter should be seriously considered and however good and wholesome the provision may be, it need not be incorporated in this particular piece of legislation. It may be included in some other legislation. That is the point which I want to make with regard to this particular chapter. So I wish to have some clarification of this aspect of the matter from the hon. Minister in charge of this Bill.

SHRI V. PRASAD RAO: You want every product to be registered?

SHRI S. C. KARAYALAR: That is not the point. My point is that this Chapter IX is out of place here and I want to have the rationale for the inclusion of this chapter in this parti-

cular Bill. This Bill provides for the registration of trade and merchandise marks. It does it in two parts, part A and part B. Later on, you will find that in the course of the Bill, this distinction is done away with. In sub-clause 9(6) you find it stated:

"Subject to the other provisions of this section, a trade mark in respect of any goods—

(a) registered in Part A of the register may be registered in Part B of the register; and

(b) registered in Part B of the register may be registered in Part A of the register;"

When this distinction is thus done away with, why should you have this distinction kept up in this Bill? That is a matter for clarification from the hon. Minister.

Next I would like to refer to clause 12 sub-clause (3) wherein it is stated:

"In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other (whether any such trade mark is already registered or not) in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose."

But if identical trade marks are registered in the names of different persons, then it may lead to confusion. I do not understand what is the object of this kind of a registration of identical trade marks in the names of different persons. I should like to have a clarification. This provision seems to be really in conflict with the essential object of this Bill.

Next I would refer to clause 38 which deals with the assignability and transmissibility of unregistered trade marks. As a matter of fact, I cannot understand why this Bill which primarily deals with the registration

[Shri S. C. Karayalar.] of trade marks should recognise unregistered trade marks and go further and recognise their assignability or transmissibility.

SHRI V. PRASAD RAO: It deals with trade marks—both registered and unregistered trade marks.

SHRI S. C. KARAYALAR: It is true. As a matter of fact it is not supposed to recognise any unregistered trade mark. Why should this Bill which deals with the registration of trade marks recognise unregistered trade marks? That is the point on which I want to have some clarification.

With these remarks, I support the motion for consideration of the Bill.

SHRI ROHIT M. DAVE (Bombay): Like the hon. Member who spoke just now, my participation in this debate is also, more or less, with a view to getting some clarification on some points. But before I come to those points, I would like to emphasise the fact that as I understand it, the purpose of this Bill is to encourage small people who have got certain creative ability, some incentive power and some drive, to see that they are assured, if they so desire, of the fruits of their inventiveness.

SHRI V. PRASAD RAO: That comes under patents.

SHRI ROHIT M. DAVE: I am coming to that. It is also necessary with reference to dealing in certain goods, goods which have got a certain value and a certain prestige in the community, to see if, out of their own drive and initiative if they have popularised a particular product in the community, that it should be possible for them to take advantage of that drive, again if they so desire, and therefore registration is not made compulsory but is optional.

Now, Sir, my friend, the hon. Shri Prasad Rao, started very well by saying that this being the general case and this being the general purpose of this Bill, it is desirable that even zonal registration should be permitted so that it may be possible for very small dealers and very small shopkeepers to see that they are also getting the advantage of their drive in their small locality, and therefore he made out, to my mind a very good case for registration on the zonal level. Later on however he tried to argue that registration should not give any benefit to the person who wants to register a particular thing and for the purpose of penalty, etc. there should be no distinction between a registered trade mark and an unregistered trade mark.

SHRI V. PRASAD RAO: That is in a different context.

SHRI ROHIT M. DAVE: May be, but I am afraid I have not been able to appreciate that part of his argument because if even zonal registration is desirable it means that registration should give certain rights and certain protection to the people as against those who may not choose to register their own trade marks. It is therefore necessary that trade marks should be registered and people should be encouraged to register them so that there may be certain protection given to their drive, initiative and enterprise. It is because of this, Sir, that I also support his argument, that there should not be any fraud on the public, or the public should not be misled into using certain symbols which are popular in other contexts so that a particular product may be used merely because it has associated with it a particular symbol either that of a person or that of a party. It is necessary that the goods should stand on their own legs, and the consumer should be induced to use those goods merely because they are popular, have been made popular by enterprising people and people have begun to associate certain qualities with reference to those goods. This being the main purpose of this Bill it is very

desirable that there should not be any attempts to mislead the public by using symbols which might have great significance in other respects but might have no significance in this particular respect at all.

With these general remarks, Sir, I want some clarification. The first clarification that I would like to have is with reference to clause 7 which deals with Part A and Part B of the register. I have not been able to understand why this complication has been introduced like Part A and B of the register at all. In clause 9 certain requirements are given for the inclusion of particular trade marks in Part A and for inclusion of certain other trade marks in Part B, and there is some distinction made between distinguishable goods and distinctive goods. I understand that these two trade marks or these two goods therefore have got a certain distinctive character of their own, whether the goods are distinctive or whether they are distinguishable, and therefore Part A and Part B might be considered to be necessary. But looking to the fact, as far as I could see, that in the general Act there is no distinction with regard to certain rights and privileges of the trade marks that are registered in Part A or the trade marks that are registered in Part B, why should there be this type of academic distinction, which should be included in this particular Bill, which serves no purpose and which might lead to unnecessary procedural difficulties as to whether it should be entered in Part A or in Part B, and people might unnecessarily find it hard to get it registered in the quickest possible time? I do not see the relevance of the distinction between the goods that could go in Part A and the goods that could go in Part B as far as this Bill is concerned. Secondly, Sir, in clause 50 we are told: "Notwithstanding anything contained in any law for the time being in force or in any contract or agreement, every registration made before the commencement of this Act of a registered user shall cease to have effect after the expiration of

three years from such commencement." What exactly is the need for this clause and why after three years that particular registration will cease to operate is also a problem which I have not been able to understand. If after three years that particular registration of a user is to cease to operate and if a fresh registration will become necessary for that, what are the considerations that the Government has in mind in order to determine whether that user will be registered again or not, whether it will be the consideration of, say, foreign exchange availability, and if a particular user wants to use a particular foreign trade mark and if there is no foreign exchange available, then he will not be allowed to make that use; is it the idea that thereby a certain import restriction, as far as trade marks are concerned, is sought to be imposed with the help of this clause 50, or whether the idea is to see that certain conditions are fulfilled before the user is permitted and, if so, what are those conditions? That point also needs some clarification.

Lastly, Sir, I would like to draw the attention of the hon. Minister to clause 3 of the Bill which deals with the jurisdiction of the High Court. There are detailed provisions for the various trade marks registered under this Bill or under other Acts, but there seems to be no provision as far as change of the principal place of business is concerned, from one part to another. What exactly will be the jurisdiction of the High Court in case there is changeover of the principal place of business? It is true, Sir, that big users of trade marks will not be generally changing their principal place of business because they have established themselves all over the country and might have a particular principal place of business. But it is very likely that small users of trade marks or owners of trade marks might suddenly find that their particular article is used more in some other locality, or can be more profitably used in some other localities, and therefore he might transfer his principal place of business from, say,

[Shri Rohit M. Dave.]

part A to part B of the country. In that case it would be very difficult for that man to have the particular jurisdiction of the High Court at his original place of business if he has already gone over to some other area. And I would beg of the Minister to consider whether it is possible to give a sort of concurrent jurisdiction for a limited period in case the principal place of business is changed from one part to another part of the country. Thank you, Sir.

SHRI P. T. LEUVA (Bombay): Mr. Deputy Chairman, before I come to the provisions of the Bill as such, I would make some general observations regarding the trade mark law. Those persons who might have gone through the provisions of the Bill might have found themselves bewildered because the law relating to trade mark is a very technical subject and generally speaking technical subjects are dry and dull but those persons who are initiated in it will find the subject very interesting. Now, the first question that we have to consider is this.

SHRI N. M. LING AM (Madras): To which category do you belong?

SHRI P. T. LEUVA: Till some time back I belonged to the category of uninitiated.

Sir, the necessity for the trade mark law arose because of industrialisation and expansion of trade and commerce. This law is not only meant for the protection of the rights of the trade mark owners but it is also for the protection of the consuming public because when a particular article or goods is circulated in the market or offered for sale if any mark is attached to that goods or article, the consuming public proceed on the presumption that because it is the manufacture of a particular person it will come to certain standard of quality and thereby the circulation of that article also increases. In order that the consuming

public may not be defrauded into purchasing something which they never desired to purchase, it was found necessary that with the expansion of trade and industry some law must be enacted which will protect both the interests of the consuming public as well as of the proprietor. Now, why is the proprietor asking for protection? It is for the simple reason that in order to make his goods popular, not only he maintains certain standards of quality but he also incurs certain expenditure on advertisements etc. and therefore, he is also entitled to the protection of the law. It was on these grounds that the trade mark law was established in several countries. In our country also laws relating to trade mark have been in existence but they are scattered in several statutes. One statute was the Trade Marks Act; another was the Indian Merchandise Marks Act and there were some provisions relating to counterfeit of trade marks in the Indian Penal Code. The Government considered that the time was now ripe for

all the laws relating to trade mark to be brought under one statute. The law is of such importance that the Government in order to have a careful and mature consideration of the subject appointed a committee. That Committee was known as the Trade Marks Enquiry Committee. The Committee made a report and fortunately or unfortunately the members of the Committee were divided in their opinion. One of the members of the Committee gave his opinion on three major issues which was diametrically in opposite direction to what the other members had said. As a result of it, the Government again appointed Mr. Justice Rajagopala Iyengar to review the law relating to trade marks. After that the present Bill was formulated and it was referred to a Joint Committee of both Houses of Parliament. Sir, even my friend, Mr. V. Prasad Rao, has admitted not only on the floor of the House but also in his note of dissent, which really speaking is not a note of dissent, that the Bill has emerged from the Select Committee in an improved form. In the

Select Committee very careful consideration was given to each and every item; we went through it line by line, word by word, and scrutinised it carefully and with our limited ability we tried to improve the provisions of the Bill.

Now, I would refer to the three major issues which were before the Enquiry Committee. The first issue was regarding the appointment of a special tribunal for the purpose of administering this particular law relating to trade marks.

SHRI V. PRASAD RAO: That is not an issue at all.

SHRI P. T. LEUVA: If my hon. friend has some patience, I will come to the issues on which he differs. Now, Sir, the Trade Marks Enquiry Committee considered the question regarding this special tribunal. It was represented to them that the law being very technical and complicated in nature it was necessary that a special tribunal should be appointed for the purpose of administering this branch of the law. The majority view in the Committee was that a special tribunal was necessary but the dissenting member gave an opinion which was diametrically opposite to the view held by the majority. Subsequently, Mr. Justice Rajagopala Iyengar considered this question and he also came to the conclusion that it was not necessary to have a special tribunal. Now, in order to understand this argument it is necessary for us to know why people wanted a special tribunal. Of course, the points raised in the Committee have been completely answered by Mr. Justice Rajagopala Iyengar but I would state one or two points which persuaded Mr. Justice Rajagopala Iyengar to give an opinion against having a special tribunal. One argument was that this law being complicated, you require a body of judges who are conversant with the trade mark law and there must be a competent bar well versed in this branch of law. Sir, there are many laws in this country which are more complicated in nature than this trade mark law.

64 RSD—4.

Another argument was that there must be uniformity in the decisions, and if there is a special tribunal there would be a certain amount of uniformity in the decisions regarding interpretation of this statute. Sir, this betrays a colossal ignorance regarding the working of the human mind. A person who might be holding one view on a subject may on mature consideration change his own view. A High Court may change its decision if fuller facts are brought to its notice or if facts which had escaped consideration earlier are brought to its notice but normally speaking in interpreting statutes the judges come to a decision which is more or less accepted by the courts and there is not much dissent about it. There are judgments of different High Courts which agree on many points but there are judgments also of the same High Court which might be conflicting. Merely because there is a special tribunal it cannot be said with certainty that uniformity of decisions can be maintained. On this and on other grounds also, Mr. Justice Rajagopala Iyengar came to the conclusion that a special tribunal was not necessary.

Now, I will come to the issue about which my hon. friend, Mr. Prasad Rao . . .

MR. DEPUTY CHAIRMAN: You can continue after lunch. The House stands adjourned till 2-30.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock. MR. DEPUTY CHAIRMAN in the Chair.

SHRI P. T. LEUVA: Mr. Deputy Chairman, I will pick up the thread where I left before we adjourned for lunch. I was dealing with the question regarding the special tribunal. The constitution of special tribunal represents one viewpoint, while the other viewpoint is represented by the amendment presented by Mr. Prasad Rao. The effect of acceptance of his amendment will be that all the High

[Shri P. T. Leuva.]

Courts in the country will have jurisdiction to decide questions arising under the trade mark law. At one point the idea was that the administration and interpretation of this statute should be confined to one special tribunal; and the other viewpoint is that all the High Courts in the country should have jurisdiction to decide this question. In the Select Committee we have tried to meet both the points half-way. Without going to the other extreme of establishing special tribunal as well as giving jurisdiction to all the High Courts, we have conceded this point that let there be a limited number of High Courts which will decide questions arising under the Bill. Now, there are valid reasons for doing this. You will see that the volume of work arising under the trade mark law is not so much that you can have the luxury of appointing zonal branches everywhere in the country. In the initial stages it is necessary that a limited number of offices will have to be established. Now, either you can take the location of the branch registry as the criterion for deciding the question of jurisdiction of the court which can review the decisions of the Registrar or the tribunal arising under the Bill. If the amendment which has been moved by Mr. Prasad Rao is accepted, it means that wherever the principal place of business is situated that High Court will have jurisdiction to decide questions arising under the Bill. That, in effect, means that every High Court will have jurisdiction and that is the very thing that we did not want to do.

Now, another question which he raised was regarding the convenience of the parties. Now, Sir, appellate courts are necessarily bound to be few in number. There would be cases always arising where some party would be inconvenienced, because the court is situated at a great distance. Where the country is so vast, such contingencies are likely to arise. Merely because a few persons would be inconvenienced will not be a ground for giving jurisdiction to each and

every High Court. We have struck a via media and I think it is fair and reasonable that the proposal contained in the Bill, as reported by the Joint Committee, is a fair measure and at least we must give a trial to the measure as it has emerged from the Select Committee. As the work of the department expands, it is very likely that Government will have to establish zonal branches in each and every State. I, therefore, do not feel that there is any advantage to be gained by accepting the suggestion made by Mr. Prasad Rao.

Now, there is another question which was raised by Mr. Rohit Dave. He said that whenever a person changes his principal place of business, he must have also the right to change his branch of registry. In effect this means that a person after making an application or even after registration in the principal place of business, will have the right to change the forum. He will have the right to get his issue agitated in whichever court he chooses. Now, this goes against the fundamental principles of jurisprudence. No party should be allowed to choose his own forum at his own sweet will. Suppose a person has got his principal place of business in Bombay. He gets his trade mark registered. After some time he decides that he should locate his principal place of business in Calcutta. If that suggestion is accepted, then the Calcutta High Court will have jurisdiction subsequently to decide questions arising under the Bill. Now, this means that every party will have the right to choose and alter his own forum at his own sweet will. This will not be practicable. It would add to the inconvenience of everybody, not only the party itself. There might be several reasons for which a person might like to alter his own forum and I think we cannot give legislative sanction to such a proposal which will give and vest rights in a private person to change his own forum.

SHRI ROHIT M. DAVE: He is not given an indefinite right. He chooses: one out of two.

SHRI P. T. LEUVA: At the moment there are only two offices of the Trade Marks Registry, but it is envisaged that as time proceeds there would be a number of branch offices in the country. The country would be divided into various zones. Today the principle as laid down in the Bill is that a person should get his trade mark registered at the zonal office in which his principal place of business is situated. The subsequent result will follow that the High Court which has got territorial jurisdiction over the place where his principal place of business is situated will have jurisdiction to decide questions arising under the Bill. It is envisaged, no doubt, that in course of time there would be at least five or six branch offices spread all over the country. At the moment people are suffering from great inconvenience because there are only two branch offices and there is conflict as to which High Court has jurisdiction to decide questions arising under the present Act. Now, the balance of advantage lies in favour of accepting the scheme in the Bill as it has emerged from the Select Committee, because the fundamental point that we have decided is this that the location of the branch must be the criterion for deciding upon the forum and not the sweet will of the person who is a registered trade mark owner.

Now, Sir, I will come to the question regarding registered trade marks and unregistered trade marks, because there appears to be some misunderstanding regarding the scope of both these concepts. As you know, registered trade mark is a later growth. It was preceded by unregistered trade marks. A trade mark comes into vogue because a person who is putting his goods on the market is using a particular mark in order to distinguish his goods from the goods manufactured by others. As the reputation is established in the market, the consuming public purchases goods on the assumption that a particular person is the manufacturer of that article. Now, there are unscrupulous persons in the world who would like to take advantage of somebody else's reputation.

The passing off action came into existence, that is a person tries to sell his goods under the pretext of passing his own goods as belonging to or as manufactured by somebody else. Now, this passing off action is really speaking what we might call an action in fraud. But as time progressed, it was found necessary that it would be much better if we could devise some means whereby a person can get better protection against such unscrupulous persons, so that he might avoid the necessity of leading evidence every now and then that his goods have acquired a particular reputation, that his goods are associated with a particular trade mark and so on, and for that reason only the Trade Marks Act came into existence.

Naturally, Sir, the rights and remedies of a registered trade mark owner and the rights and remedies available to an unregistered trade mark owner are bound to be different, because a registered trade mark owner goes through the procedure of establishing before the proper authorities the distinctiveness of his own trade mark. He establishes that fact before the proper forum and he gets registration. Now this fact of registration itself absolves him from the necessity of leading evidence every now and then when there is a breach of his trade mark. But the unregistered trade mark does not depend for its validity upon registration, but the owner of that trade mark relies solely on usage and the reputation established as a result of such usage. Therefore, an unregistered trade mark is bound to have lesser rights than a registered trade mark. I therefore submit, Sir, that in the present scheme that we have adopted it would always be necessary to have two categories of trade marks: one would be registered trade mark and the other would be always unregistered trade mark.

Then there was some question regarding the Part A register and Part B register. Now, Sir, it is very difficult to understand those provisions

[Shri P. T. Leuva.] unless one devotes some time and 'attention to that particular concept. There are trade marks which are already registered under the existing Act. Those trade marks which are already registered under the present Act will come in Part A register. But there are certain other marks which also can be registered under Part A. Now, the ingredients for entitling a person to get his mark registered in Part A have been laid down under the Act. There are certain ingredients laid down for the purpose of getting a trade mark registered under Part B. Now, the question was asked: why should there be two registers at all? Why not have one uniform register? But there is a distinction between a trade mark registered under Part A and one registered under Part B, because the standard of evidence which is required for the purpose of getting registered under Part A . . .

SHRI H. P. SAKSENA (Uttar Pradesh): There is no difference between the two registers, A and B. It is only for the sake of convenience that the registration has been split up into two. I have read the Bill through and through but I know that there is no difference of significance, of inferiority or superiority between the two registers.

SHRI P. T. LEUVA: I am not surprised at what Mr. Saksena says. I do concede that he has read the Bill. I have also myself read the Bill, but there is a distinction between reading a Bill and studying it.

Sir, Part A and Part B of the register are not based on the question of convenience. The standard of evidence which is required for the purpose of registration under Part B is less than the standard which is required for registration under Part A. If he carefully goes through the provisions of the Bill, he will find the distinction made. As I did not want to tire the House by reading each and every

provision of the Bill, I had refrained from reading the particular provision, but in order to satisfy the curiosity of my hon. friend I would refer him to clause 9 of the Bill where a distinction has been made in sub-clause (3), page 15:

"For the purposes of this Act, the expression 'distinctive' in relation to the goods in respect of which a trade mark is proposed to be registered, means adapted to distinguish goods ____ "

Now the important point is 'adapted to distinction goods', that is the expression. There might be trade marks where at the time of registration a person gives a particular mark which is adapted for distinguishing his goods from the goods belonging to others. That word may not be in existence—we see in sub-clause (1) (c) of clause 9: "one or more invented words". Now, originally this word was not used for the purpose of distinguishing the goods of a particular manufacturer, but the word was invented and it was adapted for the purpose of distinguishing his goods—when such a word is used and if all other conditions are satisfied, that trade mark would be registered in Part A of the register. But when a person wants to get his trade mark registered in Part B, then there is a separate provision in sub-clause (4):

"A trade mark shall not be registered in Part B of the register unless the trade mark in relation to the goods in respect of which it is proposed to be registered is distinctive, or is not distinctive but is capable of distinguishing goods ____ "

"Capable of distinguishing goods"—that is the expression. A trade mark becomes capable of distinguishing goods when they are current in the market under the particular trade mark, and by usage it becomes capable of distinguishing the goods as belonging to a particular person. In that event the word itself or the mark itself need not be distinctive, but if it

is capable of distinguishing the goods as belonging to a particular person, then it is registered under Part B. Now, the standard of evidence which is necessary under Part B is certainly less than the standard of evidence which is required under Part A. In order to understand this, we cannot do it by merely reading the clause. We can only understand the import of this particular clause if an illustration is given. Now, Sir, I will take the case of Dalda for illustration. It is a trade mark. It is an invented word which is adapted for the purpose of distinguishing the Vanaspati ghee manufactured by a particular firm. That word is invented and adapted for distinguishing the goods as belonging to a particular person. Now, 'Dalda' itself is not distinctive. It is an invented word. It was not in existence and the man has never used it, but for the first time he goes to the Registrar and asks for registration of this on the basis that this word is invented by him and it is adapted for distinguishing his goods. Now, take another case. There is a gas mantle called 'Queen Brand'. Now, 'Queen Brand' itself is not adapted for distinguishing, it is not an invented word, but because the trade mark has been associated with particular manufactured goods, because of its usage, it has acquired that reputation and in the course of time it becomes capable of distinguishing the goods as belonging to a particular person. That is the reason why the standard of evidence as required in Part B is not the same as in Part A. Therefore, Parts A and B are not merely for the convenience of anybody. There are two distinct types of trade marks registered under Parts A and B.

A question was raised, if a person has got his trade mark registered in Part A, why should there again be registration in Part B as well? After all, this is only an enabling provision. A person is perfectly at liberty to get his trade mark registered in Part A or B. But when there is a case of infringement, then the question arises whether this trade mark is valid on

the Register, because the Register can be rectified at any time either by the Registrar or by the High Court. In a court of law, if he fails to prove that his trade mark is valid on the Register, he will have no remedy against the person who is infringing. On the other hand a person who wants to err on the safe side will get his trade mark registered in both the Parts so that if he fails under Part A, he will succeed under Part B. For that reason, a specific provision was made that even if a person has got his trade mark registered in Part A, he can have the liberty of getting it registered in Part B also. There is another reason for saying that this is not for the sake of convenience only because you will find in the Bill that a trade mark which has been registered under Part B, can subsequently be upgraded to Part A. That goes to show that it was not merely for the purpose of any convenience. I have discussed all this question of Part A and Part B.

Another question was raised regarding the transmission and assignment of trade marks. My hon. friend, Shri Prasad Rao, was very active in the Joint Select Committee and he raised that question. It surprised me most because this question was discussed at great length in the Joint Select Committee. The reasons which impelled us to make . . .

SHRI V. PRASAD RAO: On a point of order, Sir. The hon. Member has referred to the proceedings that have taken place there in the Joint Select Committee.

MR. DEPUTY CHAIRMAN: He said that it was discussed at length. That is all.

SHRI P. T. LEUVA: I only said that this was discussed in the Committee at great length.

Sir, a trade mark, normally speaking, should not be permitted to be transmitted to any other person because the fundamental basis of a trade mark is that a particular trade

LShri P. T. Leuva.]

mark denotes that a particular person is the manufacturer or the person who is putting the goods in the market. Normally speaking, therefore, transmission or assignment of a trade mark should not be permitted. But there may be cases where it will be necessary. In order to protect the consuming public the legislature has to take great care and that great care has been taken by us. But so far as the registered trade mark is concerned, that is put on the Register after due enquiry, that is, that becomes current in the market and is associated with that particular person who has put it there. But a registered trade mark is not necessarily on the Register merely because of usage, but it is because of registration also. But any unregistered trade mark is getting the protection of the law on the ground that it is in usage, it is in the market, it has established a reputation as being associated with a particular person. The moment an unregistered trade mark is transferred from one party to another, the very basis that it was associated with a particular person and for that reason protection was given to it, disappears. For that reason only it was made incumbent that if the owner of an unregistered trade mark wanted to transfer or assign his trade mark to anybody else, he could do so only if he transferred the goodwill of his business also. Everybody—not necessarily lawyers—who is dealing with the day-to-day affairs of business knows what goodwill means. Goodwill is acquired in business because of fair dealing over a course of period. If the unregistered trade mark gets a reputation merely because it is associated with a particular person, it should not be allowed to be transferred without the goodwill also being transferred, because otherwise, a person who transfers his trade mark which is unregistered might continue to produce goods of the same quality and nature and continue his business. When the goodwill is transferred, it is always a condition precedent that the person who

has transferred his goodwill cannot deal in the same type of goods. It is for the protection of the consuming public that it has been made incumbent that when you want to transfer your unregistered trade mark, you must also transfer your goodwill. So far as the registered trade mark is concerned, the protection is granted because it is on the Register. Therefore, it was necessary to make this distinction between unregistered trade mark and registered trade mark.

Another question which was raised was regarding the certification of trade marks. It is no doubt true that the certification of trade marks, so far as our country is concerned, has not come into much vogue because there are certain Acts under which the Government itself is issuing such certification. It is pertinent to know what the exact import of certification of trade mark is. Certification of a trade mark shows that the goods which are being sold under a particular certified trade mark will conform to a certain quality, will maintain that quality and that the person who gives that certification of trade mark takes upon himself the responsibility of seeing that the goods will continue to have the same quality. My hon. friend, Shri Prasad Rao, made a mistake when he said that 'Sanforized' was a certification of jade mark.

SHRI V. PRASAD RAO: There is no certification of trade mark as far as India is concerned. I just referred to 'Sanforized.' It may be.

SHRI P. T. LEUVA: Fortunately or unfortunately, I might have misunderstood him. But I gathered from his argument that 'Sanforized' was a certification of trade mark. There are certifications of trade mark under different Acts passed by the Legislature. My hon. friend may not know it, but there is the 'Agmark', certified trade mark under a statute. That 'Agmark' shows that goods bearing

that particular trade mark will conform to certain standards required under that particular statute. That is a certification of trade mark.

Another question which is troubling me is regarding the registered user. It is no doubt true that in an expanding economy, it is very likely that people who may not have their own trade mark may like to take advantage of trade marks belonging to others so that they can get the benefit of the reputation established by such trade marks. When this registered trade mark is permitted to be used by somebody else, it is necessary that due care and caution should be taken and for that purpose, various provisions have been made under the Bill—how an application has to be made and what the registered trade mark owner should observe. The point which I am going to raise is about clause 50 wherein it has been provided that such of the trade marks as are transferred to others for the purpose of using them will come to an end after three years from the commencement of this statute. In the original Bill, there was a provision that a registered trade mark owner could permit his trade mark to be used by somebody else provided he fulfilled certain conditions and the Central Government was also given the authority to decide whether such permission should be granted. Under the Bill as it was before the Joint Select Committee, there was a provision that a particular trade mark would be allowed to be used by others, but that in no case, such registered users could exceed more than three years. That was the original provision in the Bill. In the Select Committee, Sir, the new provision 3 P.M. was made, and to confess, Sir, I was taken by surprise in the Committee. This provision was put before us for which we had not bargained at all, because as I view it, it is taking away the vested rights of the persons who have already granted

their trade marks to others for use. And there might be a number of such cases where there might be an agreement between different parties creating certain rights and duties, but by this statute we are taking away those vested rights. It may be that there might be some misuse of such a provision, but before taking away those vested rights, we must think very carefully and see to it that they are not taken away like that. I am not opposed to the principle of that particular clause. What I say is this that the multiplicity of registered users should be controlled. All the same, Sir, we should not take away vested rights in such a fashion, because there are a number of trade marks which are licensed by foreigners and which might even be licensed by persons who might be the residents of this country. The rights and duties of those persons must be under various agreements and the entire period of such agreements may not have run out. And there might be certain financial implications so far as the private parties are concerned. Of course, Sir, those persons who want to get this right again can apply under the provisions of this measure. But there is no guarantee that those persons who have already acquired such rights will continue to enjoy that protection. I would therefore submit that the hon. Minister in charge of this Bill must make up his mind and assure the House that such rights of those persons who are affected by it would not be taken away in an unreasonable manner, because after all, Sir, such vested rights should not be taken away without due and mature consideration.

Then, Sir, there are several improvements that have been effected in this Bill, and I will now take up that one major question to which attention has not so far been drawn in this House. As you know, Sir, the trade mark law is not only for the protection of a private party but it is also for the protection of the consuming

[Shri P. T. Leuva.] public. Therefore, Sir, representations were made from time to time that offences under this law should be made cognizable. That, in effect, means that when there is any kind of infringement, the machinery of the State should be established for the purpose of prosecution. Of course, Sir, a trade mark is essentially a private property right. But as the interests of the consuming public and the society are involved, it is the duty of the State to intervene at some stage. Therefore, Sir, the enquiry committee as well as Mr. Justice Rajagopala Ayyangar considered this question very carefully. The enquiry committee reported that the majority was in favour of making all the offences under the law cognizable, but Mr. Justice Rajagopala Ayyangar came to the conclusion that there are certain trade marks which are necessary for the protection of the public. And he categorised those trade marks which required the protection of the State machinery, and for that purpose he suggested that whenever there was any infringement of a trade mark which related to drugs or foodstuffs, then those offences should be made cognizable. And that is what we have done under this statute. Of course, we have done it in an indirect manner by stating that offences relating to such and such things shall be punishable with three years' imprisonment. That, in effect, means that the offences are cognizable.

Now, Sir, this Bill has emerged from the Joint Committee in a better and much improved form. But the success of any legislation does not depend only on perfect language of the statute. Everything depends upon the persons who are going to administer it. I personally feel, Sir, that the success of this legislation would largely depend upon the personnel for administering this statute. It is no doubt true, Sir, that this branch of law is still in an undeveloped form in our country, but as time passes on, we will be able to get the necessary

people of high calibre and high integrity. Sir, if this statute is administered in the proper spirit, then I am quite sure that all those persons who need protection against unscrupulous persons in our society will be much benefited.

Sir, before closing my speech. I would like to state one thing that during our discussion in the Joint Select Committee the Minister in charge as well as the Minister of Commerce and Industry adopted a very reasonable and accommodating attitude. But for their co-operation, Sir, I do not think that some of the major amendments which have been suggested by the Committee would have come about. Therefore, Sir, I would like to appeal to the hon. Minister to see that the same spirit in which he had participated in the Joint Select Committee pervades today also and let everything that is reasonable be accepted so that the Bill might become much more improved.

"Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place

श्री देवकीनन्दन नारायण (मुम्बई) :
आदरणीय उपसभापति जी, मैं न तो कोई वकील हूँ और न मैं न्यूक्लेचरर। जैसा कि मेरे भाई, माननीय सदस्य, श्री लेउवा ने कहा था कि यह एक टेक्निकल बिल है और इसमें बहुत सी टेक्निकल बातें हैं, मैं मानता हूँ और इसीलिये मुझे संकोच है कि मैं क्यों बोल रहा हूँ, परन्तु मैं सदन का बहुत समय लेना नहीं चाहता। मुझे एक ही बात कहनी है और उसे कह कर मैं बैठ जाऊंगा। मैं क्लॉज १४ की तरफ सदन का ध्यान खींचना चाहता हूँ। इसमें यह लिखा हुआ है :

within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in

writing of such living person or, as the case may be, of the legal representative of the deceased person . . ." and so on.

यानी, जो आदमी जिन्दा है उसका नाम रजिस्टर्ड ट्रेड मार्क में आपको लिखवाना हो तो उसकी सम्मति आपको दाखिल करनी होगी और जो बीस वर्ष के अंदर स्वर्गस्थ हो गये हैं, दुनिया छोड़ गये हैं, उनके जो लीगल रिप्रेजेंटेटिव्स होंगे, वारिस होंगे उनकी सम्मति से उनका नाम दाखिल कर लिया जायगा। जो जिन्दा है और जिनकी सम्मति आवश्यक है उनके बारे में मैं कुछ कहना नहीं चाहता। परन्तु जो इस दुनिया से चल बसे हैं, दस वर्ष पहले कहिये, बीस वर्ष पहले कहिये या १०० वर्ष पहले कहिये, उनके नाम रजिस्टर्ड ट्रेड मार्क में दाखिल करवाने के लिये उनके वारिसों की सम्मति लेना, मैं नहीं समझता कि यह किस हद तक ठीक है; क्योंकि यह कोई नहीं जानता कि बाप के बाद बेटा न जाने कैसा निकले। हम ने इतिहास में देखा है कि बाप द्वारा प्राप्त किये हुए राज्य को बेटे ने गंवा दिया, बाप की पैदा की हुई सम्पत्ति बेटे ने खो दी। बाप बहुत बड़े होते हैं और बेटे कपूत निकलते हैं और यह भी हो सकता है कि बाप का नाम, बाप का चित्र भी बेच कर बेटा पैसा कमाना चाहे। इस प्रकार इसमें जाइश है कि बहुत सी शलत बातें हो जायें। इसलिये मैं यह नहीं चाहूंगा कि यह जो वारिस की बात है, जिसके लिये "लीगल रिप्रेजेंटेटिव" टर्म है, सिर्फ उनकी ही ट्रेड मार्क के लिये सम्मति ली जाये; क्योंकि बहुत से महापुरुष हुए हैं जो केवल अपने घर के लिये ही नहीं बल्कि सारे समाज और सारे देश के गौरव बने हैं। उदाहरण के लिये आप महात्मा गांधी को ले लीजिये। हो सकता है कुल में, कुटुम्ब में कोई कपूत पैदा हो जाता है और आप जानते हैं कि महात्मा जी के सबसे बड़े सुपुत्र अब्दुल्ला साहब, अब तो वे गुजर गये, उनके जैसे कपूत हो सकते हैं कि जाने बे क्या कर जायें। इसलिये ऐसे महापुरुष जिनका सम्बन्ध सारे देश से, करोड़ों लोगों से है, करोड़ों लोगों की भावनाओं से है, उनका नाम

बेचने के लिये यदि उनके घर के वारिस तैयार भी हो जायें तो क्या यह बहुत अनुचित न होगा? मेरे ख्याल से यह न्यायसंगत नहीं है और किसी दृष्टिकोण से भी उचित नहीं है। इसलिये मैं यह सुझाऊंगा कि महापुरुषों का नाम चाहे वे बीस वर्ष के अंदर गुजरे हों या बीस वर्ष के उस तरफ के हों, उनके बारे में उनके वारिसों की सम्मति से ही काम न लिया जाय बल्कि उनके बारे में सारे समाज से—सारे देश से पूछा जाय। यदि देश के या समाज के कतिपय भाई बहिन हरकत कर दें तो उस पर जरूर विचार होना चाहिये। दूसरी बात, जो बीस वर्ष से पहले चले गये हैं, उनके बारे में यह आवश्यक है कि जिन ऐतिहासिक पुरुषों का या महान् पुरुषों का नाम ट्रेड मार्क में ऐसी जगह लगा दिया जाता है जिस बात से वे एक तरह से बदनाम हो सकते हैं और दूसरे उससे लोगों की भावनाओं को धक्का पहुंचता है, तो ऐसे महापुरुषों के नाम को कोई किसी कारण से ट्रेड मार्क में दाखिल करना चाहता हो तो हमारी भावनाओं का, देश की भावनाओं का, समाज की भावनाओं का विचार करना आवश्यक है। इसलिये मेरी एक सूचना है, श्रीमन्, कि एक फेहरिस्त तैयार की जाय हमारे ऐसे महापुरुषों की जो हमारे आदरणीय ही नहीं, पूजनीय भी हैं, जो हमारे लिये अनुकरणीय हैं, जिनसे सैकड़ों वर्षों से आज भी हमें प्रेरणा मिल रही है, जो सारे देश के माने जाते हैं। ऐसे महापुरुषों के नाम ट्रेड मार्क में दाखिल न हों, ऐसी हिदायत होनी चाहिये, ऐसा नियम हो। छत्रपति शिवाजी महाराज थे जिन्होंने स्वराज्य प्रस्थापित किया और सारे हिन्दुस्तान में अपना नाम रोशन किया। लेकिन उन्हीं शिवाजी के नाम से आज हमारे यहां बीड़ियां चलती हैं, उनके चित्र का ट्रेड मार्क बीड़ी पर लगा हुआ है। यह बड़े दुःख की बात है। इसी तरह से महात्मा गांधी के नाम का, लोकमान्य तिलक के नाम का, सुभाष चन्द्र बोस के नाम का या चित्र का उपयोग किया जाता है, जिससे हमें दुःख होता है, हमारी भावनाओं को दुःख पहुंचता है . . .

श्री मणिलाल चतुलनई साहू (मुम्बई) : नेहरू जी का भी नाम लेते हैं ।

श्री देवकीनन्दन नारायण : नेहरू जी का नाम मैं बू नहीं ले रहा हूँ कि हममें मौजूद हैं । वे अपना नाम देख सकते हैं और खुद को बचा सकते हैं । परन्तु जो हमारे दिलों में जिन्दा है, जो हमारी भावनाओं में जिन्दा है, जिनसे हम प्रेरणा पाते हैं, जिनसे हम स्कूनि लेते हैं, जिनकी हम पूजा करते हैं और जिनका मित्रादर होने पर हमारी भावनाओं की धक्का पहुंचता है और हम कभी कभी लड़ाई भी कर बैठते हैं, तो ऐसे महापुरुषों के बाद उनके कोई रिश्तेदार या वारिस सम्पत्ति दे दें या उनके नाम बिना किसी कारण के ट्रेड मार्क बना दिये जायें तो यह चीज मेरे खयाल से बहुत गलत होगी । यह देश के लिये भी कोई स्वाभिमान की बात नहीं है । इसलिये मेरी प्रार्थना यह है कि सरकार को यह अधिकार हो कि सरकार के पास एक फेहरिस्त तैयार हो ऐसे महापुरुषों की, और उनके नाम का कोई ट्रेड मार्क, उनके चित्र का कोई ट्रेड मार्क मान्य न किया जाय, तो इससे बहुत सी दुविधा मिट जायगी । आज जो हम देखते हैं, वह एक प्रकार की मानसिक विकृति है । और अगर मेरा यह सुझाव मान लिया जाय तो एक तरह से महापुरुषों की जो बदनामी या अनादर होता है वह बच जायगा । मुझे याद है, यदि मैं भूल नहीं रहा हूँ तो, कि जिस वक्त उस सदन में इस विधेयक पर विचार हो रहा था और यह विधेयक पास होने को था तो आखिर में स्पीकर श्री अनंत शयनम् आयोगर साहब ने मंत्री महोदय से प्रार्थना की थी कि आप अब उस हाउस में जा रहे हैं इस विधेयक को लेकर, तो मेरी प्रार्थना है आपसे कि आप इतना अमेंडमेंट तब भी कर दें कि राष्ट्रपिता महात्मा गांधी का नाम या चित्र कभी भी ट्रेड मार्क में न दिया जा सके । यह प्रार्थना उन्होंने आपसे की थी । मुझे आशा थी कि उस तरह का अमेंडमेंट शायद आप पेश करें और मंजूर करवा लें, परन्तु अभी तक ऐसा कोई अमेंडमेंट नहीं दिखायी दे रहा है । शायद ऐसी इच्छा उनके दिल में हो,

मुझे पता नहीं । तो मेरी दो ही खास सूचनायें हैं । एक तो यह कि हमारे महापुरुष जो बीस वर्ष के अन्दर स्वर्गस्थ हुए हों या अधिक वर्ष पहले हुए हों

MR. DEPUTY CHAIRMAN: No repetition.

श्री देवकीनन्दन नारायण : ऐसे महापुरुषों की एक फेहरिस्त तैयार की जाय और उसमें से किसी का चित्र ट्रेड मार्क के साथ न लगाया जाय । इतना आप अवश्य करें और हमारे स्पीकर साहब ने आपसे जो आखिरी वक्त प्रार्थना की थी कि महात्मा गांधी, राष्ट्रपिता का नाम जो कि देश में बहुत पवित्र, पूजनीय, आदरणीय माना जा रहा है, जिन राष्ट्रपिता के पुण्य प्रताप से हम इस सदन को चला रहे हैं, तो उन राष्ट्रपिता का नाम आप इसमें पहले मंजूर कर लें कि उनके नाम को कभी भी ट्रेड मार्क में नहीं लाया जायगा और न उनका चित्र किसी ट्रेड मार्क में रखा जायगा । यही मेरी एक नम्र सूचना है । और अधिक इस विधेयक के बारे में मैंने कहना नहीं है ।

SHRI N. KANUNGO: Sir, at the outset I must apologise for not acknowledging the great help which I received in the formulation of this Bill in its present form, in the Select Committee. The Members of the Select Committee, as has been mentioned by my friend Shri Leuva, sat for hours and hours together and applied their mind in the most constructive spirit and but for their consistent attention, the Bill would not have been in the shape in which it is today.

Sir, the three basic principles of the Bill have not undergone any change either in the Select Committee or in the other House. One basic principle is that the jurisdiction of the High Courts should be maintained and the jurisdiction of the High Court should flow from the provision of the territorial limitations of the branch offices where a particular proprietor is registered. The other main provision was the distinction of the two classes of registered trade marks, class A and

class B. My hon. friend Shri Leuva has very elaborately explained the difference between the two classes of registered trade marks. One of the necessities of having a class of registered trade marks for which a lesser rigid degree of evidence would be required is that a trade mark cannot be registered in another country unless it has been registered in our country. Our criterion for registration in class A is deliberately made rigid, because the purpose of the legislation is not only the protection of the properties of the owners of trade marks; but one of the main purposes of this legislation is also to give protection to the consumers and to the public at large. This was also the advice given by Justice Rajagopal Iyengar to whom I beg to pay a tribute for the amount of work, attention and labour which he has put in preparing the report which is the basis of the present legislation. Therefore, among other factors, the registration of trade marks in class B was conceived of for dealing with the registration of trade marks in other countries.

Sir, Mr. Prasad Rao mentioned about the social objectives laid down by Parliament and also mentioned that a limited territorial application of registration is necessary for such purposes. Sir, I fail to appreciate that argument. The social objective has to be achieved by many other means and Mr. Prasad Rao himself has said that the trade-marks form only a very small part of it, to gain that objective. The question that arises is this. Does anybody—however small he might be, gain any benefit by a restricted territorial registration of his trade mark? I submit that he does not, notwithstanding the fact that in the law as it stands to-day—and that Mr. Prasad Rao also conceded—limitation means also limitation in territory. If today, anybody chooses to do so, he can have his registration limited to a limited territory.

SHRI V. PRASAD RAO: The other means must follow that

SHRI N. KANUNGO: Anybody who today requires a limited registration by limiting its territory, can do so. That is provided for. But I submit that there is no advantage in getting a limited territorial right, because the same amount and the same degree of evidence has got to be submitted for registration to qualify for the A class register as would be required either for a couple of districts or a couple of provinces or for the whole country. The procedure would be the same. The necessity of evidence will be the same. Therefore, I do not see any advantage in having a separate provision for that, because the provision is already there in the Bill. Any man if he wants it, can ask for it and the Registrar can give it.

Sir, Mr. Prasad Rao has mentioned about certain industries, particularly the match industry and the change in the concept of this particular type of industrial property, namely, trade marks. I beg to submit that industrial competition according to the different conceptions of society at different periods can be fair and unfair, and there has been and there can be unfair competitions also, in a given set of circumstances. But trade mark, a registered or unregistered trade mark, cannot be a factor in that type of competition. Certainly in the present social conditions and the objectives of Parliament, unfair competitions have got to be curbed. But I would humbly submit that this is not the particular legislation in which that should be attempted.

About assignment with or without goodwill, Mr. Leuva has explained the position elaborately and I need not repeat those arguments.

Mr. Prasad Rao also mentioned about the jurisdiction of the High Courts. I am sorry that the portion which he quoted from Justice Rajagopal Iyengar's report referred only to the argument of a Special Tribunal versus the jurisdiction of the High Court. Later on, if the hon. Member would refer to the report, he would find that in paragraphs 47 and 51

[Shri N. Kanungo.] there are very cogent arguments of Justice Rajagopala Iyengar and considering the large size of the country and the present condition of society, the scheme of the Bill which is recommended by him is the best suited for the purpose. There are certain amendments which no doubt, Sir, the House will discuss, where it is proposed to give the proprietor of a trade mark the right to choose his own forum by permitting him to change his place of registration. That goes fundamentally against the conception of the Bill. The Bill, Sir, as has been explained by Mr. Leuva at an earlier stage, does put certain limitations in the sense that once a trade mark is registered in a particular branch office of the Trade Marks Registry, that particular branch office is tied down to the jurisdiction of that High Court within whose jurisdiction the branch remains. Now I suppose we will have certainly four branches of the Trade Marks Registry and it is conceivable that there is going to be an increase in industrialisation and an increase in other economic activities, in which case it may be possible to have a dozen branch offices, as the demand grows; it may be more even. Therefore it is also conceivable that with the growth in demand there may be a number of branch offices under one High Court, may be at least more than one. Therefore, Sir, I do not think that any improvement can be made in the present structure of the Bill, the Bill as it stands.

The other important point which was made out by Mr. Prasad Rao was about the symbols of political parties. Sir, in the Bill as it stands, clauses 11, 14 and 23 read together give ample powers to the Registrar as well as to the Government and also protection to others where a particular symbol is *not* desirable to be used for purposes of registration as trade marks. At the same time I would submit that political parties are transient, that symbols are transient.

SHRI V. PRASAD RAO: The world itself is transient.

SHRI N. KANUNGO: Sir, we have passed through two General Elections after independence and we have come across many symbols and the elimination of many symbols also, but the point I want to make out is this that the clauses which I have referred to give ample protection for that purpose.

Regarding the point which was made out in this connection by Shri Deoki-nandan Narayan I would submit that the Speaker of the other House did make a reference and I am sorry I did not have an opportunity of mentioning it before that House. It was that these very sections provide ample protection, for preventing the registration of trade marks bearing certain symbols and certain names and all that. In this particular legislation, Sir, you are legislating for registered trade marks. There are unregistered trade marks also which carry certain rights, common law gives those rights, and there is nothing to prevent an unregistered trade mark having very objectionable pictures or symbols or words which you or I or many of us may object to; you cannot prevent that. The objective of preventing such things can be had by having separate legislation for that, and that legislation we have in the Emblems and Names (Prevention of Improper uses), Act, 1950.

SHRI V. PRASAD RAO: That is only for national emblems.

SHRI N. KANUNGO: It provides: that you can add to the Schedule; at any time the Government can add to the Schedule. But here I would draw the attention of the Members of the House to the debate in 1950 on this Bill. In the Schedule the name of 'Mahatma Gandhi' was mentioned, that it should be entered as one of the prohibited items; there was vehement opposition in the House that Mahatma Gandhi's name should not be there, and therefore the Member of the Government who was piloting the Bill dropped that provision which was in the Bill. Obviously I find that

some Members of Parliament today hold the opposite view.

SHRI V. PRASAD RAO: After all, opinions also differ.

SHRI N. KANUNGO: Yes, that is what I am referring to. All the same it remains that the proper place for gaining that objective is in an amendment of the Act, or even a notification by Government under that particular Act which is on the statute book. But I do not know if there are such Members here, I mean, there are Members in the other House who vehemently oppose the inclusion of Mahatma Gandhi's name there. In any case, Sir, you cannot legislate for all purposes under this Bill, and, as I have said, unregistered trade marks are not covered here.

Then Mr. Karayalar wanted certain clarifications in the sense that he did not understand why all trade marks should not be registered. Well, you can certainly bring a horse to a trough of water, but you cannot make it drink. The provision is there and if somebody does not want to take advantage of it you cannot help, and if it is the desire of Parliament at any time to see that there should not be any trade mark which will have any rights, that on the contrary will "be penalised, then special legislation will have to be enacted so that the rights which have accrued to them or which flow from common law could be abrogated. But this is not the place to do that.

Then he mentioned about the provisions of Chapter IX referring to the textile marks. Sir, as has been stated in the Objects and Reasons of this Bill it is a consolidating Act, consolidating the Indian Merchandise Marks Act and the Trade Marks Act and certain provisions of the Sea Customs Act, and all the relevant legislations relating to trade marks have been consolidated in this Bill. Now those provisions of Chapter IX are mostly taken from the Merchandise Marks Act. Therefore it is necessary in the case of

textile goods to have provision for marking of the lengths, weights and other things which are a necessary feature in the textile trade. It is nothing new; it is only being transposed from the Act, which is being repealed, into this place.

I suppose Mr. Dave objected to the provision of clause 50 where the limitation of three years has been put of the rights of a registered user. Mr. Leuva has also mentioned about it. We thought over it; we discussed it adequately and ably. The question was whether a large number of registered users should be allowed. Sir, you will notice that in the Bill certain powers have been taken away from the Registrar of Trade Marks and have been vested in the Government. And in these matters the Government decision has been taken to be final and the Registrar is required by the Act to follow them as ordered by the Government. Now, I need not dilate upon the objectives of these provisions. In the present economic conditions of our country it was considered best that the rights flowing from trade marks should not be an inhibition for the flow of trade, commerce and industry in our country. Now, it is very difficult to define where the limit should be, where the line should be drawn. Therefore the Act has given powers to the Central Government which in its judgment, as time progresses and as conditions change, will use them to the best advantage of society. Therefore an arbitrary limit had to be put at a certain date on which the past rights and obligations should cease and we thought—and the Joint Select Committee agreed—that three years was a fair enough time within which adequate adjustments could be made. And hence forward registered users would be severely restricted and in fact it is quite possible that requests for registered users may not be permitted.

Mr. Dave also mentioned that a person who has got his principal place of business at a particular place is debarred from changing his place of

[Shri N. Kanungo.]

business. There may arise conditions in which he may have to change his place of business; his business may grow or his business may become smaller. AU that he is prevented here is that he is not permitted to change the registry where his trade mark is registered. He can certainly change his place of business and provision has been made that the changed address will be the address at which all notices and papers shall be made available to him. So from the point of view of convenience the utmost that can be done has been provided for.

Sir, I do not think I have anything more to say because the hon. Members who have preceded me have explained the matter much better than I could possibly do and as I have said the Bill, as it has emerged, is a fine piece of legislation and I believe that for a long time to come there may not be opportunities for any drastic changes in it. As Mr. Leuva pointed out, after all the utility or otherwise of any law can be greatly influenced by the set-up of the administration which will administer the law. The report of Mr. Justice Iyengar has made elaborate recommendations about it and I can assure the House that the recommendations will be taken care of and the administration would be streamlined and made as convenient to the public and to the parties concerned as is humanly possible.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clause 2—Definitions and Interpretation

SHRI V. PRASAD RAO: Sir, I move:

1. "That at page 7, line 18, for the words 'any person' the words 'the Central Government or any other agency authorised by the Central Government for this purpose' be substituted."

2. "That at page 8, line 10, after the word 'respect' the words 'either in quantity or in quality' be inserted."

3. "That at page 9, line 8, after the words 'made of use' the words 'including territorial restrictions, if any' be inserted."

4. "That at page 9, line 18, the words 'stopper and cork' be deleted."

(The amendments also stood in the name of Shri M. Basauapunnai.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI V. PRASAD RAO: The more important amendment is the first amendment. Here you have defined 'certification trade mark' as meaning a mark adapted in relation to any goods to distinguish, in the course of trade, goods certified by any person in respect of origin, material, mode of manufacture etc. I want the words 'any person' to be substituted by the words 'the Central Government or any other agency authorised by the Central Government for this purpose'. Sir, in the beginning itself I made it very clear that in India so far there is no certification trade mark registered in the name of any person. There are only two applications as per information that was supplied to us and more and more it is the Government and governmental agencies and institutions authorised by the Government that are using this certification. It has been rightly pointed out by my friend, Shri Leuva, that this Agmark and other marks of

certification by the Indian Standards Institution are coming up. Since there are no private institutions like the 'Good Housekeeping Institute' or some other voluntary organisations that are taking upon themselves the responsibility for this certification, I think it is better for the Government to take it up and they can authorise any agency if they find a good one in this behalf. If the Government finds that a particular agency is quite competent to give this certification, certainly it can be authorised. So instead of saying any person—of course person here would include any company—instead of giving this authority to private companies which may be exploited not in the interest of the consumers, not in the interest of the public, I think this specific power should be vested in the Government. Sir, here in India such institutions have not developed and so I think my amendment in this respect must be acceptable to the Government who can always authorise any other agency. I, therefore, do not find any difficulty for the Government to accept this.

My second amendment is at page 8, line 10, after the word 'respect' the words 'either in quantity or in quality' may be inserted. Now, a false trade description means a trade description which is untrue or misleading in a material respect. The word used here is 'material' and that is used to connote substantial. Material respect means substantial respect and it may be either in quantity or in quality. Under false trade description there are various things given here that relate to quality and quantity and if these words 'either in quantity or in quality' are added it will cover all those things. This is only a verbal amendment which makes it more precise and more crisp and I think clause (f) (iii) will become unnecessary but that will be consequential. I think there will be no difficulty in accepting these things.

SHRI N. KANUNGO: Sir, I am sorry; it is difficult for me to accept the amendments because in the matter of

certification trade mark, as Mr. Prasad Rao said, today there may not be any association having that much of prestige which can ask for certification. If I am not mistaken the Indian Standards Institution have to register their marks and possibly they may do so, and there is another mark operating under a statute—the Agmark.

SHRI V. PRASAD RAO: But that is a governmental agency.

SHRI N. KANUNGO: That is a governmental agency. But lately in the course of the last three or four years at least two textile institutes have come up. Some of the manufacturers' institutions, some of the Export Promotion Councils and possibly the Engineers Institute are all thinking of having certification procedures, maybe by marks or otherwise.

SHRI V. PRASAD RAO: But there are also complaints from foreign countries.

SHRI N. KANUNGO: Therefore, the point is that the Government should not have the monopoly of doing it. They have opened it. It must be available to anybody who can earn enough prestige. The danger will be sometimes it is possible—as Mr. Prasad Rao explained—that unscrupulous persons may run unscrupulous agencies for certification purposes, but that has been provided for, left to the judgment of the Registrar and also the judgment of the Government. So, today in the present context, it is necessary that such institutions, trade institutions and industrial institutions, which can competently carry on this work should not be debarred from asking for certification of trade marks.

As for the other point, it is more or less, according to Mr. Prasad Rao, a drafting embellishment. After all the words 'misleading in a material respect' which occur in the clause itself would cover quantity, quality, number and various other factors. Therefore, I would not accept these amendments.

MR. DEPUTY CHAIRMAN: The I question is:

1. "That at page 7, line 18, for the words 'any person' the words 'the Central Government or any other agency authorised by the Central Government for this purpose' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

2. "That at page 8, line 10, after the word 'respect' the words 'either in quantity or in quality' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

3. "That at page 9, line 8, after the words 'mode of use' the words 'including territorial restrictions, if any' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

4. "That at page 9, line 18, the words 'stepper and cork' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted. Clause 2 was added to the Bill.

Clause 3—High Court having jurisdiction

SHRI V. PRASAD RAO: Sir, I move:

5. "That at page 12, line 3, for the words 'Trade Marks Registry' the words 'principal place of business' be substituted."

6. "That at page 12, in clause 3, in sub-clauses (a), (b), (c) and

(d), the words 'the Trade Marks Registry within whose territorial limits', wherever they occur, be deleted."

7. "That at page 12, at the end of line 38, after the word 'commencement' the words 'or the principal place of business of the assignee if the trade mark is already assigned' be inserted."

8. "That at page 12, at the end of line 42, after the word 'application' the words 'or the principal place of business of the assignee' be inserted."

(Amendment Nos. 5 and 6 also stood in the name of Shri M. Basavapun-naiah and amendment Nos. 7 and 8 also stood in the name of Dr. R. B. Gour.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI V. PRASAD RAO: Sir, it has been stated, I think, on behalf of the Government by Shri Leuva that the method that it adopted here is a *via media*. It was contended that some people wanted a special tribunal; and in the other extreme there are others who wanted that the jurisdiction of every High Court should be extended. So, they limited this thing only to these High Courts where the branches of the Trade Marks Registry are located. It was also said that the number of cases would not justify giving jurisdiction to all the High Courts. In the argument that is advanced from the other side, there is neither justice nor reason. The so-called *via media* course is absolutely unsuitable for the present reality. If the question of number of cases is to be considered, then there are hardly 15 appeals according to the report which has been given to us. Then, the jurisdiction of one High Court is sufficient. So, the number of appeals is not the criterion at all. I had quoted Mr. Justice Rajagopala Ayyangar's report only with regard to one aspect, that is, even if the jurisdiction is extended to a number of High Courts, no discrepancy is

going to come about. Only in that context, only to that extent, to support my argument I had put it up. And also it was said in the very same report that the jurisdiction could be extended to five or six High Courts. I do not understand what comes in the way of extending this jurisdiction logically to 14 courts. It is not basing on the number of cases that I am advancing this argument. It is because it is going to benefit the small producer, it is going to benefit even the consumer, to the extent that he wants to raise any objection or opposition that I wanted this jurisdiction to be extended. So, I think there is no reason why it should not be extended to five High Courts. I do not see any reason why it should not logically extend to 14 High Courts. It is also said from that side that it is not precluded from that because in his view if the number of trade marks registered expands to such an extent, as and when a branch is established in every State, then it is contemplated that the jurisdiction would be extended to every High Court. In that case, why not we as well do it now and thus help the small producer, the cottage industry sector and also the consumer, to see that he does not go to a very long distance and to see that he is helped in bringing it to the High Court and get justice?

MR. DEPUTY CHAIRMAN: Any reply?

SHRI P. T. LEUVA: Mr. Deputy Chairman . . .

MR. DEPUTY CHAIRMAN: The point has been argued and it has been replied to also.

SHRI P. T. LEUVA: He has misinterpreted me, otherwise I would not take the trouble of answering him. My argument was never based on the question of appeals to the High Court. What I said was that the load of work does not justify the increase in the zonal offices and that is the reason. So far as the jurisdiction of the High Court is concerned, the criterion is the location of the branch registry. Now, the branch registry

64 RSD—5.

would be small in number because the load of work in the department is small. I never said that because there are only fifty or hundred appeals the jurisdiction should be limited to a limited number of High Courts. I never said that and I repeat it that so far as . . .

MR. DEPUTY CHAIRMAN: He understands your point and you understand his point. He wants to extend the jurisdiction of the High Court.

SHRI P. T. LEUVA: He is misunderstanding me. Another thing is that his arguments are based more on sentiment than on reason. He knows that small people not only go to the High Court, but also go to the Supreme Court. Take for instance, Andhra Pradesh. Is every village situated close to Hyderabad where the High Court is situated? People come to the High Court from 500 miles or 700 miles away. And those persons themselves do not go in person to the court. They only engage lawyers to fight their case. Therefore, this question, regarding this sudden love for the small trader and small producer—who always believe in exterminating the small trader as well as the big trader—should not be raised on sentiments, because the small traders would be away from a certain distance they will have to incur unnecessary expenditure. I do not understand that argument. After all the small trader is also doing some other business in which case he may have to go to the High Court in connection with some other cases as well. Then, why not say every High Court should go in circuit, should go from door to door, to each and every person who has to agitate his case.

SHRI N. KANUNGO: All I want to say is that the basic principle of the Bill is to link up the High Court with the location of the branch registry office and that is a vital pivot of the Bill.

SHRI V. PRASAD RAO: Which is the fulcrum?

MR. DEPUTY CHAIRMAN: They want to link up the jurisdiction of the High Court with the jurisdiction of the registry office. The question is:

5. "That at page 12, line 3, for the words 'Trade Marks Registry' the words 'principal place of business' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

6. "That at page 12, in clause 3, in sub-clauses (a), (b), (c) and (d), the words 'the Trade Marks Registry within whose territorial limits', wherever they occur, be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN:
•Amendment Nos. 7 and 8 are barred.

The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: New clause 3A.

SHRI V. PRASAD RAO: Sir, I am not moving this. But I want to clarify a misunderstanding, not on this.

MR. DEPUTY CHAIRMAN: YOU can take some other opportunity.

SHRI V. PRASAD KAO: I am not moving this.

MR. DEPUTY CHAIRMAN: He is not moving it. Clauses 4 and 5—there are no amendments.

Clauses 4 and 5 were added to the BUL

*For texts of amendments, *vide col.* 3680 *supra*.

Clause 6—The Register of Trade Marks

SHRI V. PRASAD RAO: Sir, I move:

10. "That at page 13, lines 24-25, for the words 'Register of Trade Marks' the words 'All India Register of Trade Marks' be substituted."

11. "That at page 13, after line 37, the following be inserted, namely: —

'(3A) For the purposes of this Act, a record called the Zonal Register of Trade Marks shall be kept at every branch of the Trade Marks Registry, wherein shall be entered all the names, addresses and descriptions of the proprietors, notification of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions and such other matters relating to registered trade marks as may be prescribed and the validity of this registration will be coterminous with the territorial limits of that branch of the Trade Marks Registry wherein it is registered.'"

12. "That at page 14, line 2, for the words 'a copy of the register' the words 'the Zonal Register of that branch and a copy of the AU-India Register' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI V. PRASAD RAO: Sir, I expect a more sympathetic consideration from the Minister even at this stage. Perhaps it is wrong on my part to expect it. Anyway the idea of this amendment is to provide for a scheme of zonal registration by which the small producer who is producing in the cottage sector can be benefited. The hon. Minister again is repeating the same arguments which he repeated there which are not much of substance. He says no benefit is going to be gained by imposing territorial restriction. The amendment is not

only imposing territorial restriction; by that of course the person concerned is going to gain; that is, the opposition from any quarter will be limited only to that particular zone. That is one aspect.

The second thing is certain benefits must follow if this scheme is accepted. There must be smaller fees for this registration. The litigation will be limited. All these are benefit; which will accrue to the small producer. Suppose, in our Hyderabad a small co-operative society is producing matches. What is the fun of its applying for an all-India registration? It is a women's co-operative society consisting of one hundred members and producing a particular brand of matches. They never contemplate their matches to have an all-India circulation. They are mainly and purely intended for local circulation. To say that they are not going to be benefited by zonal registration is not correct. You can reduce the fees for that. It has been well stated by none else than the Chairman of the Trade Marks Owners Association, Shri K. T. Chandy, in an annexure to the Report of Justice N. Rajagopala Ayyangar on Trade Marks Law Revision, 1955:

"Large corporations with substantial resources can command the services of the best lawyers and can afford to agitate their cases from stage to stage to the highest tribunal in the country. This is not open to the large number of owners of industrial property who are either small or medium sized business enterprises."

So, certainly benefit is going to come to him, to the small producer, maybe in the co-operative sector or maybe in the other sectors. Certainly it is going to come to him.

Then, while prescribing the fee for zonal registration, certainly it can be reduced. For instance, if it is Rs. 60 for all-India registration, it can be Rs. 5 or Rs. 10 for each zonal registration. In this way he can be saved from the big botheration of litigation resulting from an all-India registra-

tion. The second thing is, monetarily he is going to gain. So, to say that he is not going to get any benefit out of this is not correct. On the other hand, it will be a refusal on the part of the Government to see the reality and to see the pattern of things that is at present existing.

SHRI N. KANUNGO: Sir, I have advanced arguments against zonal registration of trade marks. I do not want to repeat the same, but the only point I want to make is this that Mr. Prasad Rao's assumption that particular goods have got only local circulation is not correct. To give an example, many matches are produced in Sivaganga. (*Interruption.*) There are numbers of matches in Sivaganga which are circulated as far distant as Aligarh and Hathras and many other places. Apart from that the Constitution of India permits, not only permits but enjoins that circulation of goods cannot be prevented. If we have got a limited jurisdiction and the same trade mark is registered elsewhere in another area, you cannot prevent the flow of those goods to other areas, which will lead to confusion and conflict. Therefore, on the protection of trade mark owners, whether they are big or small, it is not necessary to restrict, it will be injurious to have limited registration, except in exceptional cases for which provision has been made already.

MR. DEPUTY CHAIRMAN: The question is:

10. "That at page 13, lines 24-25, for the words 'Register of Trade Marks' the words 'All-India Register of Trade Marks' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

11. "That at page 13, after line 37, the following be inserted—

'(3A) For the purposes of this Act, a record called the Zonal Register of Trade Marks shall be

[Mr. Deputy Chairman]

kept at every branch of the Trade Marks Registry, wherein shall be entered all the names, addresses and descriptions of the proprietors, notification of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, and such other matters relating to registered trade marks as may be prescribed and the validity of this registration will be coterminous with the territorial limits of that branch of the Trade Marks Registry wherein it is registered."

The motion was negatived.

MR. DEPUTY CHAIRMAN: •Amendment No. 12 is barred.

The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clauses 7 to 10 were added to the Bill.

Clause 11—Prohibition of registration of certain marks.

SHRI V. PRASAD RAO: Sir, I move:

13. "That at page 16, after line 9, the following be inserted, namely:—

'(f) the symbols of the recognised political parties and the names of the political leaders of the country;'"

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House. Mr. Prasad Rao, you have already spoken.

SHRI V. PRASAD RAO: The hon. Minister's reply is not at all satisfactory. I don't mean that it should be subject to my satisfaction, that is not the point, but it is not satisfactory.

•For text of amendment, *vide col, 3684 supra.*

MR. DEPUTY CHAIRMAN: If there is any new argument, you may advance it.

SHRI V. PRASAD RAO: Sir, it is contended from that side that clauses 11, 14 and 23 put together will cover this thing. But clause 11 itself gives a list of prohibitions. This clause states:

"A mark—

(a) the use of which would be likely to deceive or cause confusion; or

(b) the use of which would be contrary to any law for the time being in force; or

(c) which comprises or contains scandalous or obscene matter; or

(d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class, or section of the citizens of India; or

(e) which would otherwise be disentitled to protection in court;

shall not be registered as a trade mark."

Certainly the symbols of recognised political parties' and the names of political leaders in the country are not covered by any of these prohibitions. Also, clause 14 says:

"Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application . . ." etc.

Suppose one is using the caption "Nehru Cafe". There Nehru does not mean necessarily Jawaharlal Nehru— he can contend like that. Unless it is specifically mentioned, the symbols of recognised political parties and political leaders of the country are not covered, because he can certainly say that it does not refer to a particular name or a particular party. So, when it leads to the reasonable belief that it suggests a

particular person, then clause 14 comes into operation. So also clause 23 does not apply to this question. The hon. Minister has philosophically said that after all it is transient, that the political party symbols are not permanent fixtures. But, Sir, everything is after all relatively transient. Law itself is not a permanent fixture. So, the question is not about philosophical things or transient things, but about political symbols or political parties. As long as they are recognised, this prohibition will apply. As long as they are put in the list of recognised political parties—in the list of recognised symbols—by the Election Commission, this prohibition can operate. The moment they cease to be recognised as political parties, this prohibition will also not be there. So, I think there will be no difficulty in accepting it. There is no question of any philosophy here. It has been contended from all sides also that this should be put in there.

The hon. Minister has suggested that recourse could be had by enhancing the schedule on another thing. That, I think, covers only the national emblems. The Asoka Chakra cannot be used, the national flag cannot be used or the national standard cannot be used. Only these three things are prohibited. The schedule can be enlarged. But instead of enlarging the schedule, if here a specific provision is made, certainly it can bar those people from unscrupulously using these names for their personal ends. So, I think that it is very reasonable, and it has been accepted by all sides. Some time back, he said that the House did not accept the name of Mahatma Gandhi to be included in the prohibited list. Today, Members from both the Houses including the Speaker of the other House, strongly assert that his name should be put in the prohibited list. I do not know what comes in the way of the Government accepting this amendment.

SHRI N. KANUNGO: I am sorry that I have not got brains enough to : convince Mr. Prasad Rao. But I still

that no useful purpose will be served by adding to the Schedules of the Emblems and Names (Prevention of Improper Use) Act.

MR. DEPUTY CHAIRMAN: The question is:

13. "That at page 16, after line 9, the following be inserted, namely:—

'(f) the symbols of the recognised political parties and the names of the political leaders of the country;'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 and 13 were added to the Bill.

Clause 14—Use of names and representations of living persons or persons recently dead.

SHRI V. PRASAD RAO: Sir, I move:

14. "That at page 17, line 6, for the word 'falsely' the word 'reasonably' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: Sir, I want the word "falsely" to be substituted by "reasonably" because where an application is made for the registration of a trade mark which 'reasonably' suggests a connection with any living person, then only can you take permission from him. There is no question of anything being 'false'. So, I think that it should be 'reasonable.'

SHRI N. KANUNGO: The use of the word 'reasonable' will put a man who wants to use his own name

[Shri N. Kanungo.]

into difficulties. He cannot do so. falsely. The basis of the clause is that no one should use anybody's name without his permission and without his knowledge. Therefore, Sir, the word falsely* is deliberately used and the word 'reasonable' will create confusion and ambiguity.

MR- DEPUTY CHAIRMAN: The question is:

i

14. "That at page 17, line 6, for the word 'falsely' the word 'reasonably' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Clause 15 was added to the Bill.

Clause 16—Registration of trade marks j as associated trade marks

SHRI V. PRASAD RAO: Sir, I move:

15. "That at page 17, lines 34-35, the words 'or is the subject of an application for registration' be deleted."

16. "That at page 18, lines 8 to 14 be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are now before the House.

SHRI V. PRASAD RAO: Sir, I do not want to make a speech on these.

MR. DEPUTY CHAIRMAN: Do you accept them?

SHRI N. KANUNGO: No.

MR. DEPUTY CHAIRMAN: The question is:

15. "That at page 17, lines 34-35, the words 'or is the subject of an application for registration' be deleted." The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

16. "That at page 18, lines 8 to 14, be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Clause 17—Registration of trade mark? subject to disclaimer

SHRI V. PRASAD RAO: Sir, I move:

17. "That at page 18,—

(i) in line 25, the word 'either' be deleted; and

(ii) in lines 26-27, for the word* 'or of all or any portion of such matter, as the case may be' the words 'or portion of the trade mark' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: Sir, here it is a small thing:

"....the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter _____".

If you say that all such matter is to be disclaimed, then where is the necessity of putting it on the Register? So, my idea is that, if the Registrar wants to impose certain restrictions, it can be to a particular portion. If it pertains to all the matter, then there is no use of the proprietor accepting it. The limit is only to such part or portion of the matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled. If all the trade mark is not entitled to be used, then you better reject him. There is no question of any imposition

of a limit on that. So, there is no meaning if the words "or of all or any portion of such matter, as the case may be" are there. It is reasonable and should be accepted.

SHRI N. KANUNGO: Sir, it is quite possible that separate applications may be made for trade marks and one trade mark may be completely cut out.

MR. DEPUTY CHAIRMAN: Even the clause says, "If the trade mark contains any part." So, "all" refers only to that particular part.

SHRI V. PRASAD RAO: It does not read like that. The proprietor shall disclaim any right to the exclusive use of such part or of all.

MR. DEPUTY CHAIRMAN: The question is:

17. "That at page 18,—

(i) in line 25, the word 'either' be deleted; and

(ii) in lines 26-27, for the words 'or of all or any portion of such matter, as the case may be' the words 'or portion of the trade mark' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Clause 18 was added to the Bill.

Clause 19—Withdrawal of acceptance

SHRI V. PRASAD RAO: Sir, I move:

18. "That at page 20, line 3, the words 'if he so desires' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: Sir, the Registrar may, after hearing the appli-

cant, if he so desires, withdraw the acceptance and proceed as if the application had not been accepted. Naturally, when the acceptance is withdrawn, the applicant likes to be heard. There is no question as to whether the Registrar likes to hear him. Naturally, when he applies, he says, "I want registration; I want my trade mark to be placed on the Register." I do not think that the words 'if he so desires' are necessary. So, these must be deleted. In every case wherever the acceptance is withdrawn, it will be incumbent upon the Registrar to hear the case of the applicant.

SHRI N. KANUNGO: Here, 'lie' refers to the applicant. The applicant may not desire to be heard at all and he may be content at that

MR. DEPUTY CHAIRMAN: "If he so desires.", "he" refers to the applicant, not to the Registrar. So, you withdraw?

SHRI V. PRASAD RAO: I withdraw it.

Amendment No. 18 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

Clauses 20 to 51 were added to the Bill.

Clause 52—Power of Registrar to vary or cancel registration as registered user

SHRI V. PRASAD RAO: Sir, I move:

19. "That at page 37, line 19, after the words 'thinks fit' the words 'and after hearing the parties, if necessary' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: Six, we rightly gave to the Government in certain circumstances the power to change, alter or reject certain applications. Sir, in certain cases where the national interest is involved, certainly the Central Government must have this power. But the whole question here is that the party must have a right to represent its case before the Central Government. So my amendment suggests the inclusion of the words 'and after hearing the parties, if neccessary' after the words 'thinks fit'. Once the Central Government decides a particular application in a particular way, naturally this decision will be conveyed to the Registrar and the Registrar will implement it without any change whatsoever. So in the whole scheme here the applicant finds no place at all. Of course, the Central Government is fully entitled to do this, but certainly the applicant should be allowed to represent his case before it. If my application, for instance, is rejected, certainly I must have the right to represent my case before the Central Government. I think that is very reasonable.

MR. DEPUTY CHAIRMAN: But it is said here "after making such inquiry as it thinks fit".

SHRI V. PRASAD RAO: Sir, it is not a question of any enquiry. That enquiry may be by the third party. Here I want these words to be specifically included. That is my request.

SHRI N. KANUNGO: Sir, using the words 'if neccessary' will be watering down the provision itself. The point is that the executive mind of the Central Government will work in the context of the economic conditions prevailing in the country. If we get all the material and the necessary papers etc., that will be quite sufficient to decide the matter without hearing the party. And wherever necessary, we may hear the party also. But to tie down the Government to hear every applicant will be wasting the time of the Central Government and that is no* necessary also. Therefore I do not accept this amendment.

MR. DEPUTY CHAIRMAN: The question is:

19. "That at page 37, line 19, after the words 'thinks fit' the words 'and after hearing the parties, if neeces sary' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 52 stand part of the Bill."

The motion was adopted.

Clause 52 was added to the Bill.

Clauses 53 to 59 were added to the Bill.

Clause 60—Certain provisions of this Act not applicable to certification trade marks

SHRI V. PRASAD RAO: Sir, I move:

20. "That at page 40, line 35, the figure '29' be deleted."

(The amendment also stood in the name oi Dr. R. B. Gour.)

MR. DEPUTY CHAIRMAN: The clause and the amendment are now before the House.

SHRI V. PRASAD RAO: Sir, it has been stated here that certain clauses of this Bill do not apply to certification trade marks. Sir, clause 29 deals with the infringement of trade marks and it says:

"A registered trade mark is infringed by a person who, not being the registered proprietor of the trade mark or a registered user thereof using by way of permitted use, uses in the course of trade a mark which is identical with, etc. etc."

So, Sir, if you say that the clause regarding infringement will not apply, then what is the benefit? So this clause should be made applicable to certification trade marks. That is the purpose of my amendment.

SHRI N. KANUNGO: Sir, this clause, i.e. clause 29, has been deliberately included, and it ought to be there. A trade mark is also a certification trade mark. In the earlier definition it has been said so. Therefore there is no point in removing that clause. Here all the provisions regarding trade marks are put together. The protection given to certification trade marks will be reduced to that extent by removing clause 29. I, therefore, am not in a position to accept the amendment.

MR. DEPUTY CHAIRMAN: The question is:

20. "That at page 40, line 35, the figure '29' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 60 stand part of the Bill."

The motion was adopted.

Clause 60 was added to the Bill.

Clauses 61 to 136 and the Schedule were added to the Bill.

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

SHRI N. KANUNGO: Sir, I move: "That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed."

SHRI V. PRASAD RAO: Mr. Deputy Chairman, even certain most reasonable things which have had the support of all the sections of the House have fallen on the deaf ears of the hon. Minister. Anyway, Sir, this Bill is certainly an improvement over the previous one. There is no doubt about the fact that while implementing the provisions of this Bill certain things can be improved in the light of actual experience. But the most welcome

provision in this Bill is that after three years of the Bill becoming an Act, all the existing trade marks lapse. Then, Sir, an opportunity must be taken to see that those foreign monopolists who are trying to use these trade marks as a weapon to browbeat the Indian industrialists are put in their proper shape. I perfectly agree with the hon. Minister when he says that this is not the only thing to check or curb the monopoly interests. But he must also agree with me when I say that this is also one of the things by which certain curbs could be effected on these monopolists. I can quote some instances. Take for instance, the match factory itself. I know so many false suits are brought against the Indian match makers in order to see that they are tired out and get out of this business. It is not that those suits are necessarily correct and legal, but they do it in order to tire out the Indian competitors and thus drive them out of this business. Take for instance the 'Jyoti' and 'Light' matchbox companies. I think about Rs 60,000 were spent to file suits against these two companies. These companies started with a capital of Rs. 30,000. And certainly they cannot compete with these monopoly interests. Therefore, Sir, when this provision is included in the Bill, then naturally the Central Government must be on the lookout to see that these small traders are benefited and that our Indian industry is not strangled by these foreign monopolists. So I think the Government will not fight shy to bring forward any amendment that is necessary in the light of practical experience. I hope that this aspect will be clearly borne in mind.

The second thing, Sir, is this. As has been pointed out earlier, the working of this measure will much depend on the right type of personnel which will be administering this law. Therefore unless some right type of people are there who can properly see that the interests of our country are thoroughly safeguarded, not much

[Shri V. Prasad Rao.]

would come out of this measure. So, I think these things will be borne in mind when the provisions of this Bill are going to be actually implemented.

SHRI N. KANUNGO: Sir, I reciprocate the feelings and the arguments which have been put forward by Mr. V. Prasad Rao and here I must thank him for the enormous help he has given in the Select Committee and also in the discussions in the House.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE INDUSTRIAL DISPUTES (BANKING COMPANIES) DECISION AMENDMENT BILL, 1958

THE DEPUTY MINISTER OF LABOUR
(SHRI ABTD ALI): Sir, I beg to move:

"That the Bill further to amend the Industrial Disputes (Banking Companies) Decision Act, 1955, as passed by the Lok Sabha, be taken into consideration."

The "bank dispute has a fairly long and protracted history. It is not necessary to repeat it here. The House is aware that the recommendations of the Bank Award Commission were accepted by the Parliament and enforced by the Industrial Disputes (Banking Companies) Decision Act, 1955. In its report, the Commission laid down certain formulae about the adjustment of dearness allowance, payable to the staff, keeping in view the variation in the cost of living index. According to the formulae, dearness allowance for the clerical and subordinate staff can be adjusted, if the average all-India cost of living index for the half year ending June or December rises or falls by more than 10 points as compared to 144

(1944-100). The dearness allowance for the succeeding half year is raised or lowered by 1/7th and 1/10th of the dearness allowance admissible at the index level of 144 for clerical and subordinate staff, respectively, for each variation of 10 points. It will be noticed that the formulae provide for changes after intervals of six months for variation of 10 points in the index level. Representations have been made to Government that much hardship is caused to the workers if the index level rises considerably, but does not actually reach 10 points. The interval of six months is also considered to be a long period.

In December last, the State Bank of India recognising the necessity for adjustment in the dearness allowance basis, entered into an agreement with the representatives of its workers. This permits adjustments being made quarterly instead of six-monthly and also for every variation of 5 points in the index level. Other bankers are also agreeable to accept the modification on the lines agreed to by the State Bank of India.

This Bill is intended to vest the Government with powers to modify the formulae so that adjustments could be made to remove the hardship just mentioned by me. Of course, the intention is to remain within the framework of the existing scheme of dearness allowance. The House will, no doubt, appreciate that it is not desirable to change the ratio recommended by the Commission, which was also unanimously approved by the Parliament. However, before making any modification for the adjustment of dearness allowance, Government will consult the representatives of the parties concerned.

With these words, I commend that the Bill be taken into consideration.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill further to amend the Industrial Disputes (Banking Companies) Decision Act, 1955, as

passed by the Lok Sabha, be taken into consideration."

SHRI PERATH NARAYANAN NAIR (Kerala): Mr. Deputy Chairman, the hon. Deputy Minister has explained that this Bill has been brought in response to the representations made by the bank employees who have been feeling hardship in regard to the way in which the formula relating to the payment of dearness allowance has been working during the last 5 years. Now, as far that intention goes it is to be welcomed. But in actual practice, I will ask whether the implementation of this particular provision is going to mitigate the hardships felt by the bank employees? We approach it in a negative way. In an academic sense, it may mean some relief because under the formula now in vogue as the Deputy Minister explained, it is a six-monthly period, half-yearly period and for a variation of 10 points. So, taking the base figure at 144, it may fall down to 135 or it may go up to 153. When there is this variation of 19 points there will not be any readjustment in the dearness allowance. That is really a hard case. According to the new provision the period will be quarterly and the variation points will be 5 which means in effect that whereas increase or decrease in the dearness allowance under the existing formula will be Rs. 7 of the basic figure, that is from Rs. 50 to 57½, or there may be a fall or rise of Rs. 7½, according to this amendment, it may be that the reduction will be Rs. 3½. The increase also may be Rs. 3½ and this adjustment can be made every 3 months but I want to ask hon. Minister even theoretically speaking, what will be the effect on the 80,000 bank employees in this country if according to this provision, certain bankers take it into their heads to reduce the dearness allowance, say even by Rs. 3½? Wow, the present formula is in vogue and within that framework that ratio is maintained but can we contemplate with equanimity that any class of employees in this country, when the

cost of living is rising in every respect, will accept any reduction in their dearness allowance, let alone these bank employees, 80,000 of them who are organised in their own sphere? Now, what is the actual situation in the country? The bank employees of course have been obliged to accept this adjustment. It has been a statutory . . .

MR. DEPUTY CHAIRMAN: It has been decided on the basis of the cost of living index.

SHRI PERATH NARAYANAN NAIR: That is exactly where the bank employees have their grievance. Now, the dearness allowance in regard to several other categories of employees in the country is calculated under particular method. Under this Gajendragadkar Award this dearness allowance is linked to the cost of living index based on averages.

MR. DEPUTY CHAIRMAN: Which is the same for all clauses.

SHRI PERATH NARAYANAN NAIR: It is not. Of course, the base year in this case is 1946 but in other cases it is mostly the war year of 1939 or even 1940. That itself makes a difference. Apart from that, the regional cost of living indices show a tendency to rise. You take the Bombay figure or the Calcutta figure. They go on rising. Here the anomaly is that this all-India cost of living index based on certain averages—that alone—shows a tendency to decrease. Now, the misgivings felt by the bank employees are based on facts. How do you explain this? You know as a matter of fact that there is rise in the price of food. The prices of essential articles are going up but all the same you are faced with this that the all-India cost of living index based on averages, shows a tendency to fall.

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I SHRI P. D. HIMATSINGKA (West Bengal): Is not the award applicable to the whole of India?

SHRI PERATH NARAYANAN NAIR: To bank employees. Now, If particular employees are made to suffer . . .

MR. DEPUTY CHAIRMAN: We are now concerned only with bank employees.

SHRI PERATH NARAYANAN NAIR: In the implementation of this particular provision, naturally there is the human problem . . .

MR. DEPUTY CHAIRMAN: It is an agreement, is it not, between the employees of the banks and the employers?

SHRI PERATH NARAYANAN NAIR: What applies to other categories of employees must be made applicable to these also. During the last 5 years . . .

MR. DEPUTY CHAIRMAN: That means you want to go back on the agreement?

SHRI PERATH NARAYANAN NAIR: No.

MR. DEPUTY CHAIRMAN: That is the implication.

SHRI PERATH NARAYANAN NAIR: If we look at it in a hypothetical way it will be difficult. What will be the actual effect of implementing this? Suppose, some bankers take it into their heads to reduce the dearness allowance, what will happen? May I ask the hon. Minister—is he prepared to give an assurance that a minimum dearness allowance which these people are receiving now, will not be reduced under any circumstance? Now, the whole cost of living is increasing and I may also remind the House, as the hon. Minister said, that this banking dispute has been a long and protracted one. They have been putting up a stout struggle to get some betterment in their emoluments and dearness allowance.

We know that in the case of other categories of employees the dearness

allowance is linked from point to point to the rise in the cost of living index. But that is not the case here. Moreover, the grievances and the representations made are all founded on facts and the Gadgil Committee and several other committees have suggested that there must be an improvement made in the present method of calculating and working out the cost of living indices. And they have made their suggestions. The Ministry of Labour in the case of industrial workers and the Home Ministry in the case of the middle-class employees, these two Ministries are working out a new and a more reliable method for arriving at the cost of living figures. And now even this Award—the Gajendragadkar Award—will come to an end by March next year and the Government will be obliged to review the whole thing and when they review the whole thing they will have to bear in mind certain considerations about the whole question of dearness allowance. For example, it has been said that dearness allowance is connected with the increase in the cost of living. For the last two years cost of living is going up. Dearness allowance is intended to be a kind of temporary increase over the basic pay to meet the higher cost till normalcy is obtained. But our experience has been that during the last twelve years, the prices have gone on increasing and there is no sign of their coming down. Certain responsible committees appointed by the Government have themselves agreed that after the war, prices have tended to stabilise at 160 or 170 per cent. That being so not only the bank employees but other employees have been clamouring for merging at least a portion of the dearness allowance with their basic pay. The Government has been obliged to concede at least a part of it so far as the Government employees are concerned and for the Central Government employees they have granted a temporary increase of Rs. 5 in their dearness allowance. So they knew and they accepted that the cost of living was going up and increasing. But here in the case of these parti-

SHRI P. D. HIMATSINGKA: Mr. Deputy Chairman, I was trying to follow the objections of the hon. Member Shri Narayanan Nair, but I have not been able to understand what is his objection. The Bank Award Commission made a report which was codified in 1955 which provides that if there is an increase in the average cost of living index by 10 points, there will be an increase in the dearness allowance. And if there is a decrease to the extent of 10 points there will be a corresponding decrease in the dearness allowance. The employees represented that it was very hard on them if the prices increased considerably, though not by 10 points throughout a period of six months, but' to that extent or a little

[Shri P. D. Himatsingka.] short of it throughout a period of three or four months, and that if the period fell short of six months they did not get any benefit. As the cost of living had increased, as mentioned by my friend just now, they had already got the benefit; originally the dearness allowance was Rs. 50 and because the cost of living had increased, at present it is Rs. 54-14 n.P. Now the employees wanted that, instead of making them wait for six months and the increase in the cost of living to go up by 10 points, let the basis be an increase by 5 points and over a period of three months. Therefore, if there is an increase to the extent of 5 points only and over a period of three months only there will be an increase in the dearness allowance. Similarly, if there is a decrease to the extent of 5 points there can be a corresponding decrease in the dearness allowance. It is based on the Bank Award and it covered all the banks in India barring a few which had been excluded, and therefore the question of dearness allowance concerns all the employees of all the banks throughout India. Now, if the cost of living index level increases in certain areas but decreases in certain other areas you cannot take up the question of dearness allowance areawise, but if you make it applicable to the whole of India, the cost of living to be taken into consideration should be the average cost of living of the whole of India, as has been recommended in the Award of the Bank Award Commission. Sir, why should it be funny to think of a reduction? If the dearness allowance has been increased on the basis of a formula, then certainly if the index level falls, there ought to be a decrease also.

Sma PERATH NARAYANAN NAIR: If the all-India average falls.

SHRI P. D. HIMATSINGKA: Exactly so. They get the benefit when the all-India average increases. Otherwise the original amounts payable to them should stand. As a matter of fact there is one very significant differ-

ence between the bank employees and other labour. Sir, as you know, in no industry there is—what can be called, this grade; there is no increment of salary or wages year by year on a fixed basis, whereas in a bank, under this Award, a clerk who enters on a pay and allowances of Rs. 85 goes on getting more and more till he reaches the figure of Rs. 280, from Rs. 85 to Rs. 280, the annual increment being Rs. 5 in the first three years, then Rs. 6 in the next two years, then Rs. 7, Rs. 8 and so on, the increment rising up to Rs. 15 a year. Where else do you find this yearly increment? It is in no other labour. That important factor is being ignored when opposition is being put forward to the amendment that has been proposed by the hon. Deputy Minister for the benefit of the employees. It has been mentioned by them that the banks should not reduce the dearness allowance. If that were so, this amendment will act only to the benefit of the employees because if there is an increase in the cost of living index to the extent of 5 points they will get the benefit and if there is a decrease it may be that the Government will not reduce the amount. But you cannot have it one way, a onesided decision only, when it is governed by an Award affecting all the banks, an all-India Award which has been accepted by the Government and on the basis of which this legislation is being enacted. Sir, as you know the working cost of the banks has increased very considerably and it is added to the cost of practically every industry. If the cost of running a bank goes up by even one per cent, it means additional cost of one per cent, to the industry, and that affects the price of every commodity, and therefore, one has to be very careful in seeing to it that money does not become dearer than what it is at present. Sir, there is another very important thing to be noticed. As you know, Sir, even now some banks are paying more than what the Award provides to be paid; but even then in certain places the employees resort to, what is called, pen-down-strike or go-slow tactics and so on. As a matter of fact, it is timr

Government takes up a definite attitude to see that if the employees want the help of the community to better their prospects and their position, they should render adequate service for the amount they are paid. Otherwise, Sir, it is a one-sided game, you go on increasing the salary and you do not get proper work turned out. As a matter of fact, if you now take statistics you will find that persons who were doing work, say, to the extent of 20 points, have been now doing 10 points, and to the extent of 10 points that they do not work during office hours, they want to do it on the basis of extra time devoted to it. They do it like that and they get double the amount. This is what is happening in the banks and this is adding to the cost of running the banks. These facts are being forgotten by our friends who champion the cause of the employees and they are not placing these facts before the House. The House knows how the strikes had been carried on to the detriment of the employees and to the detriment of the general community. It was because certain persons not connected with banks, persons from outside, became the leaders of the employees, and they did not care for the effects of a prolonged strike on the community and on the employees themselves.

SHRI PERATH NARAYANAN NAIR:
That is a general allegation.

SHRI P.D. HIMATSINGKA: That is not a general allegation; that is admitted, and as a matter of fact the bank employees realised later on that they had been misled. Therefore, Sir, the present amending Bill is in the interest of the employees, and I can't not understand what possible objection can be raised to its being accepted.

DR. P. J. THOMAS (Kerala): Mr. Deputy Chairman, I am not against bank employees being given allowances on the basis mentioned in the BUI, but I fear that . . .

SHRI V. PRASAD RAO (Andhra Pradesh):
You don't agree?

DR. P. J. THOMAS: I am not against them, I said.

Banks in India are not all of the same category. There are large banks and there are small banks and there are huge differences between the large banks, like the State Bank of India, the Central Bank of India and the small ones. These large banks get very large deposits paying very low rates of interest, and some deposits bear no interest at all, absolutely free of interest, whereas the small banks have to pay comparatively higher rates of interest for the deposits they get and thus their costs are very high, and as pointed out by the previous speaker, these banks will not be able to bear the additional cost involved.

I come from a part of the country where there are very small banks, and those banks have been garnering the savings of the people and giving them credits on reasonable terms in a way you cannot find in any other part of India. As such I think, to have any kind of general level of all-India cost of living for the fixation of dearness allowance for the whole of India is not at all fair. Secondly, Sir, on the question of all-India index numbers of prices, there again I doubt whether it can justly be taken as the basis for purposes of this Bill even though it is the average all-India cost of living index. Now, Sir, in some parts of the country the cost of living is much higher. For instance, take the price index of food. The prices are probably higher in certain parts, lower in other parts. Therefore, we have to base this increase in dearness allowance on the local cost of living figures, not on the basis of the all-India cost of living index. After all, this country is not a small country and the prices vary considerably in the different regions and in the different parts of the regions. For example, just at present we know very well the high price of foodgrains prevailing in northern India and I do not think prices have gone up so much in the south. In any case to base an increase or decrease in dearness allowance on

[Dr. P. J. Thomas.]

the all-India cost of living index is, to my mind, not justified. I am doubtful whether it will do even justice to all if you take the average all-India cost of living index. Bank employees in certain parts of the country may benefit a great deal whereas employees in other parts may have to lose. In any case the banks are affected. All these would add to cost and this will have repercussions on industry and business. The hon. Deputy Minister has assured us that the two associations of banks were agreeable to the change. I do not know which are the associations he meant. I have a great complaint to make in this regard. There are the banks of Kerala of which I shall say

something. The conditions of Kerala are very different from the rest of India, and I know most parts of India.

MR. DEPUTY CHAIRMAN: You want more time, Dr. Thomas?

DR. P. J. THOMAS: Yes, Sir, I shall take more time.

MR. DEPUTY CHAIRMAN: Then you can continue tomorrow.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Thursday, the 18th September 1958.