

Title: Discussion on the Trade Marks Bill, 1999.

1612 hrs.

MR. CHAIRMAN : Hon. Minister, Shri Murasoli Maran may move the Trade Marks Bill for consideration. Time allotted is 2 hours.

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

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

Sir, the proposal before this House to consider the repeal and replacement of the Trade and Merchandise Marks Act, 1958 and to enact a new legislation to be called the Trade Marks Bill, 1999 is part of the Government's initiative to modernize the laws relating to intellectual property and make them more user-friendly. The law relating to the registration and protection of Trade Marks in India is the Trade and Merchandise Marks Act of 1958. In the four decades since the statute came into force, the Act has not been amended even once.

The proposed legislation seeks to amend and consolidate the law relating to trade marks in order to provide for the registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. Market conditions, presently prevailing in India, have undergone a radical change. Most importantly, there has been a demand from the industry to modify the present legislation in line with the requirements of the trade and the need to protect consumers against new forms of fraudulent merchandise. Hence the need to replace the existing Bill. As it is a replacement Bill, the Act of 1958 will stand repealed and replaced by this Bill.

The proposed Bill seeks to introduce protection for registration of trade marks for services in addition to goods. It also seeks to extend protection for well-known trade marks and to do away with the system for registration in Part A and B and to provide for a single computerised register with a simplified procedure for registration with equal rights. The Bill also seeks to introduce protection for registration of collective marks owned by associations. It further seeks to provide for an Appellate Board for the speedy disposal of appeals and rectification of application which presently lie before the High Court.

We need to provide adequate protection for our own commerce, trade and industry to prosper in a competitive world and we should not be the ones losing benefits and protection for want of proper legislation.

The proposed legislation will provide a simplified and more accessible framework for the administration of trademark law and also protect commercial and consumer interests. It also provides for reciprocal protection of Indian trademarks from all countries.

A Trademarks Bill was introduced in the Lok Sabha in April, 1993. It was referred to the Department-Related Parliamentary Standing Committee on Industry, which presented its report in April, 1994. All the recommendations of the Committee were accepted by the Government and necessary amendments were incorporated while passing the Bill in the Lok Sabha on May 29, 1995. The Bill lapsed on account of the dissolution of the Tenth Lok Sabha. This Bill is therefore the same as the Bill of 1995. However, on the suggestion of the Ministry of Law, some changes from the drafting point of view and change in the composition of the appellate body have been incorporated. Other than these, there are no changes in this Bill. Therefore, I seek the unanimous support of this august House in considering the Trade Marks Bill, 1999.

MR. CHAIRMAN : Motion moved:

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

">SHRI PRIYA RANJAN DASMUNSI (RAIGANJ): Mr. Chairman, Sir, I am sorry that Dr. Murli Manohar Joshi is not here at the moment.

"> I thank the present Government of India first for the inconsistency when they were in the Opposition and also the inconsistency when they are now in the Treasury Benches. When this piece of legislation was brought in during the Narasimha Rao Government in 1995, it was opposed by our distinguished friends who are now sitting in the Treasury Benches. Similar was the case of the Copyright Bill, which was opposed tooth and nail by the distinguished Members of the Treasury Benches. Anyway, belated wisdom has come to them and they have realised that what the Congress did was correct. Therefore, they have now changed their words. I thank their late wisdom and also feel pity for the inconsistency in their approach.

"> This piece of legislation has been brought in by your Government now. I have nothing much to speak but I have to draw the attention of the hon. Minister to a few things because the issues are very much involved in the Ministry that he is heading.

"> First, I take up the case of Darjeeling Tea and Assam Tea. The hon. Minister will agree with me that the logo for Darjeeling Tea was introduced during 1984-89 by the Rajiv Gandhi Government to earn more foreign exchange. There were efforts made in this country to copy the trade mark, the logo and the whole thing in a very clandestine manner and to sell the different kinds of spurious tea as Darjeeling Tea outside India, especially in the Middle-East. It was brought to the notice of the Commerce Minister at that time, he looked into it carefully and said, 'Certain provisions are to be linked up with our trade mark concept.'" Similarly, Assam Tea has a different kind of brand, logo and smell. It was also earning better prices both in the domestic and international markets. Attempts were made in our domestic tea industry, especially by those who wanted to sell tea in the Middle-East and Gulf areas, to copy that.

"> I would like to draw the attention of the hon. Minister regarding the provisions of clause 115. Unfortunately, I was not in the Tenth Lok Sabha. I would have pointed out that there was a lapse. I am sorry that the Government did not look into that carefully. The Government

is in a hurry to pass the Bill. What is that lapse?

"> Under the Copyright Bill, a sub-inspector is to take cognizance of the case and to prepare the documentation so far as police investigation is concerned. Here, in the Trade Marks Bill, under clause 115, any police officer not below the rank of Deputy-Superintendent of Police is the authorized person. I will leave the question before the hon. Minister. Now, consumerism has grown fifteen more times than it was supposed to be.

">Because of the opening up of our economy, the consumerism will go right down to the village in a wider scope of the market. All the companies, be it within India or outside, will come and compete or overlap with each other. Suppose, in a village or a tehsil of Gujarat, a block of West Bengal or a sub-divisional town of Uttar Pradesh, if such complaints come, who will investigate them? In each district, at the present moment, there are not more than two or three Deputy Superintendents of Police. One is engaged to maintain the law and order. Other is engaged to monitor the judicial cases and the third one is engaged just to compensate the S.P. in case he is out of station. The Government has taken away these trade mark matters from the sub-inspector because the big companies and such other groups will find it more convenient to avoid the jurisdiction. One has first to lodge the complaint, bring it to the knowledge of the administration and then the DSP goes. Do you think it proper for a DSP from the headquarters to go to a tehsil to do all these things? In the Copyright, it has been left to the sub-inspector of police but in trademark, the volume of which is more than the copyright, it has been left with the DSP.

"> I am not at all proposing any amendment either on my own or on behalf of my party. The Government can pass the Bill as it is but it can have a wider discussion in the ministry with experts in the field. Possibly, this is a provision which will give a lot of chance to those who are deliberately violating the trademark obligations and are carrying on their trade. Such people will never be brought to the net. Since the sub-inspector is not in its jurisdiction, I am not talking of the honest sub-inspector but a dishonest sub-inspector, he will make them thrive as he likes. They are not accountable to take cognizance of these things unless a DSP comes to the scene. In a town called Ahmadabad, Cannanore or in a district of Darjeeling, it will be very difficult for him to take cognizance of these people and bring them to book. It is very difficult. I know the functioning of the DSP. I still wonder that this concept is still there. Maybe, it was felt that the trademark cases will be very few and the high-ups, the big companies may not like to be interrogated, supervised or negotiated by a person less than a DSP. In that case, I think it will be much more dangerous.

"> I personally feel that this is the only provision where some lacuna can be found out, otherwise, the other things are in their correct form. I request the hon. Minister, after passing it here, to have a general study of this Bill to see which are the areas where counter-efforts may begin at the time of opening up of economy, competition or challenging the trademarks of Indian products. As also, to see the loopholes which may require amendments to be brought in future to plug them.

"> Some of the established trade marks are also causing some problems. There is a provision not to give any trade mark which is susceptible to any religious sentiment, etc. I agree with it. Mamataji is not here. I wonder, how does smoking link with monkey?

"> हिन्दुस्तान में एक बानर माई बीड़ी है।

">

">I do not understand the logic of linking smoking with monkey or an elephant with mustard oil.

"> हाथी मार्का तेल खरीदो तो अच्छा है। हाथी मार्का तेल एक समय में इतना मशहूर हो गया था कि सब लोग गलतफहमी में थे कि हाथी की छाप है तो ठीक है।

">

"> Somebody riding on an elephant shouts

"> वह तेल खरीदेगा।

">

">He is not giving food to the poor elephant. But he is putting somebody as a rider on the elephant. I personally feel that since we have a lot of respect for the wildlife, the way we are using the symbol of elephant or tiger or monkey for the sake of our consumerism is very very painful and sickening to me. This matter of course does not cause concern for the trade. But it sometimes creates laughter and mystery behind it.

"> It is true that Brooke Bond is a multinational company. But they are doing business in our country. Somebody has copied Brooke Bond Tea. When I was a Minister, I found exactly the same thing. They wrote Book Bound Tea. When I asked why it is Book Bound, they said:

"> 'इस कागज से हम चाय बिकने के बाद खाता-किताब तय करते हैं।'

">

">Brooke Bond and Book Bound are two different words in English. But while speaking, Book Bound sounds nearer to Brooke Bond. Of course, Brooke Bond is a very powerful company. They fought and finished them. That is a different issue.

"> In India it is very well established. If somebody wants to challenge it one day and do some mischief, there are provisions. How are provisions there? I give a classic example. I am from a rural constituency. There are two brands of soaps called Rexona and Lyril by two very well established groups. They have their own trade mark. They have their own pattern also. One day I went to a village haat in

my constituency to address a meeting during the election campaign. I found something called Resona soap was being sold. It was just like Rexona soap. All of them were announcing:

"> रेक्सोना सस्ते में, गांव के लोग खरीद रहे हैं।

">

">It was looking like the original stuff, only the letter 'x'" was changed. Unless the Sub-Inspector gets hold of them on the spot, how will the DSP come into the picture?

"> I, therefore, appeal to the hon. Minister to look into these aspects. They can pass the Bill today. We all support it. But these are the apprehensions that are gaining ground. In future, if you feel that some more areas could be covered to tighten the arrangement, it will be good for the industry, good for the trade, good for the future participation and the competition of the company.

"> I support the Bill.

"> SHRI V.P. SINGH BADNORE (BHILWARA): Mr. Chairman Sir, I rise to support the Bill. The hon. Member from the Opposition said that this Bill was brought by their Party when they were in power. It is being supported by them though it is being piloted from this side.

"> This Bill is one of the most important Bills for India. It will change the whole market, trade, commerce mainly because E-Commerce is coming into India in a big way. In another ten years most of the people even in the rural India, not to talk only of the bourgeois or the urban elite, people will be buying things looking at the TV and by sending E-Mails. That is why Trade Marks Bill is one of the most important Bills for India.

">1629 hours (Dr. Raghuvansh Prasad Singh in the Chair)

"> There are some apprehensions which were expressed like today curry is being made a trade mark in Japan. What has curry got to do with Japan?

"> In America, there is basmati and all these things are there. These apprehensions are there in the minds of the Indians. You will have to do something to stop this. The biggest market today is the perfume industry. It is even bigger than marketing liquor or beer. It is the biggest market. Do you know what they are doing? They have already got the Jaipur perfumes. Now what is Jaipur? It is a famous city in India. It has a history behind it. It has got hundreds of years of history and that also of the Maharajas and the system. They were with Akbar and they also fought against the Marathas and what not. The whole history is being taken away by a perfume company. Can we stop it? We cannot stop it.

"> Then, there is another problem that we have to look into. A Jaipur firm called Autolite went to Paris and for a small little error which they may have committed, the police of France caught them and put them behind bars. They did not even have money with them and they did not know as to why they were behind bars and what is their fault. It was due to trade mark; it was due to patents or the trade marks. Things like these are happening to the Indian industry and we have to do something about it. We do not have that sort of money to fight against and be in litigation with the foreign companies which are very very big. These are the apprehensions and that is why, we will have to do something about these things.

"> There is a very interesting story about how the trade marks system works. It is interesting to quote Mr. Atio Morita, Chairman of the Board of Sony. He gives an illustration about international trade marks in his book "Made in Japan". He writes that in 1955, when Sony was a very small company making radios, he went to US and there, he got a big order of 100,000 pieces of radios but there was a condition put forth by an American firm, Bullova. It said not to put 'Sony'" on the radio but put 'Bullova"'. Imagine the plight of that small trader, Sony in 1955 getting a big order of 100,000 radios! He said, "Should I take it or should I stick to the name, Sony?" Suppose he had taken over that order of Bullova, then the name of the famous radio which is the household name today, would not have been here today. We would not have been able to get the name Sony today. He writes that it was his best decision that he ever made, that is, he refused that firm and he went to make Sony. The fact is that we have to learn a lesson from Sony and how our industry can cope up with the international competition. Otherwise, we will get big orders and we have a name in the international market. But those people are really using us.

"> In the end, while supporting the Bill, I would like to mention only one more thing that they must also think of changing the renewal system. Now, in the renewal system, if somebody forgets to renew his trade mark, and it goes on for some time like this, will the Government give that trade mark to somebody else? Will it be possible? For example, let us say that there is the Indica Car of the Tatas. After some time, if they start using another name and the Indica is phased out, will the Government be able to give the India name to some other car manufacturer of India who will use the Indica name and the Tatas'" trade mark? Will that be open? Nothing has been said about this in the Bill.

"> There is another thing that in Japan, France and the USA, if there is a trade mark which is not used for three years, that trade mark is again open and he cannot use it any more. It is cancelled. Mr. Minister, have you thought of something of that kind in our country also? Basically, this Bill has to be in consonance with or in conformity with the rules and the regulations of the other countries where we should also benefit. It is not one-way traffic that they benefit from us and we do not benefit from them.

"> With these words, I support the Bill otherwise. Thank you very much.

"> SHRI BIKRAM KESHARI DEO (KALAHANDI): Mr. Chairman, Sir, I rise to support the Bill brought forward by the hon. Minister wholeheartedly. This Bill was piloted in the year 1993 in this House but the same was referred to the Standing Committee for eliciting its views. Eventually, the views came and now the hon. Minister has again piloted this Bill.

"> This Bill is of great importance. It is essential for the merchandise of the country. Because, as you know, India is a country of varied cultures, varied agricultural practices, varied trades and varied people. Therefore, every region has got its own trade mark. It has got its own individuality thereby its own identity. To save that identity, this Bill is very essential.

"> As you know, today in the world of globalisation - India has accepted the liberalised policies - if this Bill is not passed and if this Bill is not to be in vogue, then, our Indianised products, the Ayurvedic products or the products which are made through the Ayurvedic process or the products which are Indianised products would be globalised; gradually these products would die and the people depending upon these products would fade away. Therefore, this piece of legislation will protect their identity. It is like the Copyright Act which was passed half-an-hour before this piece of legislation which protects literature and the artists. Therefore, trade mark or the trade product of merchandise has got a vast area of operation.

It involves a lot of local items which are to be protected. Therefore, this Bill is being piloted by the hon. Minister. We support it wholeheartedly. We hope that it is maintained.

With these words, I conclude.

"> SHRI TRILOCHAN KANUNGO (JAGATSinghpur): Sir, I rise to support the Bill. But certain things are to be made clear. It is no doubt a necessity for the country to have a comprehensive law for the trade marks. It is also a necessity to replace the Trade and Merchandise Marks Act, 1958. It is also a compulsion.

"> The hon. Member Shri Priya Ranjan Dasmunsi was telling that the present Government or the party in power are making a U-turn; they were opposing it in 1955 and they are now supporting it. In 1995, the whole of the country was burning when India became a party to the Dunkel proposal when India signed the GATT. The then Government also signed the Trade-Related Aspects of Intellectual Property Rights known as the TRIPS. The World Trade Organisation came into being from 1st January, 1995. We were very much aggrieved at that time that India should not have done that. By becoming a party, by becoming a signatory to the WTO, we wanted to know whether we have gained or not. It is another matter. But we have not gained anything. It is my personal view that I am telling you. It is against the interests of India, no doubt. Sir, you shall agree with me in this regard. I have no doubt about it. In the World Trade Organisation and in the TRIPS Agreement, there are certain compulsions on the member-nations - whether they are developing nations or the developed nations. They have been told to frame laws relating to eight aspects. They are: (1) Copyright and related rights; (2) trade marks rights; (3) geographical indications of goods; (4) industrial designs; (5) patents; (6) lay-out designs; (7) topographies of integrated circuits; (8) protection of undisclosed information and control of anti-competitive practices in contractual licences. These eight aspects are to be enacted by respective nations. That was the Agreement. For the developed countries, one year's time was given. That means, by 1st January, 1996, they had to enact their laws if they had not done that earlier. For the developing countries like ours, four more years were granted. That means, we have time up to 31st December, 1999. Because 31st December, 1999 is coming closer, we have to pass this Bill. It is a compulsion. Out of these eight aspects, we have four existing laws: (1) the Patents Act, 1970 which is going to be amended; (2) the Trade and Merchandise Marks Act, 1958 which is going to be repealed and replaced; and (3) the Designs Act, 1911 which would be taken up very shortly and copyright Act, 1957, which was amended a few hours before the Copyright Act, 1957 has already been passed in both the Houses. Other laws are there. So, it is a necessity and also a compulsion by World Trade Organisation and Trade-Related Intellectual Property Rights. These two Bills, - the Trade Marks Bill and the Geographical Indications of Goods (Registration and Protection) Bill - should have been taken up together. I think, in that manner, the discussion would have been better. Let me tell you that I am also one with Mr. Munshi so far as section 115 of the earlier Law is concerned. Now, this is also there in the present Bill. A DSP will take cognizance of the offence. It should be handed over to the Sub-Inspector of Police. It is all right. He is right in stating so and the hon. Minister will definitely examine it and then bring forward the necessary Amendments.

"> I tell you about certain things. I come from an eastern part of this country. Most of you, particularly the ladies, are aware of 'Sambalpuri' sarees and Sambalpuri handloom cloth. It is an unparalleled one. It is totally different. It is not just a printed saree. It is done by 'tie-and-dye' system. The man who popularised it is no less than Padma Sri Kuthartha Acharya whose son, Shri Prasanna Acharya, has been elected to this House as an hon. Member.

"> The Sambalpuri saree has been copied. That has been done not by print but by tie-and-dye technique. Such a methodology or a technique has not been applied elsewhere in the world for handloom sarees like the Sambalpuri sarees or Sambalpuri cloth. The Sambalpuri saree has been imitated by others by print. Therefore, the trade in Sambalpuri sarees has been affected not only inside the country but also outside the country.

"> I tell you another thing. There is a sweet, called 'Neemapada Jhilli'. It is made out of cheese. 'Neemapada Jhilli' is made in an area from where the hon. Member Shri Braja Kishore Tripathy comes. I represent that constituency. No where in India, you can find a parallel to 'Neemapada Jhilli' which is produced from cheese. Many persons have tried to copy it. But they have failed to do that.

"> My friends from West Bengal are here. They are very much fond of 'Rasgullas'. I tell you that if anybody goes to Shri Tripathy's constituency, 'Pahara Rasgulla' has been given a national name.

"> SHRI ABUL HASNAT KHAN (JANGIPUR): It is a Bengali form of 'Rasgullas'.

"> SHRI TRILOCHAN KANUNGO : 'Pahara Rasgullas' are different.

"> SHRI ABUL HASNAT KHAN : Then, what is the rate of that per kilogram?

"> SHRI TRILOCHAN KANUNGO : Next time, I shall bring it for you!

"> I tell you that unless a trade mark is given, the things would naturally be imitated and they will lose their market throughout the country.

"> No only this, regarding flora and fauna, there are 45,000 species of plants in this country. A clear survey has not been done and only 50 to 60 per cent of the whole of India's survey has been done. It has been done at random. They have identified about 45,000 different species of plants. There are about 81,000 species of animals and birds.

"> Sir, a patient, Shri Banke Behari Das, a Member of the House of Elders -- the Socialist people must have heard about him -- had come to the All India Institute of Medical Sciences. He was suffering from Rheumatism. The doctors told him that he had come from Orissa, the land of medicine for this disease. They asked him why did he come to Delhi when the medicine was available in Orissa. Banka Bata said I do not know what is and where is that medicine." The doctors told him that Indian hornbill was the medicine. The Oriya equivalent of this is known as Kochilakhaichadehi Kochilakhaipokhi. Kochilakhaipokhi, he who takes the entire thing in totality by roasting it, the rheumatism and arthritis will go.

"> My point is that all these things should be identified and should have been taken in right earnest long back. These trademarks and geographic indications have not been taken in right earnest for which Basmati has been patented in America by Ricetech Company as Texmati. In reply to one of the question I have heard that Meghalaya Haldi is good. I would like to inform the House that the best Haldi or Turmeric in the world is found in Phulbani District of Orissa and Kandhas cultivate it.

">1652 hours (Dr. Laxminarayan Pandeya in the Chair)

"> My point is that we have to be very careful. When Haldi or turmeric was going to be patented by an American company that was protested and, of course, that could not be patented there. The trade mark, the geographical indications and all those things should be taken up in right earnest. We have not done in the past, that is all those related matters and we understand it. But in 1994 we signed the GATT Agreement, that is, the trade related Intellectual Property Rights Agreement. We did all these things but we are dragging our feet for long six years on enact related laws.

"> I do not know that even if we enact this law, whether we would implement it sincerely or not. The hon. Minister should come forward with a statement that all these things will be taken care of and we shall see that the trade marks and also the geographical indications are dealt with sincerely. Those things will have to be taken up in right earnest and for paucity of funds, we should not fall back upon it. We should see that it is implemented properly. We are now rising when others are patenting our commodities, our Basmati Rice, our Haldi, our Neem and all other things.

"> Sir, in Orissa, ghritkumari is found. In Oriya it is known as Gheekumari. For blood pressure ailment, it is a patent medicine. Outside it has been tried to be patented. There are many more things which I am telling you. Another thing is Patalagaruda.

"> We have to register these things, bring them to the Registry and implement them in the right earnest. As it has been stated by the hon. Minister that since the passing of Trade and Merchandise Market Act in 1950, no amendment has yet been made. That shows that we have not been properly implementing it. We are not serious about the law. Now, we have to become serious about this law especially when we have opened up our economy. Whether by opening up, we have gained or lost, that will be discussed on some other day. Anyway, I support this Trade Marks Bill. I request the hon. Minister and the Government to see that it is implemented in the right earnest and nothing should stop it on the plea of paucity of funds.

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SHRI E.M. SUDARSANA NATCHIAPPAN (SVAGANGA): Mr. Chairman, Sir, even though this Bill is a belated one, we have to become richer by implementing the Act with all our efforts and with all the dynamism of the hon. Minister so that we can become richer which we have lost for the past six years. Had it come earlier, we would have protected our interest from the international competition. Therefore, I am just rushing through certain provisions alone which need some more explanations.

Clause 9(1)(a) of the Bill while laying down an absolute ground for refusal of registration of trade marks which are devoid of any distinctive character, vests unlimited discretion in the Registrar in assessing whether or not the trade mark is distinctive. The current practice of Trade Marks Registry permits overcoming of the objection of non-distinctiveness on the ground that the trade mark in question stands registered in Commonwealth countries such as U.K., Australia, New Zealand, Ireland, etc., without even letting in any evidence. Hence, a further provision may be added to the Section to give effect to the above established Trade Marks Registry practice. This is all I want to submit regarding Clause 9(1)(a).

Regarding Clause 9(3)(c), the expression "the shape which gives substantial value to the goods" is vague and ambiguous. It is proposed that it be deleted altogether. Or, in the alternative, its import may be clarified by way of a proviso or explanation.

Explanation (2) to Clause 11 lays down the guidelines for determining what constitutes a well-known trade mark. However, the guidelines be further clarified to include knowledge or reputation of a trade mark in India as a result of international advertisement and promotion which spill over into India through satellite communication etc. In this connection, it would be material to refer to the following ratio of a judgement of Delhi High Court in the case of Apple Computer Inc., Vs. Apple Industries Ltd.

"I am in agreement with the view expressed by the Ontario Supreme Court with respect to the need to carry on business in the jurisdiction in a particular territory as also regarding the meaning of goodwill in passing-off matters. In other words, it is not necessary in the context of the present day circumstances, the free exchange of information and advertising through newspapers, magazines, video, television, movies, freedom of travel between various parts of the world, to insist that a particular plaintiff must carry on business in a jurisdiction before improper use of its name or mark can be restrained by the court. Similarly, I am also in agreement with the view expressed regarding the meaning of goodwill in passing off cases. In passing-off cases, the main consideration is the likelihood of confusion and consequential injury to the plaintiff, and the need to protect the public from deception, deliberate or otherwise."

The above decision is followed by the Calcutta, Bombay and Madras High Courts also. Therefore, this may also be considered.

Regarding the clause 11(3)(a), providing for a relative ground of refusal of registration by virtue of law of copyright should be further elaborated so as to protect India's commitments under the Universal and the Berne Copyright Conventions as endorsed by

Parliament in the International Copyright Order, 1991 as also its obligations under the TRIPS Agreement of the GATT.

17.00 hrs.

Clause 11(4) be deleted altogether since its retention would be contrary to the purity of the Register and may facilitate trafficking in trade marks. A person who has registered earlier can also come forward with another registration, with some permission from the previous registered person.

Clause 17: The note on the clause states that it seeks to omit the provision relating to the requirement of disclaimer. The disclaimer clause should be specifically retained in the new law in the form in which it exists in the existing law.

Sir, I would like to go to the next clause: "Application for registration" in clause 18. I am quoting based on the judgement of the Supreme Court...(Interruptions).

MR. CHAIRMAN : Shri Natchippan, you are reading the whole speech.

SHRI E.M. SUDARSANA NATCHIAPPAN : No, Sir. I am just reading the judgments alone.

MR. CHAIRMAN: You can quote from quotations. But you are reading the whole speech.

... (Interruptions)

SHRI E.M. SUDARSANA NATCHIAPPAN : I am quoting a particular judgement in the DRISTAN case.

"It was also submitted by Dr. Gauri Shankar, learned Counsel for the First Respondent that the Appellant was not entitled to retain the trade mark DRISTAN on the register because it had obtained its registration by making a false statement in its application for registration in as much as it had not stated in the said application that the said trade mark was proposed to be used by a registered user but instead stated that it was to be used by the Appellant who claimed to be the proprietor thereof. This point was not raised at any time before the Registrar or the High Court and it is not open to the First Respondent to take this point for the first time in this Appeal by certificate. Apart from that, there is no substance in this point, Form TM-1 appended to the Trade and Merchandise Marks Rules, 1959, does not contain any column similar to the column in the new Form TM-2 appended to the English Trade Marks Rule, 1938."

I would like to submit that provision 115(4) is about giving the dual role to the Magistrate. When they have got the complaint, then that should not be referred to the Registrar. They have to get the permission from the Registrar. That will make a lot of delay in confiscating the contraband. Therefore, getting a reference from the Registrar will make the actual accused to escape from the clutches of the law. Therefore, that provision should not be there. The Registrar can be enquired into whether that particular violation is there or not.

Sir, finally, I would like to submit one thing regarding the Appellate Tribunal. This is very important. It is really the need of the hour. But the selection of the members is more important. The more importance should be given for the retired High Court Judges or Indian Law service people. Therefore, we should give more importance for the clause 4(b) in respect of the practising lawyers who have got ten years experience. A provision is already made.

But those type of persons should be given more chances so that they can come with fresh knowledge which is of the international level because the Appellate Tribunal is going to have powers of the High Court. Therefore, they are going to decide the work of the High Court. The power of the High Court is going to be taken away by the Tribunal. Therefore, the Tribunal should not be manned only by retired people, but people who are in the service, a High Court judge or a person who has practised as a lawyer and having some expertise should also be allowed so that he can give interpretation in a proper way. That will be helpful for the subordinate services also to explain the law in a proper way, to the level of international expectation.

With these observations, I thank you very much.

"> DR. B.B. RAMAIAH (ELURU): Thank you very much Mr. Chairman, for giving me the opportunity to speak.

"> The hon. Minister has put up this Bill, which is already four decades old. It is as old as 1958. He has not made any changes or modifications in it. When the Bill came up for the first time in 1993, it was referred to the Standing Committee for Industry. Some suggestions were given by the Committee and the Report was presented to the House on 21st April, 1994. All the recommendations of the Committee have been accepted. The Bill that has come up even today is a part of the main object. Except for a few changes which have been made by the Law Ministry, this Bill is more or less on the same lines.

"> The Trade Marks Bill is very essential in the present circumstances and it had to be implemented much earlier. We know that there is a lot of delay in registration and other things and the present rate at which it is growing, we need to improve and develop the system with computerisation and various other requirements that we are looking for. I know that some of the hon. Members have made it that the WTO is responsible for some of these things, including probably the next Bill - Geographic Indications of Goods (Registration and Protection) Bill - which is coming up. Whatever it is, today the situation has completely changed than what it was about 10 or 15 years back. Some of the Members have also made it that the people who opposed it earlier are now supporting it in the present conditions. The changes are going on very fast and the circumstances must have made it more fast.

"> The WTO has made a lot of provisions due to which we have to live up to the world conditions and there is a lot of opposition to the WTO. However, there are a number of countries which are waiting to get into the WTO. Today, there may be 138 countries in the WTO, but at least 40 or 50 countries are looking forward to join it, including China, Russia and so many other countries. There are a lot of advantages of joining WTO and we need the world trade to be developed. When we are exposed so much to the world trade, we need to protect that part of our culture and our products in this country. That is the area where we have to see that the trade marks law

should be improved. Not only trade marks, what we are talking of, geographical identification of our both plant-based and animal-based and various other circumstances has to be protected by this law.

We also need to protect our patents. We have a lot of technologists and scientists in this country who are still hesitant that the other countries will be able to come and encroach upon this country. It is not a fact. Our own scientists are going outside because we do not have protection in the case of patents in this country. This has to be modernised today. They are looking from outside when they can come back and introduce their patents in this country.

You can look at what has happened in the case of pharmaceuticals. India can produce bulk drugs at substantially cheaper price than any other country can do. We may not have enough resources to develop a drug, which needs to be very expensive. Even Japan was not able to do it. In regard to electronics industry, the Silicon Valley produces goods and they commercialise it. So, we have to take advantage of something that is being developed with our own resources and with our own capabilities, we can go further and take advantage of it.

Sir, India would be the biggest exporter of pharmaceuticals and we may need very little imports.

Sir, coming back to the various aspects of this Bill, I would like to submit that there has been good protection for the development of various products. This Bill provides for a lot of support for various items which we need for our country. Earlier, hon. Members have mentioned that Darjeeling and Assam Tea need protection. Earlier there might have been a small number of patents but today the products under the trade marks are increasing very fast. Today, we have to deal with, maybe, 50,000 to 60,000 such products. Well, it could even be more. Under these circumstances, the passing of the present Bill is very essential.

Sir, some of the hon. Members have mentioned about Basmati. The United States, of course, has come out with a different name, Texmati, for this. We have been fighting about this in the WTO and we are quite sure that we would win this case. There are a lot of protective measures, safety measures and safety clauses in the Bill which we can use to protect our products. It is up to us as to how fast we could make use of all these safety clauses to protect our own agriculture and trade-related products.

Sir, there are a lot of Ayurvedic and plant-based medicines also. This is one area which is expanding very fast. Even today, in the protective market, or what we call the reserved forests, we do not have the full data as to what type of plants are available and what kind of plant species are available which could be developed for useful purposes. Some hon. Members have mentioned that some work in this regard has been done by Australia. This has been done to protect the people of their country. Some hon. Members here have mentioned about paper being utilised for some useful purpose by Vietnam. We also have to start with such things ourselves and see how we could go ahead with them. The Basira cow even has been termed as the Mongal cow and there are such other things which need to be protected either by protecting them by their name and local geographical basis or on some other basis. Again, there is a species by the name germ plaza. It is an indigenous plant. We have to take care of it.

Sir, some hon. Members have also mentioned about the Appellate Board. At some point of time there would a requirement for referring cases to the Appellate Board. The suggestion that has been made is about the type of judges that are required to be appointed in these Boards. They should either be experienced lawyers or retired High Court judges who have the ability to dispose of the cases quickly and not drag on with them as has been the case on earlier occasions.

Sir, there are a number of people in the Indian management pool. Their services could be taken to see as to how they would be able to help in the expansion of trade by protecting the products that we are developing.

Sir, finally, I would like to submit that I did not want to say anything except for extending my support to this Bill. But since I have to say something, I thought, I should make some points on a Bill which I strongly support.

"> SHRI RUPCHAND PAL (HOOGLY): Mr. Chairman, Sir, I would have been very happy if I could extend my support to this Bill. It is because in this environment of, so called, globalisation this comprehensive Bill has been brought, of course under the directives given by the Supreme Court and many other courts in relation to trade marks, to give encouragement to flow of investment and transfer of technology.

"> Sir, although there are several good things in the Bill, yet I have noticed at least four to five areas which the persons involved in drafting the legislation have either not cared to look into properly or they have looked at it very casually or maybe, in this globalised era they have deliberately not taken care of.

"> First, let me come to Section 15. I think, my esteemed colleague from that side had made a reference to it. They say that they would look into, enquire raids and cause seizure of the spurious goods, and others who are involved in violation of infringement of trade marks.

"> Clause 115(4) says:

"> "Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he is satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate..." etc., etc.

"> There can be no objection to that. But then, there is a proviso. The proviso says:

"> "Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained."

"> But how many Registrars will be there in the country? To my mind, they are five. Suppose, there is a case. Because the opinion of the Registrar is very important, the violator contests the case and calls the Registrar as witness. Of course, according to the law, a

Registrar cannot be prosecuted. But as per the law of the land itself, he can be called, as a witness. On the basis of the Registrar's opinion only, it is being executed. But how can a Registrar move about from one end of the country to the other end? How can it be feasible? This is to make the whole exercise futile. In that case, the Registrar will have to sit in the courts only. But that also will never be possible. In different courts, it will be challenged and the Registrar will have to sit all the while without having any time to look into the Registrar's part which is being simplified.

"> Before I give my suggestions, I would like to touch Clause 134. There is something new. In the Code of Civil Procedure, it is the defendant whose residence should be taken into account as a jurisdiction of the court. But it is being reversed here. It is a plaintiff. What will happen in the case of a multinational company? A small Indian company which is having a trade mark to a poor fellow will be facing problems. A multinational company with so many branches will become the plaintiff. If a unit, say, is in Kerala, he will lodge a complaint in Rajasthan. Will it be possible for the defendant to go there and challenge it? Financially also, it would be absolutely impossible. That way, the multinational company will trade away all our genuine trade marks and monopolies it. And, Sir, I suspect that this has been done deliberately and not as careless mistake or lapse.

"> We think that these days, the multinational companies do have their influence in very many quarters. I am not aspersing anything on anyone in the Legislation Section engaged in the drafting. But here is the case. I would like that the hon. Minister should just explain it. How can it be that the Indian law, as applicable as per the Civil Procedure Code, is being reversed. The result would be that it will be to the disadvantage of the indigenous holders of trade mark. It will just encourage and strengthen those who have financial strength, earnings, that is, the multinational companies.

"> It has happened here. I can go on giving any number of cases. The multinational companies have expropriated our indigenous trade marks because of their financial strength and also because of the inability of the poor indigenous trade mark holder to contest in the court of law, because he does not have money, he does not know whom to approach there and all such things. Let us take Clause 17. It is also a very important Clause. Will the Register be preoccupied in the court of Law or Appellate Body as witness all the time? The disclaimer, provisions earlier existed in the Act is being changed. Suppose a company is just monopolizing a trade of beauty shops. What are the ingredients of it -almond oil, etc. Now, what is being suggested is that the whole concept of beauty soap with any of the ingredients will be monopolized, and ultimately none including those having something to do with one of the ingredients, will be able to produce anything. This the disclaimer clause which was there in the earlier Act is being removed. This will help only to the multinationals. Having said that, I want to emphasize on one thing. In the name of investment flow and in the name of having more access to foreign technology, the so or is opening up our Indian markets for the multinationals by bringing these changes.

"> Sir, through you, I would like to request the hon. Minister to tell us what are the stipulations of WTO that compel us to bring such a legislation. To my mind, there is no such compulsion. It has nothing to do with the WTO. Nowhere, it is written that they are to make such changes. But still, they are doing it. We have seen in other cases also. When we are asked to bend, we crawl; when we are asked to do something by 2,005, we do it before 2000.

"> Sir, here, we have never been told by any international body to undergo such changes. But such changes are being caused or proposed to be caused. It is a very dangerous thing.

"> Now, I come to the point of Appellate Board. I know about the problems facing the Ruling Alliance. They have their own people there who had been defeated in the Elections. They are now unemployed. After putting so many of them as very high officials -- I am not mentioning their names. How can I say they are being given the post of Governor or something like that --even then, there are a large number of people who are to be given employment. That is what they are talking about it. There are High Courts. Why do they not set up exclusive benches for the intellectual property right cases? That will not involve any additional cost also. They say that they are in deep debt trap. Daily they are assuring the nation that they shall bring down the fiscal deficit. Daily they are speaking about Expenditure Commission. And, now, they are saying that they propose to set up another Appellate Board. It will have technical Members. But what is the technicality involved in the trade mark? There is obviously, no technicality. This is the packaging. These are the marks. If any technicality is required, it is required in the Copyright Law. But in the Copyright Law, they have not placed any technical officer. But here, they have proposed to put in one technical officer. What for he is there? I think, Sir, the Ministry has been misdirected. There are so many things mentioned in the Bill, but it is not that everything is bad. But there are so many important areas, some of them I have already mentioned, about which the hon. Minister need to explain to this House. I think, they should make appropriate changes. Instead of the Appellate Board, This power should be given to the High Courts' Special Bench. Clause 17 is a disclaimer clause, and it should be retained to protect our indigenous interests.

"> It should be retained to protect our indigenous interests. That proviso in section 115 should be changed. of bringing everything. Say for example, Someone is selling some spurious products. Someone is importing something spurious and police had the knowledge. Now the Registrar will be approached and asked to give permission. What will happen?

">The multinational companies will require one man, maybe on the pay roll, in the Registrar's office, one man in the Appellate Board and another man, at some other connected area which comes to a total of three persons. They will give the information. And also one advocate should be there. Of course, I am not mentioning that because there are many friends of ours who are advocating the cause of MNCS only.

"> The Trade Mark Bill suffers from several infirmities. I have mentioned three or four only. My plea will be that for proper study and scrutiny, it should be referred to a Select Committee and there should be people like Dr. Nitish Sengupta, eminent lawyers like Shri Ajit Kumar Panja.

">SHRI AJIT KUMAR PANJA (CALCUTTA, NORTH EAST): Whether I am here or in Bengal, CPI(M) will always touch me.

">SHRI RUPCHAND PAL : I am seeking legal opinion. The Government should be helped by people like them by people like Dr. Nitish Sengupta and by lawyers and other eminent people. The Minister should be heard. The Ministry should be heard. These measures are being brought forward because of the pressures of the multinational companies. So, I oppose the Bill. I would have been very happy to support the Bill had there not been the provisions mentioned by me. I think the hon. Minister will have a relook at

these clauses. I have mentioned them and the Govt. should desist from setting up an Appellate Body. Instead High Court should be involved in such cases with the special bench.

"> 1729 hrs.

"> प्रो.एस.पी.सिंह बघेल (जलेश्वर) : सभापति महोदय, मैं आपका आभार प्रकट करना चाहता हूँ कि इस महत्वपूर्ण विधेयक पर चर्चा में भाग लेने के लिए आपने मुझे बोलने का समय दिया। यह विधेयक कोई नया विधेयक नहीं है, जब श्री नरसिंहराव जी की सरकार थी, १९९३ में इसे रखा गया था और उस भारतीय जनता पार्टी के हमारे मित्र विपक्ष में थे। इस विधेयक को कुछ धाराओं का उन्होंने उस समय पुरजोर विरोध किया था और आज वही विधेयक यहाँ लाया गया है। १२वीं लोक सभा में भी आप उधर ही बैठे थे। लेकिन उस समय इस विधेयक को नहीं लाया गया। मुझे लगता है कि १३वीं लोक सभा में भारतीय जनता पार्टी और कांग्रेस की नजदीकियाँ कुछ ज्यादा ही बढ़ी हैं और मुझे लगता है कि कल प्रस्तुत होने वाले महिला विधेयक पर कांग्रेसी मित्रों का जो रवैया रहेगा, वह इस दोस्ती की प्रगाढ़ता का परिचायक होगा।

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"> सभापति महोदय, इस विधेयक के बारे में मैं कहना चाहूँगा कि हम कोई भी विधेयक लायें, हमें बहुत गम्भीरता के साथ उसका अध्ययन करना चाहिए, उस पर रिसर्च होनी चाहिए,

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"> जिस विषय से संबंधित विधेयक आप ला रहे हैं, उससे लाभान्वित होने वाले या उससे प्रताड़ित होने वाले लोगों की भी राय ली जानी चाहिए। इस विधेयक को लाने से पहले छोटे व्यापारी, बड़े व्यापारी, विभिन्न ट्रेडों के व्यापारियों, विधि विशेषज्ञों, चिकित्सकों आदि की भी राय ली जानी चाहिए थी। विधेयक को बनाने के लिए जो महत्वपूर्ण सुझाव हैं, वे एक ही बार में आने चाहिए जिससे बार-बार हमें संशोधन न करने पड़े।

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"> व्यापार चिह्न विधेयक के बारे में मैं यह जरूर कहना चाहूँगा कि जो भी महत्वपूर्ण उत्पाद हैं, जैसे जीवन रक्षक दवाइयाँ या खाद्य पदार्थ हैं, उन पर भी निगाह रखने की जरूरत है क्योंकि आज के जमाने में पैसे के लिए एक अंधी दौड़ चल रही है। मैं यह देख रहा हूँ कि चाहे कापी राइट अधिनियम हो या व्यापार चिह्न अधिनियम हो, कहीं न कहीं अमरीका अथवा डब्ल्यू.टी.ओ. के दबाव की हम दुर्गंध महसूस कर रहे हैं। मेरा इस मामले में कहना है कि हमें अपनी गाड़ी के स्टेयरिंग को कभी किसी के हाथ में नहीं देना चाहिए। यदि आप एक बार गाड़ी का स्टीयरिंग किसी को पकड़ा देंगे तो उससे ज्यादा गंभीर दुर्घटना होने की संभावना है, क्योंकि स्टेयरिंग किसी को पकड़ा दी तो फिर उसका पता ही नहीं है कि वह गाड़ी को कहां ले जाए।

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"> कुछ उत्पाद ऐसे हैं जो बहुत पापुलर होते हैं और उनकी बहुत मोनोपोली होती है। जब कभी हमें किसी देहात में रात्रि में विश्राम करने का मौका मिलता है तो सुबह गांव वाले कहते हैं कि आपने कोलगेट कर लिया हो तो नास्ता कर लें - जबकि वह एक टूथपेस्ट है। ऐसे सैकड़ों किस्म के टूथपेस्ट हैं, लेकिन वे इतने पापुलर होते हैं कि उन्हें उनका पर्याय माना जाने लगता है। उसी की सबसे अच्छी नकल होने लगती है। हमारे ग्रामीण अंचल में लोगों की ग्राम सभा है, बाजार भी बहुत देहाती तथा छोटे हैं। वहाँ हमें देखने को मिला कि जहाँ हमारे कोलगेट के स्पैलिंग

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"> बनाने का उपक्रम किया। अतः जो बहुत ही प्रसिद्ध प्रोडक्ट्स हैं, उनकी व्यापार चिह्न के बारे में अलग से समीक्षा जरूर की जानी चाहिए। विषय से थोड़ा हटकर बात जरूर हो लेकिन इस प्रकार से नकल करके नुकसान से बचने की आदत सी पड़ गई है।

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"> सभापति महोदय, जब मैं पुलिस की नौकरी में था तब मैंने एक गाड़ी पर

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"> को थोड़ा ऐसा घुमाया कि अगर पकड़े जाएं तो वे उसे ठटी'''' साबित कर सकें।

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"> नीले-लाल रंग से उसे केवल इसलिए लिखा गया ताकि वह गाड़ी पकड़ी न जाए और यदि पकड़ी जाए तो वे सिद्ध कर सकें। उन्होंने कहा कि हमारी एक शांति अभियान समिति है, जो रजिस्टर्ड है, उसमें नीला-लाल रंग रजिस्टर्ड है और हमने पोलाइट लिखा हुआ है न कि पुलिस लिखा हुआ है। ऐसी लोगों की जहनियत बनती जा रही है।

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"> दिल्ली में पान मसाले का एक बाजार है। यदि आप वहां चले जाएं तो एजेंट पछोगे कि आप कहां से आए हैं। यदि आपने कह दिया कि आगरा से आए हैं तो वे वहां के पौपुलर पान मसाला प्रोडक्ट का नाम लेंगे हुए कहेंगे कि यदि आप कहें तो दस मिनट में आपको उनके जितने हजार या लाख रैपर चाहिए, वे उपलब्ध करवा देंगे। एक किस्म का पान मसाला किसी अंचल विशेष में प्रसिद्ध हो जाता है तो उसकी नकल होने लगती है। इस ओर भी हमें ध्यान देना पड़ेगा।

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हमारे कई बुद्धिजीवी सांसदों ने बासमती चावल का उल्लेख किया कि उसे अमरीका ने पेटेंट कर रखा है। यदि वे वहां ऐसा बासमती चावल पैदा कर लें तब हम उनकी काबलियत समझें। वे नैनीताल की आबो-हवा कहां से लाएंगे, गोबर की खाद कहां से लाएंगे, हिन्दुस्तान की आबो-हवा कहां से लाएंगे। मैं समझता हूँ कि सुगन्ध बनाने वाली चाहे जितनी बड़ी बहुराष्ट्रीय कम्पनियां हों, हिन्दुस्तान के बासमती चावल की जो सुगन्ध है, वह अमरीका नहीं ला सकता, भले ही वह चांद पर पहुंच गया हो। उन्होंने कुछ चीजों का पेटेंट कर रखा है। मैं पढ़ रहा था कि उन्होंने नीम और हल्दी का पेटेंट कर रखा है। लेकिन हमारी ऐसी बहुत सी सम्पदाएं हैं जिन्हें हमें बचाना होगा। अमृत नाम की चीज भले ही पुराणों में लिखी हो लेकिन मैं नहीं समझता कि अमृत नाम की कोई चीज कभी पैदा हुई होगी। लेकिन हिन्दुस्तान में कुछ चीजें जरूर ऐसी हैं जो अमृत हैं चाहे वह तुलसी का पौधा हो या जड़ी-बूटियां हों। इस ओर भी हमें ध्यान देना होगा कि हिन्दुस्तान की चीजों को पेटेंट करने की जो साजिश हो रही है, उससे बचा जाए। कुछ उत्पाद जो ३०-४० साल पहले बहुत प्रसिद्ध थे, किन्हीं कारणों से आज वे फेकटियां बंद हो गई हैं। लेकिन अब उसी नाम से अन्य लोगों ने वे फेकटियां प्रारंभ कर दी हैं। हमारे पैदा होने से पहले देवीदयाल के नाम से स्टील चला करती थी, बीच में वह बंद हो गई लेकिन उपभोक्ताओं को गुमराह करने के लिए उसे दुबारा शुरू की गई है।

मैं आपके संज्ञान में एक बात और लाना चाहूंगा। मुर्शी जी ने कहा कि कुछ उत्पादों का ट्रेड मार्क जीवित पशु-पक्षी है। मैं बड़े शहरों की बात नहीं करता लेकिन देहातों में अगर बंदर छाप बीड़ी है तो हम देखते हैं कि पिंजरे में बंदरों को कैद किया जाता है। ऐसे ही अगर कोई शेर छाप उत्पाद है तो सर्कस से किसी बड़े शेर को ले आते हैं और देहात के बाजारों में उसके साथ बहुत अमानवीय व्यवहार किया जाता है। इस पर भी रोक लगाने की आवश्यकता है।

अंत में मैं आपका ध्यान बहुराष्ट्रीय कम्पनियों की ओर आकृष्ट करना चाहूंगा। यह कहावत है कि बड़ी मछली छोटी मछली को खा जाती है।

जिस प्रकार से बहुराष्ट्रीय कम्पनियां आ रही हैं, उससे हमारी देशी कम्पनियों को खतरा उत्पन्न होगा। ये कम्पनियां क्यों सफल हो रही हैं, क्योंकि ये प्रचार-प्रसार के माध्यम से हमारे दिमाग पर हेमरिंग करती हैं। हमारी कम्पनियों के साइनबोर्ड बिल्कुल साधारण पेंच में होंगे, लेकिन किसी बहुराष्ट्रीय कम्पनी का उत्पाद होगा तो वे अपने साइन बोर्ड पर ऐसी वार्निश करते हैं कि वह रात में भी दिखाई पड़ता है। वे दूरदर्शन पर पल-पल पर इतने विज्ञापन दिखाएंगे कि हम उसको खरीदने के लिए मजबूर हो जाते हैं। इसको हेमरिंग करना कहते हैं, हथौड़ा मार-मार कर वे हमारे जेहन में उस चीज को डाल देते हैं। उससे सबसे ज्यादा आकर्षित महिलाएं और बच्चे होते हैं। इस ओर भी हमें ध्यान देना होगा।

जहांगीर की बिटिया का हाथ जल गया था। एक अंग्रेज उनके दरबार में था ... (व्यवधान)

सभापति महोदय : कृपया समाप्त करें। सामान्य चर्चा से हटकर विधेयक पर कुछ कहना हो तो कहें। ये तो सामान्य बातें हैं।

प्रो.एस.पी.सिंह बघेल (जलोसर) : मैं अपनी बात बस खत्म कर रहा हूँ।

शहजादी का हाथ जल गया था, तो ऐसे ही अंग्रेज ने कहा कि एक मरहम मेरे पास है। उसके पास कोई बहुत बड़ी दवाई नहीं थी, उस पर उसने वैसलीन लगा दी थी, उससे शहजादी ने ठंडक महसूस की। इससे बादशाह खूश हुए और इनाम के तौर पर उन्होंने अंग्रेजों को इजाजत दे दी कि समुद्र के किनारे व्यापार करने के लिए आप एक टेंच लगा लें। वह टेंच फलता गया, फलता गया और इतना फल गया कि ईस्ट इंडिया कम्पनी के रूप में पूरे हिन्दुस्तान पर छा गया। आप बहुराष्ट्रीय कम्पनियों को बुला तो जरूर रहे हैं, इससे शहजादी को ठंडक महसूस हो सकती है, बादशाह खूश हो सकता है, लेकिन अगर उनको पैर रखने का मौका मिल गया तो एक नई ईस्ट इंडिया कम्पनी इस देश में आ जायेगी। उस ईस्ट इंडिया कम्पनी से देश को जो नुकसान हुआ था, वह फिर से हो सकता है। हमें इतिहास से सबक लेना चाहिए

that history is the root of politics and politics is the fruit of history.

इस बात का हमें ध्यान रखना है।

समय देने के लिए आपका बहुत-बहुत धन्यवाद।

"> 1744 hours

"> SHRI ANNASHEB M.K. PATIL (ERANDOL): Mr. Chairman Sir, I rise here to support the Bill. This Bill is a revolutionary Bill. I know that some speakers have shown a little suspicion and also fear because of certain pressures or maybe because of fear from the multinationals.

"> Sir, this Bill has been in the cold storage for the past six years and it has come up as we have to compete or come in line with

globalisation or we should also be in the same line internationally as far as trade and industry are concerned.

"> Sir, trade mark is a very essential activity in the industry as it denotes the specific quality and reputation based on various factors. For example, trade mark is basically dependent upon geographical grounds, process of manufacture, mode of machinery, packing style of the product and so on. These are very essential aspects as far as the quality of the product is concerned.

"> When we are moving for competition in the global sphere, it is needless to say that the procedure adopted should be a simplified one. Therefore, this Bill intends to simplify the procedure and legal aspects as also the procedure for registration. I cannot elaborate more on these points because the time is short. Therefore, I would say that this is an essential Bill. I have experience with two jarda manufacturing companies in my area of operation. Both are very similar ones. They are in the court for the last several years. It is observed that even though they fight with each other, we can differentiate the quality of both the companies as to which one is better than the other. Therefore, this Bill would certainly ease the tension between the manufacturers and also simplify the procedure.

"> Sir, I have certain suggestions to make to the hon. Minister. There are a lot of pending cases regarding the applications for registration. The Appellate Board should have a procedure which can tackle the cases speedily within a minimum time schedule.

"> With these words, I support the Bill.

"> SHRI T.M. SELVAGANPATHI (SALEM): Sir, I rise to oppose this Bill though many Members who participated in this discussion supported to a long extent since the very basis of the Bill blows the economic sovereignty of the nation.

"> The hon. Minister has cited his own reasons for the introduction and for the consideration of this Bill in the Statement of Objects and Reasons. He has clearly pointed out that in view of globalisation and liberalisation and in view of increasing trade activities and development of the commerce, he seeks to take up this Bill for consideration.

"> After all, in the name of liberalisation and globalisation, the wealth of many of the developing nations has been drained. This is what the history taught us. Since 1994, there are reports and statistics to indicate that \$ 60 billion have been drained from the developing nations alone. Then, what is the purpose in enacting such type of a Bill. Serious blows have been inflicted on the economic sovereignty of our country one after another.

"> I am really surprised that this Government has come to power only in order to serve the multinationals. This is my question. Right from the inception of this Government, that is, the 13th Lok Sabha, this entire Winter Session was devoted for the purpose of passing the Bills which help multinationals and foreign powers to the core. Take, for instance, Insurance Regulatory Authority, Mines and Minerals and Copyright. The Patents Law and other Laws are yet to come. The trade and commerce and the investments have been predominant in the entire session. The whole thing is devoted for the purpose of helping the multinationals. This is another attempt.

"> They are not only selling out but they are also in the process of speedier sellout. They are selling out the nation. The Indian history taught us many things right from the East India Company. It took us nearly 200 years to drive that Company out. I do not know what would happen to this nation if in the name of liberalisation and globalisation, we take the entire nation to the hands of the multinationals. I reiterate that it is a clear surrender to the multinationals. This Bill is only to protect the interests of the foreigners. Sometime back, the hon. Minister, Dr. Murlī Manohar Joshi, was fuming how this liberalisation was in the interest of the nation. In support of his Bill, which was considered earlier than this Bill, he was explaining as to how his Government was committed to protect the interests of this nation. But it is very unfortunate that when this very Bill came up before the Rajya Sabha in 1995, Dr. Joshi was opposing it. I may be permitted to quote his words. On 31st July, 1995, when this Bill was taken up for discussion in the Rajya Sabha, I quote the words of Dr. Joshi. He was quoting the example of 'Singer':

"> "Singer was doing the same thing as what Bata is doing. They used to manufacture that machine for Rs. 200 and they used to sell it for Rs. 500. So, where was the gain for the Indian industry?"

"> This was the query posed by him. You just made 'Singer' popular. I just quoted his words. So, I want to repeat the same thing. Where are the provisions for safeguarding the Indian industry? The small entrepreneurs of this nation, that is, millions of small industries have, time and again, been thriving this economy. These will be totally jeopardised because if this Bill is introduced, a floodgate will be opened to the multinationals to protect their own interests.

"> Sir, it will be a fatal blow to the small entrepreneurs and small industries of this nation. In My opinion, the owner of the trade mark, if this Bill is passed, just because he is the owner, even if he is not producing the product, will have the control over the entire item in which his trademark is registered. He will become the owner of all products which come under his trade mark. This is fatal to the very existence of the small entrepreneurs.

"> Another question is whether the Indian product will be accommodated in the same way in the international market? I doubt, the Indian product will not be allowed to enter the international market. There is no safeguard. The multinational corporations alone will have the upper hand, if this Bill is passed.

"> Sir, coming to the core provisions of this Bill, let me take two provisions, I understand the paucity of time. Assuming one is, accepting this Bill. This Bill is not valid for the changed circumstances now even. Almost seven years have lapsed since the introduction in 1993. I do not know whether the Ministry has taken that into consideration and whether they have deliberated on the changed circumstances or not. Vast changes have taken place since 1993. Therefore, this Bill may not be valid at this present juncture.

"> Another thing which I would like to mention is that the main provision in this Bill is, the Government has lost its control over the registration now. As per the provisions of this Bill, Government's control is totally surrendered to one individual, that is, the Head of the Department, Registrar. Registrar is the sole person, who takes the entire control. He can act on his own whims and fancies. There is no authority, which can question him. There is no Government to which he is accountable. Therefore, I call upon the Government to

see that there has to be some safeguard, to have checks and balances with regard to the functioning of the Registrar.

"> The hon. Minister knows the tendency of the bureaucrats. The absolute authority will lead to more malpractices. Therefore, I say that the Registrar's authority has to be checked. In one of the provisions the Registrar can even call for the application pending... (Interruptions)

">MR. CHAIRMAN: Please conclude.

">SHRI T.M. SELVAGANPATHI : Sir, I am concluding.

"> Another draconian provision in this Act is Clause 93. I may be permitted to read it.

"> "No court or authority shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-Section 1 of the Section 91."

">As per this Section, against the order of the Registrar, one can go to the appellate board. But beyond the appellate board, there is no way for an appeal. It is a draconian law and in our system nobody can curtail a party to go to the court or approach the court of law.

"> Therefore, I would say, as our friend, Com. Rupchand Pal has deliberated, Chairman is appointed by the Government and because of the political affiliations, only those people may be appointed as Chairman and there is no chance for a person to go in for an appeal. First to the Registrar, then to the Appellate Board Chairman and there ends the matter. So, I urge upon the Government to remove this particular provision.

"> Another important aspect is that there is no time limit prescribed in this Bill for the registration of the trade mark. Therefore, there has to be a prescription of time limit.

">18.00 hrs.

"> Finally, because of the time constraint that Mr. Chairman has been imposing on me, I quote the Report of the Select Committee. The Chairman of the Committee has categorically stated:

"> "Some Members of the Committee were of the opinion that the liberalisation of trade marks registration may provide added advantage to the foreign multinational units. Instead, the policy should go slow in according recognition to foreign trade mark with a view to encourage domestic initiatives in the same or similar lines of production, the need to make efforts to encourage the use of indigenous trade marks."

"> Therefore, there is no provision in this Bill either to protect the small entrepreneurs or no provision is enunciated to encourage the millions of domestic traders, who are small entrepreneurs of this nation. Rather, this Bill would only serve the foreign companies. Therefore, I oppose this Bill. I call upon the Government to bring a comprehensive Bill.

"> Thank you for the opportunity given to me.

"> सभापति महोदय : मैं सदस्यों से समय बढ़ाने की अनुमति चाहूंगा। इस विधेयक के लिए दो घंटे का समय तय था। अभी इस पर मंत्री महोदय का उत्तर होना है और इसे खंडवार पारित करना है।

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"> Sir, we have to consider clause-by-clause of this Bill and also pass this Bill. So, I am requesting that the time of the House be extended by one hour.

"> अगर सदन की सहमति हो तो एक घंटे का समय बढ़ा दिया जाए ताकि इस विधेयक को पारित किया जा सके।

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"> श्री कांतिलाल घुरिया (झाबुआ) : हमें साढ़े सात बजे प्रधान मंत्री जी के यहाँ जाना है।

... (व्यवधान)

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"> सभापति महोदय : कल बहुत सा काम है, इसलिए कठिनाई होगी। कल इस सत्र का अंतिम दिन भी है। अब मंत्री महोदय उत्तर देंगे। इसके बाद इसे खंडवार पारित करेंगे।

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"> Is it the pleasure of the House to extend the time by one hour?

">SEVERAL HON. MEMBERS: Yes.

">MR. CHAIRMAN: So, the time of the House is extended by one hour. Now, the hon. Minister.

"> ... (Interruptions)

">SHRI S. BANGARAPPA (SHIMOGA): What will happen to the last Bill? ... (Interruptions)

"> THE MINISTER OF COMMERCE AND INDUSTRY (SHRI MURASOLI MARAN): Mr. Chairman, Sir, I am grateful to the hon. Members for having given their general support to this Bill.

"> After all, this is a Bill which has been placed here in the year 1993. We have simply added the service marks, for example band box, Travel Corporation of India (TCI), Life Insurance Corporation (LIC). These are all service marks. We have just only added these things.

"> Sir, a view has been expressed that this Bill will support and protect the interests of the multinationals. Comrade Rupchand Pal is just now entering. He let out his steam against the multinationals. I agree with his views but I refute the view that this Bill will lead to protect the multinational companies. Out of the total applications filed in India for trade mark registration, nearly 70 per cent of the applications is filed by Indian entrepreneurs. If the Indian entrepreneur and his product is to be recognised in the domestic and world markets, he needs to give his product an identity. So, trade mark achieves this purpose. We are all Members of Lok Sabha and are identified by our party symbols. We are here because we have won on a symbol. We are emotionally attached to our symbols. If some symbol is taken away because of the split in the party or because of the order of the Election Commissioner, we know how we suffer. Therefore, we should understand the importance of trade mark.

"> So, if the symbol is attached to the politicians during elections, trade mark is attached to the trader, producer and the entrepreneur for his trade. Now, trade mark has attained a lot of importance in the business world. In fact, I would say, Sir, that trade marks are very important to promote one's business.

"> The hon. Member, Shri Dasmuni, mentioned that even monkeys and elephants are made as trade marks. It is true. Sir, here is a great authority, whose name is Mr. Kapferer, has written in his book:

"> ".....Starting as a nonsense word attached to a new product year after year, trade mark acquires a meaning composed of the memories of the past emergent and communication and products."

"> It starts sometimes as a non-sensical mark and then it attains importance. So, trade marks and brands have become the atomic core of our consumer driven economy. It fuels commerce. So, I would even say that the brand essence can reside in its founder, which gives Fords something Chevrolets do not have. Therefore, trade mark includes a package, a package of brand vision, its names, its performance standards, its signage, its packaging, its pricing philosophy, its marketing communications, its community relations policy, its sales force activities, its promotion strategies and so on. Therefore, we have to protect trade mark.

Regarding promoting our own business, I would give one example. In the year 1994, the Financial World made an estimate of the value of the trade mark. So, according to that, in the year 1994, Coco Cola stood first as the well-known trade mark in the world. Its value was estimated to be in that year 35,500 million dollars. The second was Marlboro cigarette. Its value was estimated to be 33,045 million dollars. Such is the value of trade marks. So, in India also, our trade marks are becoming very popular. Therefore, to protect our trade marks, this Bill has been brought in.

I would make a remark regarding Clause 115. He has asked why Clause 115 is required. Sir, it is there because the law seeks to protect the honest trader. The creation of the post of Registrar is required to prevent harassment. Since penal provisions are enhanced, the provision also harmonizes the process with Copyright Act. So, Shri Pal referred to the Registrar. The Registrar is not required to move about. The expert opinion is related to the technical aspects of the registration of trade mark after verifying the Registrar of Trade Marks. It is just only a safeguard.

SHRI RUPCHAND PAL (HOOGLY): I have asked totally a different question because the prosecution is dependent on the opinion of the Registrar only. The one who is accused will seek the Registrar as witness and the Registrar will have to move about from one end of the country to the other. So, he will have to be preoccupied as standing in the witness box only. How could this proviso be a safeguard under this situation?

SHRI MURASOLI MARAN: What we thought was like this. We do not want to give the power to a police man or a DSP. He should act in a scientific manner with hard evidence. That is why, we have given the powers to the Registrar. On the advice of the Registrar, the Superintendent of Police will act and not the ordinary constable. So, if Shri Pal feels that it will not lead us in the good way, naturally after seeing the implementation, if necessary, then we will come with an amendment. There is no doubt about it.

We have the constraint of time. Sir, many Members expressed their opinions about Basmati against which I want to say something. The Government has taken all steps to contest the case in America. During September, 1997, a particular patent entitled 'Basmati Rice Lines and Grains' has been granted by the United States' Patents and Trade Mark Office to M/s Ricetech Inco., Texas, U.S.A.

There was a case filed by Ms Vandhana Shiva, as a public interest litigation, in the Supreme Court. The learned Attorney-General of India who appeared on behalf of the Union of India had assured the Court on 13th July, 1998 that all steps would be taken to challenge the patent.

Sir, we have created a fund called Basmati Development Fund. It was set up in December, 1995 primarily for the purpose of protecting the name of Basmati in the international market.

The Fund has engaged a Trade Mark Watch Agency which stands watch on its behalf on any new trade mark applications for Basmati or its deceptive variations in literally every part of the world. As a consequence, the Fund is currently involved in pursuing the legal actions in 18 jurisdictions in the world including Greece, United Kingdom, South Africa, Jordan, U.A.E., Chile, Spain, Turkey, Brazil, Kuwait, Taiwan, etc. We have achieved success in U.K. We have won the case in U.K., Columbia, Brazil, Spain and Taiwan. We have filed opposition in Chile, Denmark, Israel, Jordan, Turkey and South Africa.

Sir, this is the position. So, we are going to fight the case.

SHRI TRILOCHAN KANUNGO (JAGATSINGHPUR): They have not used the name of Basmati. They have used the name of Texmac.

SHRI MURASOLI MARAN: That is right. That is the distinction they have made. So, anyhow, we are going to test it. We are examining it. For example, an Inter-Ministerial Group has been set up under the Chairmanship of Secretary, Industrial Development, to examine the implications of the patents and determine the ways and means of challenging this thing.

Sir, again, a Technical Committee was also set up to provide necessary technical information and documentation for challenging the patents.

Sir, we are doing our best in this matter. I do not want to take much time of the House. I thank all the hon. Members, from all sections of the House, for having given their full support.

I request, once again, to pass the Bill.

SHRI TRILOCHAN KANUNGO : Sir, I have one question. Why has it been made a voluntary thing? Trade mark is not a compulsory thing for a trader. My point is: why should it not be made compulsory?

SHRI MURASOLI MARAN: I am sorry. We cannot compel people. It is a free country. (Interruptions).

SHRI RUPCHAND PAL (HOOGLY): You are reversing the practice as per Code of Civil Procedure where the defendant resides is considered to be the jurisdiction, but here you are reversing and giving the plaintiff the choice to select his own jurisdiction for complaint and the defendant will have to come from distant places to attend the cases. In such a situation, the poor holder of the trade mark will be at a disadvantage and will not be able to contest the cases and the multinational and powerful companies will appropriate the trade marks of intellectual entrepreneurs.

I am quoting Section 134(2):

"The person instituting the suit or proceedings, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain."

SHRI MURASOLI MARAN: Shri Pal, you may be a lawyer, but I am not a lawyer.

SHRI RUPCHAND PAL : No, I am not a lawyer.

SHRI MURASOLI MARAN: I will try...(Interruptions).

Regarding clause 134, the law seeks to protect the honest trader and will be as beneficial to the petty trader honestly doing his trade on the basis of a registered trade mark. That is the intention, if it is not, we will come here with an amendment. (Interruptions).

MR. CHAIRMAN : I have allowed Shri Selvaganpathi.

... (Interruptions)

SHRI T.M. SELVAGANPATHI : Clause 93 says that there is no appeal allowed against the order of the Appellate Board. People will take shelter under this.

SHRI MURASOLI MARAN: Every law says like that. Do you mean to say that the High Court does not have any appeal? Here is a great lawyer. Let him say.

Sir, writ appeals under article 226 and 227 of the Constitution of India can be filed. It is provided. But it is, probably, the custom of the Legislative Department to put like this. Nobody bothers...(Interruptions).

SHRI RUPCHAND PAL : How may appeals do you come across in a year? It may be 60 or 65 appeals in a year and for that five Appellate Boards have been set up. What will they do? What is the necessity of it? Rather you may set up a Special Bench for Intellectual Property related cases in all the five High Courts.(Interruptions).

MR. CHAIRMAN: He has already replied.

Now, the question is:

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

The motion was adopted.

MR. CHAIRMAN: Now, the House will take up clause-by-clause consideration of the Bill.

SHRI RUPCHAND PAL : As far as article 134 is concerned, the hon. Minister has said that he will look into it. Let the assurance be given that he will look into it.

MR. CHAIRMAN: We are considering clause-by-clause of the Bill. He has already replied. Afterwards, you can speak.

... (Interruptions)

MR. CHAIRMAN: The question is:

"That clauses 2 to 159 stand part of the Bill."

The motion was adopted.

Clauses 2 to 159 were added to the Bill.

The Schedule was added to the Bill.

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

SHRI MURASOLI MARAN : Sir, I beg to move :

"That the Bill be passed".

MR. CHAIRMAN : The question is :

"That the Bill be passed".

The motion was adopted.
