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14.47 ½ hrs

Title: Discussion on the Trade Marks (Amendment) Bill, 2007.

THE MINISTER OF STATE IN THE DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION, MINISTRY OF COMMERCE AND INDUSTRY (SHRI ASHWANI KUMAR): I beg to move:

"That the Bill to amend the Trade Marks Act, 1999, be taken into consideration."

Sir, with your permission, may I make a few opening remarks about the Bill? ...(*Interruptions*)

MR. DEPUTY-SPEAKER: Only the Minister's statement will be recorded.

SHRI ASHWANI KUMAR: Sir, I would like to make a brief opening statement on the merits of this Amendment Bill. The objectives of the Bill are primarily to align the Indian trade marks statute with the various provisions of the Madrid Protocol to enable India's accession to the Protocol and to facilitate simultaneous grant of trade mark registration in 71 member countries of the Protocol. It is also to facilitate and enable our registry of trade marks to entertain applications for international registrations filed in India and those received from International Bureau for being processed in India.

I would like to very briefly indicate why this Bill is so important. In a globalised economy, we all know that trade marks, being a part of the intellectual property regime are instruments of quality in the armoury of Government, to facilitate investments, to protect the sources of origin and to take our product abroad globally in a global market. We have been receiving various representations over the past many years. There have been judicial pronouncements over the past many years recommending that in view of the changing global reality of trade and commerce, we should be enabled and empowered to accede to Madrid Protocol and to facilitate international filing of trade marks and registration of trade marks.

14.49 hrs (Shri Arjun Sethi *in the Chair*.)

After considering all aspects of the matter, we introduced the Bill in Lok Sabha on 23rd August. The Standing Committee of Parliament, after detailed deliberations, gave its recommendations on the 19th March and on 20th November, the Cabinet okayed the proposals of the Department and that is how, we are before this august House.

There are no substantive changes in the Trade Marks Act of 1999 which this amendment seeks to introduce. All it seeks to do is to align our Trade Marks law with the Madrid Protocol without which we cannot accede to the Madrid Protocol. The virtue of acceding to the Madrid Protocol essentially is that merely by paying one fee and by making one application, that too in English and not in the number of languages of other countries, our trade mark owners will have the protection of their trade marks in the member countries of the world. I see no objection either on principle or on any other account to the amendments that I seek to [\[U53\]](#) bring forward.

[\[MSOffice54\]](#)

I would like to say just a word about one of the recommendations of the Parliamentary Standing Committee, which we have not been able to accept. The Parliamentary Standing Committee had proposed insertion of section 36 (h) regarding the application of same trade mark description as to the standards of quality of goods as they apply in other countries. The point of distinction here is that trade mark is not a guarantee of quality or homogeneity or uniformity of quality of a particular product. Trade mark distinguishes only the source of the services or of the product in question. So, for this reason, on an understanding of the trade marks, in terms of law, in terms of policy, in terms of utility, we have been unable to accept that one solitary recommendation of the Standing Committee. Therefore, this Bill that I have brought forward for consideration and passage by the hon. Members and by this House, seeks to enable us to take our trade marks globally and to facilitate the registration in our country of trade mark applications received from the International Bureau.

This is only to be accepted as an inevitable corollary of India's emerging status in global trade. We are, today, one of the fastest growing economies of the world. We are increasing our global engagement in terms of trade. Our global engagement today is about half a trillion dollars in terms of imports and exports, which makes India as a very substantive global trading partner.

With all these considerations in mind, this Bill has been brought forward for consideration and passage.

MR. CHAIRMAN: Motion moved:

"That the Bill to amend the Trade Marks Act, 1999, be taken into consideration. "

SHRI VIJAYENDRA PAL SINGH (BHILWARA): I stand to speak on the Trade Marks (Amendment) Bill, 2007 to amend the Trade Marks Act of 1999. The Minister has clarified the reasons as to why these amendments were required to the 1999 Act. When the 1999 Trade Marks Act came into existence and when we passed it, it was one of the six or seven IPRs at that time, which were required in the international trade and before signing the WTO those were the necessity.

What I want to know from the Minister is that when in 1999 we passed this, and the protocol that the Minister has talked about was adopted in 1989, why is it that when our Bill and the Act came into existence in 1999, this was not considered? So many years have passed. How is it that we have risen to this problem now and we are accepting this protocol? This is a big thing.

Now, we have had problems of trade marks. India, at one time, was not a global player. We were not MNCs. We did not have many players. ...*(Interruptions)* But, now we have a lot of players in the international market. We have big names. The Reliance is an international player. [\[MSOffice55\]](#) We have the TATAs which is an international name and so many other organisations and companies which are today known in the world. There are other small players who are becoming big players in the international market. They would have a problem because if they want to have a trade mark of their own, which is going to be accepted not just in the country but in the whole world, it is a necessity that we sign this protocol. It is in only 71 countries today.

Sir, what I want to know from the hon. Minister is that what about the other countries? Now, will that name have the same impact in the countries which are not part of this protocol? If it is not, if that name is not given the same status and registration is not accepted, what happens there, and if in those countries the acceptance is not there, out of this protocol which he is being talking about the Madrid Protocol, what is the status of the trade marks which are registered here and which are accepted in 71 countries, which are accepted by the UN, what is going to happen to them? That is also very important and the hon. Minister must give me a reply to that as well.

Sir, I must also say that he has also talked about the quality and he said, that was not accepted. It is true because if you have a registered trade mark and if it does not have the quality, it is the trade mark itself which has to get that quality and the quality comes with the trade mark.

Sir, I remember some years ago, the original Sony and the person who started that company was a very small player. He wrote his autobiography and I had gone through it. He said that he got the first big order in America and when he went to States, he got a very big order of - I do not know how many thousand pieces of Sony radios that he had started. When he went there, they said that we will not accept the trade mark of Sony. We will put our own trade mark and sell it. Mr. Sony said that "I will not sell it to you till the Sony name is also given to the radios which I am selling". He himself writes in that autobiography that it was a great decision that he had to take. If he had said that I accept this order and they put their trade mark on it, Sony would not have been today what Sony is today. So, what I am trying to say is that quality comes from the product and not from the trade mark. You cannot say and very rightly this was not accepted. It is not accepted internationally also.

But I have put a few questions to the hon. Minister and I would like to have answers on them. But along with that, I support this that we follow this Protocol and the amendments.

SHRI S.K. KHARVENTHAN (PALANI): Sir, first of all, I would like to congratulate our hon. Minister and senior Advocate, Shri Ashwani Kumar, for presenting this Bill with respect to trade mark in international level.

Sir, the Bill elaborately explained the Trade Mark Registry to deal with international applications by India and international applications originating from India. It is clearly mentioned that based on the Madrid Agreement, the Madrid Protocol was reached. [\[a56\]](#)

15.00 hrs [\[R57\]](#)

The Madrid Agreement means the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the

14th day of April 1891 as subsequently revised and amended. Then, the Madrid Protocol means the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on the 27th June, 1989 as amended from time to time. This present Bill, through clause 36C, paves the way for the trade mark registration of international applications. Clause 36 deals with applications from our country to be registered abroad. I am supporting this Bill. While I am supporting this Bill, I would like to say that even though the Trade Mark Patents Act is in force in our country from the date of the implementation of the Trade Marks Act, yet we are seeing a number of cases about trade mark and patents in various High Courts. The High Courts are dealing with a number of cases. But this Bill fully explains the registration at the international level. What is the way out if any dispute arises? Suppose violation of the trade mark and patents under these rules is not mentioned anywhere here. For example, some of the industries started working in our country and they are working at the international level also. They are sending the goods on the same trade mark. It will help them. For example, in our State in Tamil Nadu in Southern India, Sakthi Masala is one of the products sold at the international level. This company is exporting the product at the international level. It will help them. Throughout the world, they are selling the food products. But the trade mark is registered in our country, in Tamil Nadu alone. Through this Bill, it will help them. They can register the trade mark throughout the world. In the same manner, outside companies are working under registered trade mark in our country and they are selling the goods. Suppose any third party, not a member under the Indian Registration or registration done abroad violates these rules, and bogusly or falsely uses the trade mark and sells the goods. What is the remedy? Should we go by the same provision, existing provision or will any special provision be made for taking civil remedy or criminal remedy to stop cheating? In respect of the most of the products, nowadays, food products or non-food products, people are cheated by the false trade mark. We are seeing the criminal cases. This aspect has to be explained. It is a good approach at the international level. It is a welcome Bill.

Another thing is that in this Bill, clause 36D, sub-clause (1) deals with international applications originating from India. It says:

"Where an application for the registration of a trade mark has been made under section 18 or a trade mark has been registered under section 23, the applicant or the registered proprietor may make an international application on the form prescribed by the Common Regulations for international registration of that trade mark."

Here again, I want to know who is going to frame these rules for preparation of an application for international registration. Where have they to apply? From where have they to get the applications? What will be the fee for registration? So, all these things have to be explained.

Next, clause 36E deals with international registrations where India has been designated. Sub-clause (1) says:

"The Registrar shall, after receipt of an advice from the International Bureau about any international registration where India has been designated, keep a record of the particulars of that international registration in the prescribed manner. "

In the same way, the effects of international registration is dealt with in Section 36F, sub-clause (1) which says:

"From the date of the international registration of a trade mark where India has been designated or the date of the recordal in the register of the International Bureau about the extension of the protection resulting from an international registration of a trade mark to India, the protection of the trade mark in India shall be the same as if the trade mark had been registered in India."[\[R58\]](#)

This Bill also deals with service given by the applicants and it shall not bind the Registrar with regard to the determination of the scope of the protection of the trade mark.

The hon. Minister has explained about the quality. The quality and trade mark cannot be changed. The hon. Member from the Opposition also explained about the trade mark value like Sony. People want to purchase goods based on the trade mark. But if the quality is very low, automatically consumers will be affected. If bad quality goods are supplied under a good trade mark, what is the purpose?

Then, this Bill also deals with international business. We are acknowledging the trade mark of foreign companies also which are registered in India. But they are not able to send good quality goods. If this continues, this will not only affect the industry but it will also affect our country. In the same way, an American company registered under Indian registration rules is sending their goods, but the goods are not up to the mark and so our customers are affected. So, what is the safeguard for the quality of goods? That is why, the Standing Committee also recommended very strongly that quality of goods should be safeguarded. This has to be considered. This is my suggestion.

Then, there is amendment which deals with registration of assignment or transmission. These are all good steps taken by the hon. Minister. I support these measures. But at the same time, we have to think about the quality. Further, I would like to know as to what is

the jurisdiction for filing of cases. Suppose an American company registered in our country under our Trade Mark Act is eligible to sue in our High Court or in their country. These doubts have to be clarified by the Minister.

Sir, I, once again, welcome the measures taken by the hon. Minister. I congratulate the hon. Minister for bringing this Bill and I support this Bill wholeheartedly.

श्री आलोक कुमार मेहता (समस्तीपुर): महोदय, मैं व्यापार चिन्ह संशोधन विधेयक, 2007 के समर्थन में बोलने के लिए खड़ा हुआ हूँ। यह संशोधन बहुत ही सही दिशा में है। सरकार के द्वारा ट्रेड मार्क व्यवस्था की परीधि को बढ़ाने का काम किया गया है और यह आज की आवश्यकता है। यह इसे ग्लोबल फॉर्म, वैश्विक रूप देने का एक प्रयास है। इसके लिए माननीय मंत्री श्री अश्वनी कुमार जी धन्यवाद के पात्र हैं। इसकी कई खासियतों की चर्चा हमारे पूर्व वक्ताओं ने की है। इसमें पूरी दुनिया से लोग अपना ट्रेड मार्क भारत में रजिस्टर करा सकते हैं और भारत के लोग पूरी दुनिया में अपने ट्रेड मार्क का रजिस्ट्रेशन करा सकते हैं। पहले, खास तौर से मध्यम और छोटे वर्ग की कंपनियों को, जब उनके उत्पादों का डुप्लीकेशन हुआ करता था तो बहुत परेशानी का सामना करना पड़ता था। उनके उत्पाद की नकल करके विदेशी कंपनियां या देश में ही दूसरी कंपनियां अपने नाम से ट्रेड मार्क ले लेती थीं या अपने नाम से उसका रजिस्ट्रेशन करा लेती थीं। मैड्रिड प्रोटोकॉल के दायरे में हुआ यह संशोधन इस देश के ट्रेड सिस्टम को और मजबूत करेगा। [r59] रजिस्ट्रेशन की प्रक्रिया को सरल करने के साथ ज्यादा से ज्यादा कंपनीज़ अपने उस बौद्धिक अधिकार का उपयोग कर सकेंगी जिसकी बात लंबे समय से चली आ रही है, पेटेन्टीकरण पर लंबे समय से बहस चली आ रही है। इन तमाम चीज़ों में उसे बहुत सहायता मिलेगी। कई भारतीय कंपनियों को मल्टीनेशनल कंपनी बनने का अच्छा अवसर मिलेगा। रजिस्ट्रार को अच्छा खासा एम्पावर किया गया है। केन्द्र सरकार और उच्च न्यायालय तथा उच्चतम न्यायालय इसके डिसप्यूट को सॉल्व करने के लिए जो निर्णय लिया करते थे, उसे भी रजिस्ट्रार की पावर्स में वैस्ट कर दिया गया है। इसके साथ साथ कुछ बातों पर हमें ध्यान देना होगा कि पहले से ही यह व्यवस्था भारत में बहुत मजबूत नहीं है। हम इसे ग्लोबल ज़रूर बना रहे हैं, लेकिन भारत के अंदर जो व्यवस्था है, उसके अंदर ही बहुत सारी कंपनीज़ जिन्होंने ट्रेडमार्क ले रखा है, दूसरी कंपनीज़ उसकी नकल करके खुलेआम बाज़ार में उसका मार्क लगाकर सामान बेच रही है। जैसा कि हमारे पूर्ववक्ता ने कहा कि सोनी या उस तरह की किसी कंपनी का माल धड़ल्ले से उसका मार्क लगाकर बेचा जा रहा है। उससे बहुत बड़ा रेवेन्यू लॉस सरकार का हो रहा है तथा साथ ही साथ कंज्यूमर्स को भी परेशानियों का सामना करना पड़ रहा है। कंज्यूमर्स क्वालिटी को निश्चित रूप से निर्धारित करेंगे। ट्रेड मार्क सिस्टम का काम इतना ही है कि सोर्स को डिसटिग्विश करे कि किस सोर्स से यह प्रोडक्ट आया लेकिन क्वालिटी का निर्धारण एंड यूज़र या मार्केट ही करेगी। यह बात सही है, लेकिन अपने ही देश में बहुत बड़ी मात्रा में इस तरह के नकली सामान का जो बाज़ार में मेला लगा हुआ है, उस कुव्यवस्था पर नियंत्रण करने की आवश्यकता है और उसके लिए भी सख्त कानून बनाने की आवश्यकता है और उसका अनुपालन करने के लिए भी पूरी व्यवस्था करने की आवश्यकता है। सॉफ्टवेयर इंडस्ट्री में जो छोटी छोटी इंडस्ट्रीज़ हैं, उनके साथ भी बहुत परेशानी होती है। पेटेन्टीकरण का सिस्टम पहले से ही सरल नहीं है। ट्रेडमार्क की बात जब होती है तो बहुत कन्फ्यूज़िंग स्टेट होता है कि ऐसे प्रोडक्ट्स का पेटेन्टीकरण कैसे करें। सर्विस इंडस्ट्री में भी प्रावधान किया गया है कि सर्विस इंडस्ट्री का भी ट्रेड मार्क होगा। इस मामले में भी अपनी आइडेंटिटी एस्टैबलिश करने में कोई सर्विस इंडस्ट्री बहुत सफलता पा सकती है और ग्लोबल लैवल पर अपने स्थापित मार्क के माध्यम से ग्लोबल लैवल पर अपनी पहचान बना सकती है। बहुत तरह के सुधार किये गये हैं। Like other things, this thing is also going global, so I congratulate the hon. Minister and our Government for taking this step in the positive direction.

I support this Bill.

SHRI BRAJA KISHORE TRIPATHY (PURI): Hon. Chairman Sir, we are discussing the Trade Marks (Amendment) Bill 2007. The trade mark allows customers to visually distinguish a company's product from those of its competitors. The importance of a corporate name hardly needs emphasis considering the fact that it not only reflects the goodwill of the company but also its brand name in business.

Its importance can be easily equated with that of Intellectual Property Rights like the trade marks owned by the company. It intends to facilitate Indian names as well as foreign nationals to secure the simultaneous protection of trade marks in the country. [r60]

The Madrid Protocol is administered by WIPO. The Madrid Protocol is intended to facilitate international registration, which is a cost-effective system. This legislation will facilitate the trade mark registration by businessmen and the business houses in our country. Definitely, we can have registration automatically with single application in 71 countries. Naturally, this amendment will help the

business houses.

The Trade Mark Act was passed in 1999, but because of lack of infrastructure, like there are not sufficient registration offices and properly trained people just to make the registration easier. So far, it has not been so much popular in our country. So the Government should also facilitate extension of the services. The trade mark offices are to be opened in all the States to facilitate the business houses. Sufficient staff is to be posted so that this legislation will properly be implemented and we can extend better services to our people and to our business houses.

There is also a provision in this Act itself that Government has to decide for the location of the Appellate Court and its Benches for any litigation and other things. But the Government is not deciding for the location of the Appellate Court and for the location of its Benches. Naturally, with this legislation, we are not extending the services. The Government, under the rules, should also provide other facilities. So, I would request the hon. Minister to see that the Appellate Court should be located immediately. The location of the Benches of the Appellate Court should also be decided so that the services can be extended for any litigation.

The hon. Minister was telling that the trade mark will not give guarantee for the quality. We are observing that with the same trade mark a business house is producing so many products. With one trade mark, they are producing so many products. Naturally, if a big business house is producing so many products with one trade mark, it is giving more facilities to the customers. A business house having one business with the same trade mark cannot compete because the customers are in the habit of purchasing so many things in one shop with one brand. The competition will not be better. The Government should also consider facilitating the other business houses so that they can have a single trade mark for two or three items.

Secondly, regarding quality, I would like to give an example of 'Lux' soap. It is available abroad; it is available in our country. They are having the same trade mark, but the quality is not same. By allowing this trade mark, they are cheating the customers. A customer is purchasing the same item, the same commodity sent better in quality abroad in comparison to the commodity that is available in our country. So, there should be some legislation for the customers^[RP61].

If we do not give guarantee about quality, then naturally the customers will be affected, and in that way we are cheating the customers. So, in order to give protection to the customers and also to the consumers, the Government should also make necessary legislation that under one trademark they cannot produce so many items with different qualities. Sir, the quality of Lux soap available in London is not the same quality that is available in India. In London, the quality of Lux soap is better than the quality of Lux soap that is available in India. If you purchase Lux soap in Chicago or in other countries, you will find that the quality of Lux soap is better. I have given an example of an item which is very commonly used by the people.

So, under the provision of this legislation, the Government should make necessary amendment so that we can give protection to the customers and also to the consumers.

SHRI SURESH PRABHAKAR PRABHU (RAJAPUR): Mr. Chairman, Sir, I welcome this Bill since it is piloted by my good friend, an eminent lawyer, someone who has practised and understands the Intellectual Property Rights, and also an intellectual himself.

Of course, this Bill is very innocuous that way. It tried to introduce a system whereby a single application made in India would be able to protect the trademarks globally because of India being a part of the Madrid Protocol. Therefore, this Bill, of course, is something which should try to welcome.

I think, it is time that we should try to evaluate and also to revisit our Intellectual Property Rights regime in India generally. After the TRIPS agreement, we have now got a regime in which almost all inventions that take place globally are protected by virtue of the TRIPS agreement that we also signed. It also covers the medical inventions that take place. Development of a new molecule, development of new drug delivery system and all these get covered by the Intellectual Property Rights. I think, it is time we really need to look at whether such protection really helps the common people in India. Of course, there is always an argument against not lifting the IPR regime generally because then new invention will not take place. So, having considered that point, I think, it is time that we should try to look at it because India is known to be one of the largest developments of pharmaceutical industry. Our pharmaceutical industry is so well developed and so well penetrated that for a long time we have been able to do what is called 'reverse engineering'. We have been able to develop a new molecule; if not a molecule, when the drug goes out of patent we could actually develop that. Now, because we have moved towards a Product Patent System than a Process Patent System, I think, we really need to find out how far it has really worked and helped our Indian pharmaceutical industry. This is something which we should try to look at very seriously.

The generic industry globally is also facing this problem. It is not just India which is worried about it. The countries like Brazil are also equally concerned about it. So, I would request the hon. Minister to look at this issue a little more carefully.

Sir, also the issue which is now emerging in the global place is the issue of climate change. The only way by which we can address the climate change is by developing new technologies. If technologies are the cause of the problem, then technologies are going to be a part of the solution. We need new technologies to be developed, new technology particularly in the renewable energy field, new technology particularly to address fossil fuel challenges. Now, we have to do all these. Climate change is such a serious threat, and we must reduce our emissions in the next ten years. Today, our emissions are 385 ppm. People are saying that we must try to reduce it to 350 ppm in another 15 years. If you want to reduce it from the current level of 385 ppm to 350 ppm, it is almost impossible. But even if you have to do that, then a new technology will be needed. Now, if the new technologies, which are going to be developed, are going to be protected by Intellectual Property Rights, how do you expect people in India to actually benefit from the renewable energies that are required? [H62]

[r63]

Therefore, I think, it is high time that the hon. Minister and the Government look at these issues more carefully.

As I said in the beginning, I am also a strong proponent of protecting intellectual medicines. Otherwise, no invention will ever take place. India has always respected the intellectual capabilities of others. Therefore, we never say, 'do not have IPR regime in India'. But I must say, Mr. Minister, that you must have it in a very selective manner. As I said, the areas like pharmaceuticals and more so, renewal energies and new technologies need to be developed to combat climate change challenge.

Sir, I would, therefore, request the hon. Minister to look at the issue of climate change because it is a very relevant and contemporary issue now. We are going to Copenhagen in the next eight to nine months. When we are thinking of coming out with a new success or Protocol to Kyoto Protocol, which is going to expire in 2012, we should have the new regime. The whole world is talking about that whatever regime we should have, that should be able to deal with the problems of the climate change.

If you cover new inventions and if you think that only the Intellectual Property Rights-covered products can solve this problem, we are actually befooling ourselves. Look at the dubious and duplicity involved in it. Industrialised countries are saying: "We cannot do anything about it though we would like to give technologies to the developing countries like India. We cannot do much because the technologies are owned by the private sector."

Therefore, the Government cannot do anything,; the State cannot intervene because the market-dominated developments have been taking place. But when the banks in the US were failing, when the companies in the UK were facing problems, their Governments used the public money to bailout those companies. At that time, they did not make any distinction between the private capital and the public capital! So, why should now --when we are facing the challenge of magnitude of climate change -- Intellectual Property Rights come in the way of disseminating technologies, which should go round to the country like India?

Therefore, while supporting this Bill, I would request the hon. Minister to look at the larger issues because, in my opinion, these are really the issues on which the future negotiations are going to be based. We must look at these issues more carefully.

Sir, Intellectual Property Rights is something, which should not be used as a trade barrier. Every pharmaceutical company, is going to hike prices only because of this, which is absolutely counterproductive. I would say, in a sense, that it is inhuman. Just imagine, the people in the world are dying of AIDS and companies are going to say: "We will develop a new drug provided we get Intellectual Property Rights protection." It is very unfair.

My last point is on the administration of the trademark offices. I do not know how many of us have been fortunate or unfortunate enough to be visiting these offices. This is a real nightmare experience. I know that some improvements have taken place. Thanks to some of the new grants that are coming. But the moment you file an application there, probably your competitor knows about it sooner than you know that your application has been accepted. This is something, which also needs some sort of a re-look. Some proper innovative measures should be adopted. If you can make this happen, it would be helpful.

Now, we get global protection. If you make one single application, you get it globally. But I think, first and foremost, we must try to dispose of these applications at fastest possible rates. Some of the things have been renovated in the last few years, but we really need a complete revamp of the administrative system that exists in our trademark offices.

With these words, I conclude.

श्री लक्ष्मण सिंह (राजगढ़): सभापति महोदय, मंत्री जी जो संशोधन लाए हैं, मैं उसका समर्थन करता हूँ। बहुत सारे विषयों और बातों का समावेश मुझसे पहले जो माननीय संसद सदस्य बोले, उन्होंने अपने भाषणों में कर लिया है। श्री सुरेश प्रभु ने जो अभी भाषण दिया, उन्होंने अपने भाषण में बची-खुची बातों का समावेश भी कर दिया है। मैं ज्यादा समय नहीं लूंगा। मैं सिर्फ दो-तीन बातों का स्पष्टीकरण मंत्री जी से चाहता हूँ। अन्तर्राष्ट्रीय व्यापार और ग्लोबलाइजेशन की चर्चा हम लोग पिछले लगभग 15-20 साल से कर रहे हैं। गैट पर हस्ताक्षर किए हुए भी हमें लगभग 15 वर्ष हो गए हैं। जो समस्याएं आज तक उत्पन्न होती रही हैं, अगर यह संशोधन पहले लाया जाता, तो वे समस्याएं उत्पन्न नहीं होतीं।

महोदय, मैं अन्तर्राष्ट्रीय व्यापार के पक्ष में हूँ, लेकिन इसे लेकर बहुत सारी भ्रान्तियां लोगों के मन में आज भी हैं। अन्तर्राष्ट्रीय व्यापार और गैट ट्रीटी को लेकर, स्वयं कांग्रेस में भी विभाजन हो गया था, लेकिन बाद में वे एक हो गए, क्योंकि उन्हें लगा कि ग्लोबलाइजेशन एक ठीक कदम है। खैर, इन बातों का इस बिल से कोई मतलब नहीं है। [R64] [R65] हम उन 71 देशों में से हैं, जिन्होंने मैट्रिड प्रोटोकॉल पर हस्ताक्षर किये हैं और इसीलिए इस संशोधन को लाना आवश्यक है। मेरा पहला प्रश्न मंत्री जी से यह है कि एक तो इसके रजिस्ट्रेशन के लिए जो समय सीमा निर्धारित की गई है, उसमें 12 महीने का समय दिया गया है और एक शर्त यह भी रखी गई है कि जो एप्लीकेशन फाइल होगी, वह फ्रेंच में होगी। अब शायद इसमें संशोधन हो गया होगा, अब शायद अंग्रेजी जोड़ दी गई होगी, लेकिन एक समय था, जब उसको फ्रेंच में रखा गया था। अगर अंग्रेजी उसमें जोड़ दी गई है तो अच्छा है, नहीं तो बहुत सारे ऐसे देश हैं, जो फ्रेंच स्पीकिंग नहीं हैं। उनको इससे बहुत सारी समस्याएं आ सकती हैं।

दूसरी बात, जैसा कि और माननीय सदस्यों ने लीगल प्रोसीडिंग्स के बारे में कहा, हमारे अपने देश में करोड़ों केस हमारी कोर्ट्स में पेंडिंग हैं, उनको हम किस तरह से हमारे ट्रेडमार्क एग्जिमेंट्स की जो ऑब्जेक्शंस आएंगी, जो लीगल परेशानियां आएंगी, उनको किस तरह से हम निर्धारित करेंगे। क्या हम और एल.पी.ओ. हमारे देश में बनाएंगे? उनको बनाने के लिए क्या प्रयास हम कर रहे हैं, जिससे जो एल.पी.ओ. बनाने हैं? जो ट्रेडमार्क सम्बन्धी केसेज़ हैं, उनका निराकरण इससे जल्दी से होगा। यह मेरा अपना सुझाव है, मेरी सोच है, अगर आपको गलत लगे तो आप उसको नकार सकते हैं।

हमारे देश में छोटे-छोटे शहरों में जो बार एसोसिएशंस हैं और बहुत सारे हमारे जो काबिल वकील हैं, उनके पास काम नहीं है। अगर ये विषय, जो केवल बड़े-बड़े शहरों तक सीमित हैं, अगर एल.पी.ओ. के माध्यम से, अगर आई.टी. के माध्यम से वहां उसको खोले, उनको आउटसोर्स किया जाये, हमारे जो छोटे शहरों में वकील बैठे हैं तो वहां उनको बहुत सारा काम मिलेगा, बहुत सारा पैसा वे वहां कमा सकते हैं और मैंने जैसा पहला कहा, अभी भी कहता हूँ कि टेलेंट की हमारे देश में कमी नहीं है। अभी देखिये, स्लमडॉग मिलियनेयर एक फिल्म कितने सारे एवाइर्स जीती। स्लम में भी जो हमारे बच्चे रहते हैं, उन्होंने आज दुनिया को दिखा दिया कि भारत क्या है। भारत की वह शक्ति क्या है, जो स्लम्स में रहती है तो इसीलिए मेरा आपसे निवेदन है कि एक ऐसी व्यवस्था बनायें, जिससे कि लीगर वर्क आउटसोर्स होकर छोटे-छोटे शहरों में भी जाये और हमारे वहां के वकीलों को अवसर मिल सके और वे जीवन में आगे बढ़ सकें।

इतना कहकर मैं इस बिल का समर्थन करता हूँ। आपने समय दिया, उसके लिए धन्यवाद।

SHRI ASHWANI KUMAR: Sir, I am more than gratified that the Amendment Bill that I have brought before this House has received bipartisan support. I think all the Members, who have spoken on this subject, have in a sense supported the measure. I am indeed most grateful to all the distinguished Members who have lent their voice in support of the Bill and who have given insightful remarks and thoughts on the subject.

I would seek to very briefly respond to some of the major points that have been raised. May I first take some of the points that were raised by Shri Braja Kishore Tripathy? Regarding the issue of Benches of the appellate bodies to be set up in different parts of the country, I can immediately say that we have already established-- and this is fully functional with effect from 2007--an Appellate Board in Chennai, and its Benches are functional in Delhi, Mumbai, Kolkata and Ahmedabad.

The second point that was talked of was with reference to one trade mark not being permitted for a variety of services and goods by a single producer or owner. The first principle of trade mark law is that it distinguishes the origin of the goods or services. Now, we, as a matter of law, cannot tell a person that he shall only produce one service or one good or that he should take not one trade mark for his goods and services but a multiple of them. It is a business decision. As long as the promoter of the trade mark or the owner of the trade mark feels that it is more useful for him to propagate or to familiarize the people with one trade mark so that his goods and services are easily sold, he shall do that. [m66]

[SS67]

Let me allay the apprehension. Since as a matter of law, trade marks are never a guarantee of uniform quality of goods or products, there should be no need for an apprehension on this score. There are any number of other laws in our country as well as in other

countries that protect consumers' interest on quality issues. In our country, we have the Consumer Protection Act which takes care of the quality. We have the Drugs and Cosmetics Act which also refers to quality. We have the Fair Trade Commissions in various parts of the world which address those issues. So, there are number of different legislations that occupy different fields and address different subjects. The purpose of this particular measure that is being debated by hon. Members in this House is very limited and that is whether we should allow a single application to afford trade mark protection to our people and *vice versa* in the member-countries of the Madrid Protocol.

Sir, the Madrid Protocol has been acceded to by 71 countries. So, as far as those 71 countries are concerned and members of those 71 countries are concerned, once an application is made in the home country, they would have automatic protection. That is the sum and substance of the measure. It seeks to do nothing more and nothing less than that.

Sir, there is another question. Of course, my good friend, Shri Suresh Prabhu, has raised very pertinent points, as he always does, in the context of climate change, in the context of pharmaceuticals, but I am afraid that these rightfully belong to the domain of patent and that is not what is being considered here. As far as trade marks are concerned, trade marks have a direct relevance to trade and goods and services to the extent that a particular good or service gets to be associated with a trade mark. It still is not a guarantee of the quality of what you are producing or what you are rendering, but it does, in public mind, gives rise to certain images and that is really the intellectual property in the trade mark.

Sir, the other question of why after so long we are coming up with this Bill was raised by my good friend, Shri Vijayendra Pal Singh. It is a very pertinent question and I will straightaway and candidly answer. The answer is that we could not have moved in with the Madrid Protocol without first modernising our administration, our intellectual property laws, and administrative and institutional structures. It is only now that we have digitised our records; it is only now that we have gone in for e-filing; and it is only now that we can ensure, and give an affirmative reply, that we will be able to process the trade mark within the mandatory 18 months. That is necessary as far as the accession to Madrid Protocol is concerned. So, the earliest when we were ready, we brought in the measure. That is the short answer to that very pertinent question.

One other issue that has been raised as to which courts will have jurisdiction. Apparently, it will be our courts which will have jurisdiction. If the infringement takes place within the country, it is the country where the infringement takes place, where the offence is committed, which will have jurisdiction and that will be so *mutatis mutandis* when it comes to other countries as well. It will be us, it will be the Indian laws and Indian rules that will be applied. Therefore, there can be no doubt or no apprehension on that score that it would be the Indian legal system that would enforce the Indian law that we are now debating.

Sir, this is in substance my reply to a very meaningful and purposive debate that I have had the honour and privilege of attending and listening to. Considering the broad support – in fact, the unanimous support – for the measure in principle and considering my feeble attempts to answer some of the questions raised, I do hope that hon. Members would, in their wisdom, support the Bill.

I commend, with these concluding remarks, the passage of this Bill.

MR. CHAIRMAN (SHRI ARJUN SETHI): The House will now take up motion for consideration of the Bill.

The question is:

"That the Bill to amend the Trade Marks Act, 1999, be taken into consideration."

The motion was adopted. [\[SS68\]](#)

MR. CHAIRMAN: The House will now take up clause-by-clause consideration of the Bill.

Clause 2 Amendment of Section 21

Amendment made:

Page 1, line 8, --

for "three", substitute "four" (3)

(Shri Ashwini Kumar)

MR. CHAIRMAN: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3 was added to the Bill.

Clause 4 Insertion of new chapter IV A

Amendments made:

Page 2, *after* line 16, *insert*—

"Explanation.—For the purposes of this clause, "real and effective industrial or commercial establishment" means and includes any establishment where some *bona fide* industrial or commercial activity takes place and need not necessarily be the principal place of business;" (4)

Page 3, line 16, --

for "as soon as may be", *substitute* "within the prescribed period." (5)

Page 3, line 50, --

for "without any delay", *substitute* "within the prescribed period" (6)

Page 4, line 32, --

for "36G.", *substitute* "36G.(1)" (7)

Page 4, *after* line 34, *insert* "(2) Subject to payment of a surcharge fixed by the regulations, a grace period of six months shall be allowed for renewal of the International Registration." (8)

(Shri Ashwini Kumar)

MR. CHAIRMAN: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5 Substitution of new section for Section 45

MR. CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

The motion was negatived.

Clause 6 Omission of Chapter X

Amendments made:

Page 5, line 1, --

for "made", substitute "filed" (9)

Page 5, line 3, --

after "mark", insert "without the knowledge of assignment or transmission" (10)

(Shri Ashwini Kumar)

MR. CHAIRMAN: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clauses 7 and 8 were added to the Bill.

Clause 9 Power of Central Government to remove difficulties

Amendments made:

Page 5, *for* lines 14 and 15, *substitute*, --

"(ixa) the time within which the international application is to be forwarded to the International Bureau and the manner of certifying the particulars by the Registrar under sub-section (4) of Section 36D;" . (11)

Page 5, *for* lines 20 and 21, *substitute*, --

"(ixd) the manner of advertising the international registration and the time within which the international registration shall be advertised under sub-section (3) of Section 36E;" . (12)

Page 5, *omit* line 22. (13)

Page 5, *for* lines 23 to 25, *substitute* --

'(c) after clause (xiii), the following clauses shall be inserted, namely:--

"(xiiia) the manner of application to the Registrar under sub- section (1) of Section 45;

(xiiib) the period within which the Registrar shall dispose of an application under sub-section (3) of Section 45;" . (14)

Page 5, line 26, --

for "(e)", substitute "(d)". (15)

(Shri Ashwini Kumar)

MR. CHAIRMAN: The question is:

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10 was added to the Bill. [\[r69\]](#)

Clause 1 Short title and commencement

Amendment made:

Page 1, line 3, -

for "2007", substitute "2009". (2)

(Shri Ashwani Kumar)

MR. CHAIRMAN : The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1, -

for "Fifty-eighth", substitute "Sixtieth". (1)

(Shri Ashwani Kumar)

MR. CHAIRMAN: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The LongTitle was added to the Bill.

SHRI ASHWANI KUMAR: I beg to move:

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

MR. CHAIRMAN: The question is:

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

The motion was adopted.
