

27th January 1930

THE  
LEGISLATIVE ASSEMBLY DEBATES  
(Official Report)

Volume I, 1930

*(20th January to 24th February, 1930)*

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SIXTH SESSION  
OF THE  
THIRD LEGISLATIVE ASSEMBLY, 1930

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1930

# Legislative Assembly.

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THE HONOURABLE MR V. J. PATEL.

## *Deputy President :*

MAULVI MUHAMMAD YAKUB, M.L.A.

## *Panel of Chairmen :*

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MR. M. A. JINNAH, M.L.A.

SIR DARCY LINDSAY, KT., C.B.E., M.L.A.

SIR ZULFIQAR ALI KHAN, KT., C.S.I., M.L.A.

## *Secretary :*

MR. S. C. GUPTA, BAR.-AT-LAW.

## *Assistant of the Secretary :*

RAI SAHIB D. DUTT.

## *Marshal :*

CAPTAIN SURAJ SINGH BAHADUR, I.O.M.

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# LEGISLATIVE ASSEMBLY.

Monday, 27th January, 1930.

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The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

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## MEMBER SWORN.

Rai Bahadur Raizada Bhagat Ram, M.L.A. (Jullundur Division: Non-Muhammadian).

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## THE INDIAN MERCHANDISE MARKS (AMENDMENT) BILL.

### APPOINTMENTS TO THE SELECT COMMITTEE.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadian Rural): I beg to move that Mr. W. Alexander, Mr. M. S. Aney, Mr. Abdul Matin Chaudhury and Mr. A. H. Ghuznavi be appointed to the Select Committee on the Bill further to amend the Indian Merchandise Marks Act, 1889. This has been necessitated by the resignation of some Honourable Members of this House who were members of the Committee.

The motion was adopted.

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## THE INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL.

**The Honourable Sir Bhupendra Nath Mitra** (Member for Industries and Labour): Sir, I beg to move that the Bill further to amend the Indian Patents and Designs Act, 1911, for certain purposes as reported by the Select Committee, be taken into consideration.

The House will recollect, as explained in my speech of last February when I moved the motion for the appointment of a Select Committee, that the Bill represents an attempt at overhauling the present Indian Patents law, to bring it up to date, and that the amendments proposed were based partly on the revision of the English law undertaken in 1917 and partly on the experience gained in India on the working of the present Act. The Select Committee, whose Report the House will observe is unanimous, and to whom my thanks are due for their care and patience

[Sir Bhupendra Nath Mitra.]

have made no radical changes in the Bill, though they have proposed certain important alterations which in my opinion have greatly improved the Bill. The alterations proposed by the Committee are generally designed for the greater convenience of those members of the public who have occasion to have recourse to the Patents Office. Thus new clause 3(b) is designed to permit a greater latitude to applicants in making applications for extensions of the ordinary limit of twelve months after which an application for a patent, if not accepted, becomes void. Similarly, in new clause 28-A, the period of limitation for appeals to the Governor General in Council from the orders of the Controller is proposed, for the greater convenience of the public, to be increased from two to three months. The important questions of policy to which the Select Committee have drawn attention in their Report are receiving the careful consideration of Government. Sir, I moye.

**Sir Purshotamdas Thakurdas** (Indian Merchants' Chamber: Indian Commerce): In rising to support the motion before the House, I should not ordinarily have added anything to what has fallen from the Honourable Member in charge, but as he has disposed of the two questions regarding policy, which have been referred to in the Select Committee's Report, with only this assurance that they will receive the attention of Government, I think it necessary to elaborate on these two aspects. The Select Committee's Report was submitted to the House towards the end of the Simla Session, and personally to me it is a matter of regret that the public have not devoted any time to this question in view of the larger engrossment of their attention, in the meantime, in political questions. The fact, however, remains that the measure which is now being amended is a very important one to the commercial and industrial community, and I wish to impress upon my friends on the Treasury Benches the great necessity of Government taking action on the two questions of policy referred to in the Select Committee's Report under clause 28-A, paragraphs 2 and 3. There is the International Convention for the Protection of Industrial Property, and India is not a member of that Convention. One of the main reasons why India cannot be a member of that Convention is, I understand, the absence of registration of trade marks in India. The question about the registration of trade marks in India is not a new one and I find that in the Holland Commission's Report of 1916-18 this question was dealt with very fully. I wish to refer to Volume IV of the Evidence, page 326, where Mr. Rutnagar of the *Bombay Textile Journal*, giving evidence, pressed for some action or some recommendation by that Commission regarding the registration of trade marks. Honourable Members will find there a short history of trade marks registration, and I have here a quotation from that which would be interesting if I read it to the House. But the quotation being fairly long, I wish only to refer to it by giving a reference to the page, which I have already done. The whole idea regarding the registration of trade marks started in 1877, and from this quotation it appears that the Bombay Chamber of Commerce and the Bombay Millowners Association then said that it was not necessary in the light of the circumstances then prevailing to do anything in the direction of registration of trade marks. Between 1877 and 1929, considerable changes have naturally taken place. I understand that this subject is under the Honourable the Commerce Member and I wish to ask

him if he has received any representations lately from commercial bodies in India asking Government to proceed with this question, and if so, what is the attitude of Government regarding this question. I am convinced, Sir, by the opportunity available to me to study this case on the Select Committee, that the few Indians who do go in for patents have suffered a good deal by India not being a party to this International Convention. I feel that, if this absence of registration of trade marks in India is militating against India by her not being a party to this International Convention, and further if there is a demand in India now for registration of trade marks, one may well inquire of the Government of India what justifies them in their policy of doing nothing and saying that the thing was turned down by commercial bodies in 1877. I inquire whether the Government wish to do anything in the near future. I strongly recommend them to move in this direction, and I trust that the remarks made in the Select Committee's Report will be attended to with more promptitude than is usual with Government Departments.

The other point I wish to touch is under the direct control of the Honourable Member in charge of this motion. That is the subject referred to in paragraph 2 under clause 28-A. That, Sir, is a matter, I understand, of the applications for patents and designs being scanned more thoroughly and more minutely than is being done at present. The Honourable Member gave us to understand in the Select Committee that the Government were aware that the staff in the Patents and Designs office was not adequate to cope with the demand. We were told that, in Great Britain, where it is being done much more thoroughly, the staff is much larger. Where Indians have to compete with and hold their own against other able talents in the wide world, I wish to ask my Honourable friend whether it is not a fact that the Government, by not making the same adequate arrangements as are being made in other countries, do not really create a handicap for those Indians who exercise their intelligence in the direction of devising patents and designs? If that is so, I wish to ask the Honourable Member what steps Government propose to take to remove this handicap. I do not wish it, by the slightest inference, to be understood that I have anything to say against the office as staffed at present, and I wish to impress upon the House the able manner in which Mr. Rama Pai, as Controller, has conducted his office. He showed the greatest intimacy with the work with which he is charged, however inadequately his office may be staffed. My complaint is that the Government of India have not kept that Department adequately manned and this tells on the people for whose benefit the Patents and Designs Act is, I understand, being amended. Sir, I have pleasure in supporting the motion before the House.

**The Honourable Sir George Rainy** (Member for Commerce and Railways): Sir, I have only a very few words to say with reference to what fell from my Honourable friend Sir Purshotamdas Thakurdas on the subject of the registration of trade marks. I was not aware that the question was likely to be raised today and therefore I am not in a position to deal with the matter quite so fully as otherwise I might have been able to do, but the information I have is as follows. The last time on which the question was formally brought before the Government of India was in December, 1927, as a result of a Resolution passed by the Fifth session of the Indian

[Sir George Rainy.]

Industrial and Commercial Congress held at Madras. The Congress passed a Resolution to the following effect:

"That it was desirable in the interests of Indian trade and industries to introduce at an early date legislation for the registration of trade marks in India, in the absence of which the Indian merchants are put to considerable hardship, both in India and abroad, and India is unable to join the International Convention for the protection of industrial property."

The Commerce Department replied to that letter, and the reply was to the following effect, that we had noted the opinion of the Federation of Indian Chambers, but we added that the question of the introduction of the system of registration of trade marks in India had been considered on no less than ten occasions, and that, on every occasion, it was found that commercial opinion was either unanimously, or in the balance, against the proposal. We stated that in these circumstances the Government of India were not prepared to reopen the matter unless a statement were placed before them indicating clearly the reasons which were held to justify it, and, in particular, the extent of the disability which India suffered by non-adherence to the International Convention for the Protection of Industrial Property and the advantages which it was believed would result from the registration of trade marks.

Unless a reply has come in very recently, I think the matter stands there. That is to say, as far as my information goes, we have not yet had the statement from the Federation of Indian Chambers which we suggested they might send to us. On the other hand, Government are bound to attach weight to the opinion expressed by the Select Committee on the Patents and Designs Bill. The matter has already been examined in the Commerce Department, but I do think it will be helpful to our examination if the Federation of Indian Chambers can see their way to give us the statement we suggested they should send, because that will enable us to focus our minds definitely on the points which the Federation considered important. I can assure the House that any representation of that kind which we may receive will be most fully examined.

**Sir Purshotamdas Thakurdas:** I wonder, Sir, whether the Honourable Member can tell me when the last inquiry regarding this matter was made? Was it made more than 10 years ago or was it made recently?

**The Honourable Sir George Rainy:** It was last under discussion in the years 1917 to 1919.

**The Honourable Sir Bhupendra Nath Mitra:** Sir, I wish to deal briefly with the second of the points to which my Honourable friend Sir Purshotamdas Thakurdas referred. That is the point mentioned in paragraph 2 of the Report of the Select Committee, and it refers to the desirability of tightening up the procedure in India, in regard to the examination of applications for patents, so as to bring it more in line with the procedure followed in England. Now, Sir, this matter received our consideration as soon as we received the Report of the Select Committee. We asked the Controller to examine the matter fully and let us have any specific recommendations he might consider it desirable to make. The

one main difference between the procedure in India and the procedure in England refers to the systematic search for anticipation of inventions. Section 7 of the English Patents Act makes it obligatory on the examiner to investigate whether the invention claimed in a patent application has been wholly or in part claimed or described in any specification, other than a provisional specification not followed by a complete specification, published before the date of the application, and left pursuant to any application for a patent made in the United Kingdom, within 50 years next before the date of the application. Section 5 (1) (e) of the Indian Patents and Designs Act, on the other hand, enjoins that the Controller shall examine every application to see whether the invention, as described and claimed, is *prima facie* a new manufacture or improvement.

I understand that in India, there are great practical difficulties in following the English procedure in its entirety, *i.e.*, that all specifications of a particular class published before the date of the application within fifty years next before the date of the application should be examined. In India, specifications filed prior to 1912 have not been printed, and the applicants would be put to a considerable loss of time and money in obtaining copies of specifications cited against them if the examination is to be pursued to a period of fifty years back. Even so, Sir, we have not for that reason rejected the recommendation of the Select Committee. We are still pursuing the matter in consultation with the Controller in order to determine to what extent it would be practicable to tighten the Indian procedure in the interests of the general public.

My Honourable friend Sir Purshotamdas Thakurdas was perfectly correct when he referred to the inadequacy of the establishment. As a matter of fact, we hope in the Budget for next year to get a few more examiners and also to raise the pay of the Controller himself, to the commendation of whose services by my Honourable friend I fully subscribe. When we have managed to come to definite conclusions as to the extent to which the Indian procedure can be improved, we will have to ascertain the amount of extra expenditure which this tightening of the procedure is likely to lead to; and thereafter when it is possible for us to get a grant for the extra establishment, there should be no difficulty on our part in making such improvements in the procedure as may be found to be necessary.

**Mr. President:** The question is:

"That the Bill further to amend the Indian Patents and Designs Act, 1911, for certain purposes, as reported by the Select Committee be taken into consideration."

The motion was adopted.

Clauses 2 to 32 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir Bhupendra Nath Mitra:** Sir, I am sorry there is one point to which I have not drawn attention at an earlier stage. In fact it has just caught my eye. In clause 1, sub-clause (2) it is stated that the Bill shall come into force on the 1st day of January 1930. That might have been all right when the Select Committee made its Report, but it is not

[Sir Bhupendra Nath Mitra.]

right at present. I suppose it is not permissible for me, at the third reading stage to move the formal amendment to alter "January" into "July". If that is not permissible, we will have to have the change made in another place.

**Mr. President:** As a special case, I will allow some other Honourable Member, on behalf of the Government, to move the amendment at the third reading. The motion for third reading must be made.

**The Honourable Sir Bhupendra Nath Mitra:** I move :

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

**The Honourable Sir Brojendra Mitter** (Law Member): Sir, I move :

"That in clause 1(2), the word 'January' be altered into 'July'."

The motion was adopted.

**Mr. President:** The question is :

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

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 28th January, 1980.