

15.02 $\frac{1}{2}$ hrs.

The Lok Sabha then adjourned till Fifteen Minutes past Fifteen of the Clock.

15.20 hours

The Lok Sabha re-assembled after Lunch at Twenty Minutes Past Fifteen of the Clock.

(Mr. Deputy-Speaker *In the Chair*)

TRADE MARKS BILL-Contd.

MR. DEPUTY-SPEAKER: Shri Girdhari Lal Bhargava was on his legs. He may continue his speech.

[Translation]

SHRI GIRDHARI LAL BHARGAV (JAIPUR): Mr. Deputy Speaker, Sir, I would like to request that it has taken more than one year to introduce this bill. The hon. Minister has not disclosed the reason for this delay.

Similarly the permanent Committee of Parliament held 18-19 sittings after meeting traders of Bombay and after making full investigation but all their recommendations have not been accepted. Now when the bill is introduced, the hon. Minister has proposed several amendments which means there is no necessity of permanent Committee of Parliament. It is so because after disallowing its recommendations, several amendments have been proposed. If these amendments had to be brought in, they should first have been placed before the Permanent Committee of Parliament and then discussed. But this was not done. My submission is that if the Government wants to discuss these amendments let the hon. Minister have the Bill passed but all these amendments should be sent to the Permanent Committee for discussion and then only the Bill brought in the House I think this alone will be appropriate. The hon. Minister proposed amendments hurriedly in the past two-three days in the House. I think this is an insult of the Permanent Parliamentary Committee. To disallow the recommendations of the Committee and propose amendments in between is not proper.

Mr. Deputy Speaker, Sir, in connection with the Bill, I beg to submit that there is no provision in this Bill to save the home and small industries from the clutches of Multinational companies. The result will be that the Multinational Companies after acquiring Trade Marks trade signs of our country will seize our home and small industries because they have got their trade marks registered here. There are many such Multinational companies. Due attention should be paid in this direction. As many Members have said earlier about Maruti/Suzuki. Now if the name of Maruti is separated from Suzuki, the Indian Government

will be left only the job of collecting labels. The foreign companies will thus start dominating. I feel in this way Indian industries will suffer. Pepsi and Maruti are two examples before you.

1525 hrs.

[Smt. Santosh Chaudhary *In the Chair*]: You will consider in this connection, how can the Indian industries keep their partnership in order. How to maintain their share properly, no provision for this has been made in this Bill. This means you have completed your task by bringing in this amendment and that will become a course. Instead of the Government of India, the power will go to the Registrar. The Tribunal will decide the litigation. These are pleasant dreams. However the small and cottage industries of India will suffer and foreign companies after registering themselves will try to usurp Indian industries. No provision to stop such a situation has been made in the bill.

As per section 8 and 9 of Article 19, the Parliamentary Committee had given suggestions about the art of Indian artists and artisans. These were also not accepted. This Bill has been proposed only to protect the benefits of the big people. These artists have transferable rights, he may be musician or a literator. These rights and cinema industry can be purchased by foreign industrialists. Alongwith this they will purchase their earnings and will pocket the entire royalty. Indian artists will be losers in this way. The recommendations made by the Parliamentary Committee in this regard should be taken seriously and then only a complete bill should be introduced. That will be a better job. Supposing a particular industry is not registered on the basis of a Trade Mark, its recognition will stand cancelled. If another person takes that Trade Mark, there is no provision to stop him from continuing with that Trade Mark. If the old Trade Mark is being used, the consumers will not know that the concern has been purchased by another party. The continue purchasing the stuff. Take the case of Sunlight and Lifebuoy. If after removing one letter from their name, they are sold consumers will continue purchasing them. I hope you will consider this aspect also. The Parliamentary Committee have said that Trade Marks should not include insulting or obscene material but there is no such provision in the bill. Also there is no provision in Bill to ensure that it does not hurt the feelings of a particular section of the people. I had also said on Friday that specifications should be laid for granting registration to Trade Signs so that they do not hurt the feelings of people. It is observed these days that on consumer products packed in packets or Tins bear the photos of Gods and Goddesses. Their names may be used if your name be Krishna Sahi, the products can be sold with this name, we have no objection but if a product is sold with

the photo of Hanumanji or a Goddess, that is wrong and is insulting. People used to paste Gandhiji's photo on lotteries. When we see such cartons or labels in a dust-bin, this hurts the feelings of a particular section of the people. Their names may be used but you should prohibit. The use of their photos. Because when we see any such label or carton on the road which bears the God's photo we pick it up and place it aside. Therefore, you may allow the use of names but the use of photos should be banned.

Mr. Speaker, Sir, I would like to say 3-4 things more. First, how to stop transfer of technology. In India the poor labourers, artists musicians produce something but prominent professors well that technology and others take advantage of that. A poor man runs a business in loss and another person is taking the benefit of it. I feel there must be some way out. You must consider the fact that person at source should receive the benefit. By inviting foreign companies in the country our trade and industry has become stifled. I wish to say that had the GATT Agreement been signed at the time with the Committee gave their suggestions that would have been a different matter. We should ensure that the labour of poor labourers artists small and cottage industries should not be seized by the Multinational companies. The Trade Marks of India should be registered so Indian trade does not suffer. This must be considered. By entering into GATT agreement, Indian trade has been put to a loss. This should also be considered.

Mr. Speaker, Sir, the hon. Minister has brought in the Bill with good intentions, there are no two opinions about it but after the Multinational companies entrance in India bringing in such a Bill will be against the interests of the country. I think you should forward all the amendments to the Committee. As your name Krishna Sahi signifies, you take yourself to be incarnation of God, so in this country labourers, traders and unemployed persons should not suffer in the land of Krishna, Ram and Rahim, also it should not affect the Indian trade adversely. In this regard the Bill will be reconsidered. Let it not be an insult to you. Since you have become a Minister and understand that the Bill is to be passed which you have brought under pressure of the GATT or Multinational companies, I hope you will keep in view the fact that 45 members of the Permanent Committee, who gave their recommendations and which held 18-19 meetings, went to Bombay on tour, there not traders and competent people and so will not insist on its passage. In the end I would like to say on 19th May you were granted a boon which will last for 4-5 months. Please bring this Bill after amending it. With these words, I thank you for giving me time to speak.

[English]

SHRI SRIBALLAV PANIGRAHI (Deograh): Madam Chairperson, I rise to support the new Trade Marks Bill, 1993.

Madam, In fact, there has been no opposition whatsoever to this Bill. Some hon. Members are suggesting some amendments. But, in spirit, everybody has supported the spirit of the new Bill which is before the House.

Madam, you will kindly find that this Bill, after its adoption and after it becomes law, will replace the existing Trade and Merchandise Marks Act, 1958 which was enacted as far back as in 1958. This Act will be replaced by this new legislation.

I would like to say that this law has reasonably served well. But over the last more than three decades since 1958, there has been a sea-change in different fields of activity including trade and commerce, and particularly revolutionary changes are taking place in the field of trade and commerce for the last three or four years. The GATT has been signed by more than 117 or so countries including India. Globalisation is taking place very fast. So, considering it from this angle, when a comprehensive review of this legislation was undertaken, it was found wanting in certain respects. Meanwhile, some regulations, laws relating to trade marks were scrutinised or they underwent legal scrutiny. Several judicial authorities or courts had given valuable judgments which also needed to be incorporated in the Act. So, looking at the situation, where there are so many changes that are to be incorporated in the existing law, the Government, in their wisdom, though instead, to bring in a new piece of legislation and that is how this Bill is before the House.

This Bill was introduced in 1993. After its introduction, the Government, in response to the demands and also as per the provisions of the newly constituted Standing Committees, referred it to the concerned Standing Committee on Industry. They examined it in great detail. They also reported back two or three months after August 1993. Now two years' time elapsed meanwhile. I wonder why there has been so much delay after the same was examined by the Standing Committee. After the Report was presented to the House, there should not be such a delay particularly in a matter of this nature which concerns our trade and commerce, which tries to update our existing law, which tries to bring it on par with the international standards and specifications.

There should not be delay and it should be expeditiously adopted. As I understand, I do not know how and wherefrom hon. Shri Bhargava has got this impression that the Standing Committee has different views on this.

By and large, the views expressed by the Standing Committee have been accepted by the Government. Therefore, there is not much to speak on this Bill. This proposed Bill is a concerted effort to bring the existing law on par with international practices and it is definitely an improvement. It is intended to simplify the procedure. It is a right step in protecting the genuine interests of the businessmen and at the same time, protecting the interests of the consumers.

These changes were envisaged by India, as I told you, well before it signed the General Agreement on Trade and Tariff as also the Trade Related Intellectual Property Rights Agreement in April, 1993. For the first time, there are some new features in this Bill. Earlier trade marks were protected. But now a new dimension is provided in the Bill to protect the services also. Services have been introduced for the first time. This Bill seeks to protect service marks as opposed to trade marks in goods. The services to which the trade marks can be registered include that of advertisement and business, insurance and finance, construction and repair, transport and storage material treatment, boarding and lodging, education, entertainment etc.

The Bill under discussion expands the scope of the definition of trade marks to include graphic representation, say, packaging and combination of colours and covers both goods and services. The scope of other firms like, collecting marks; registered trade marks, permitted use have been expanded in tune with international practices. The jurisdiction of the court would also be affected with the formation of an Appellate Tribunal. There has been a long pendency of large number of cases. Now with the establishment of the Appellate Board, cases will be transferred to such Boards from the High Court. It is definitely an improvement.

This Bill also proposes to lay down the procedure for the registration of trade marks. Earlier also there were two forums available. And now it will be done in a single window and one authority will be there. The Registrar will be appointed for this purpose and instead of the Government, the parties will have to appear before the Registrar.

There are many welcome features in this new Bill. It keeps our legislation in tune with the changing times or developments in this particular field. There has been some lurking fear in the minds of the opposition about the trade marks. In this field also, we come across the fake trade marks being used by some companies, businessmen and also by farm sectors. They should be firmly dealt with. Stiffer provisions are there in the new Bill. viz. two years imprisonment etc. which are welcome. Now, it is, of course, voluntary. For businessmen or firms, it is compulsory on their part to go in for registration. Of course, those who get registration will be entitled to get certain benefits, damage

etc. They can sue in case of violation etc. Any good or reputed firm can always work or operate under a Trade Mark. As you know, this trade mark is also an indication of goodwill. It offers an assurance to the consumer that when he is buying a particular item with a trade mark, he is purchasing the same item which he has been assured of, its quality, composition etc. It is often a tendency on the part of businessmen, firms etc., to copy it and that has got to be strictly viewed. A Trade Mark reflects the goodwill or reputation of a particular product. As I have told earlier, in some cases the increasing globalisation of trade, modification etc., are also viewed from lacuna. We have to be very careful about these spurious goods, which brings bad name or reputation to the country.

Although, at the time of our Independence, we were not capable of producing even a pin or blade, now, after four or five decades, our country has got the distinction of having become one among the fifteen most industrially advanced countries in the world. It is no joke. It is not a mean achievement. At the same time, now since there is globalisation taking place at a faster rate, we have to be competitive, our industry has got to be internationally competitive, which means that, we have to maintain certain standards. If the standard gets diluted, that will bring bad name to our fast developing country.

Regarding the Registrar, I would like to tell that under the new Bill he will be getting enough powers. But, I am afraid that unless proper support, necessary staff and other facilities are given to the Registrar, there also delay will take place. Standing Committee have examined closely in greater details and the recommendations of the Committee have been by and large accepted by the Government. Difficulties which are coming in the way should be taken care of.

I would like to make one suggestion with regard to not only the Trade and Commerce, but also in various fields for we have got legislations which are obsolete, which are not up to the time and which are not meeting the requirements of the changing times. We should review all those legislations and the same should be updated. We have laws like the Indian Penal Code which came into force in 1892 or 1893. Of course, we are updating them by bringing in amendments as and when necessary. But at the same time there are definitely certainly legislations which need thorough changes. In such cases also, we have a parliamentary committee on these legislations. These are not major legislations. Even in such cases, review should be done and efforts should be made to update our laws.

Without any further delay, this Bill has come before the Lok Sabha and will be sent to the Rajya Sabha after it is passed

With these words, I support this Bill.

[Translation]

STATE MINISTER IN THE MINISTRY OF INDUSTRIES (SMT. KRISHNA SAHI): Mr. Speaker, Sir, a proposal has been mooted to amend Trade & Merchandise Marks Act 1958 through Trade Marks Bill, 1993. I am grateful to all Hon. Members. All have welcomed it and the special support that I received, I feel much obliged to them. This Act which was enacted in 1958 was satisfactory but it has also become three and a half decades old. As felt by all hon. Members, with the lapse of time, changes have become necessary in it and that is why it is before you. During this period overall changes have taken place in economic, industrial and commercial troposphere capital investment in economic field and to promote technology transfer, simplification of Trade Marks and Management System is considered necessary. Court rulings to the old Act were also passed and amending the Act as per the rulings became essential. Therefore, through the Trade Marks Act, 1993, the 1958 Act is proposed to be amended after its full review by the House.

Trade Mark is sign displaying a particulars product or service. This display can be done through word, letter, number or photo etc. Primarily Trade Mark has two objectives. Traditionally the first objective is accord clear existence to any product or service which gives it a clear identity. In addition the consumers gets information about the quality of a product or service. Through the medium of the Rule relating to Trade Marks, facility to get the Trade Mark registered and to prevent its misuse, is obtained. It is essential that the Rule should be in accordance with the economic, industrial and commercial climate. From time to time the necessity of amending the Rule was felt and so the Trade Marks Bill 1993 has been brought in. Trade Marks Bill was introduced in the Lok Sabha on 19 April, 1993. The Parliamentary Standing Committee on Ministry of Industries, fully reviewed it and on 21 April, 1994 they submitted their recommendation. Several amendments related to the Committee's Report were received. The Government has accepted all those amendments and there is a proposal to amend the proposed bill. All that I want to say is that in 17 clauses there were a total of 29 amendments. The changes suggested by the Standing Committee have been accepted by the Government. After incorporating these, the Bill is before you. Whatever changes have been made, these were based on the recommendations of the Committee, only peras has been changed, somewhere Sr. Nos. have been changed. If someone said add 3 after 2, that was done. These were the changes made. It took a long time. All the suggestions have been accepted which are contained in the Standing Committee Report. The Hon. Members will refer to para 13 which signifies that discussions are held, suggestions are

given and a complete Report has been presented by the House. Briefly the Bill is:

[English]

To achieve these purposes, the present Bill proposes to incorporate, *inter alia*, providing for registration of trade mark for services, in addition to goods, preventing the registration of trade marks which are imitation of well-known trade marks, enlarging the grounds for refusal of registration as mentioned in Clauses 9 and 11, doing away with the system of maintaining registration of trade marks in Part A and Part B with different legal rights, and to provide only a single register with simplified procedure for registration and with equal rights, simplifying the procedure for registration of registered user and enlarging the scope of permitted use, providing for registration of trade marks for "Collective Marks" owned by associations etc., establishing an Appellate Board for speedy disposal of appeals and rectification of applications, which at present lie before High Court, providing enhanced punishment for the offences relating to trade marks to prevent the sale of spurious goods prohibiting use of someone else's trade marks as part of corporate name or name of business concern and incorporating provisions like amending the definition of 'trade marks', providing for filing of a single application for registration in more than one class, increasing the period of registration and renewal from seven to ten years etc... (Interruptions)

[Translation]

During the discussion the hon. Members have given their valuable suggestions relating to the Bill and they have also expressed some of their doubts. I would, therefore, like to remove their doubts on those points.

Our hon. Member Sh. Bhagwan Shanker Rawatji raised some issues while initiating the discussion. As Sh. Girdhari Lalji also said just now that where a Trade Mark has been in use for 15 to 20 years and due to some reason could not be renewed, any other man could get it registered and the old Trade Mark holder has no defence. In this regard I would like to say that as compared to Trade Marks & Merchandise Act 1958, a provision has been made in the new Bill that even if well known Trade Mark is not registered, no registration of that Trade Mark or of its invitation will be done. Let us suppose, 'Maharaja' is the symbol of Air India which is well known. All people know it. Likewise if 'key' is the symbol of a bank, which everybody knows, it may be registered or not. All these aspects will be taken care of and even if it is not registered, its registration or of its limitation, will not be done. Members are voicing their concern over security. Its provision has also been made in this Bill.

The second point which they raised was about

hurting the religions feelings or about obscene or improper trade marks.

16.00 hrs.

In this connection I would like to clarify.
...(Interruptions)

[English]

Section 9(2) (b) and (c) will take care of this aspect. As per these Sections, a mark shall not be registered as a trade mark if it contains or comprises any matter likely to hurt religious susceptibilities of any class or section of the citizens of India or it comprises or contains a scandalous or obscene matter.

[Translation]

I feel this would have clarified your doubt. Other Parliamentarians have also discussed these points over which I have given my clarifications.

Litterateurs and artists were also discussed. Their security aspect comes Act of Copyright and is related to Min. Of Human Resource & Development while we are discussing Act for Trade Marks. Prof. Sourtri Lakshmanan is not present here. She timely gave nice suggestions which we accepted. Hon. Members Sudhir Rajji is not present here...(Interruptions)

[English]

"Oh I you are here. I shall speak in Bengali. Please excuse me if there is any mistake. You raised three issues. Firstly you suggested that to stop the foreign companies from capturing our market either their trade mark should not be registered or dual policy should be pursued. Your second suggestion was that"

Association of persons should be permitted to use marks. ...(Interruptions) *You also suggested to set up the Bench of Appellate Board. I would like to say... well I do not know whether I should continue in Bengali because there may be some mistakes. Please excuse me for that*.

SHRIMATI GEETA MUKHERJEE (Panskura): Please continue. You are speaking perfectly in Bengali.

SHRIMATI KRISHNA SAHI: I would like to say that Trade Marks Act, 1958 has some facilities such as.

[Translation]

Any person who is sanctioned a Trade Mark to secure his interests after registering the Trade Mark of Foreign Companies, some policy well be formed and provisions will be made.

"I assure the hon. Member that no new provision will be brought in for the registration of foreign company."

[Translation]

In the economic climate of today, while the globalisation is on, to adopt a policy against our policy, our exports will face difficulty in the face of such dual policy.

[English]

The Bill provides for collective marks. Collective marks are provided for a group of associations or enterprises, its use is reserved only for the members of the group, if the group wants to have more persons, the same is permitted.

Benches of Appellate Board have been suggested. Many other hon. Members have also suggested about it. There is already a provision for Benches of Appellate Board, under Section 85(2) of the Bill.

Mr. Mumtaz Ansari is not here. But he has given some suggestions. They have also been taken into account.

[Translation]

Shri R.K. Yadav stated whether under pressure from outside, we are making such changes. I would like to say that we are not making such changes under pressure from somebody.

[English]

The changes that have been proposed are based on practical realities of the Indian market place and are not dictated by any particular country or organisation. It should be noted that the benefits of improved production will flow to all trade marks registered in India. It may also be noted that 80 per cent of the trade marks registered or applied for in India are owned by Indians. The Bill seeks to simplify and rationalise procedure, reduce paper works.

[Translation]

Red Tapism consists of very complicated procedure. This Bill has been introduced to make it easier. We want that it should be incorporated with economic changes and judicial decisions.

[English]

This is the basic philosophy of the Bill. There should be heavy penalties for persons who misuse trade marks.

[Translation]

In this connection one Rawatji and other hon. Members have also said.

Translation of the speech originally delivered in Bengali.

* Translation of the speech originally delivered in Bengali.

[English]

The Bill provides for heavier penalties. For certain offences, the penalty extends upto imprisonment of three years and fine upto Rs 2 lakh.

[Translation]

Hon. Member Shri Ram Asray Prasad's suggestion has also been heard. Shri Shahabuddin is not present in the House. The suggestion made by Shri Shahabuddin and Shri Ram Kapsay and also by other hon. Members, the facilities that we are making available, those facilities should also be made available on reciprocal basis by other countries. I wish to draw your attention to Section 156 which contains the provision of reciprocity. The second issue is—

[English]

Why have some suggestions of the Standing Committee not been accepted?

[Translation]

This point has been raised by Shri Ram Krpal and other hon. Members. I would like to say and as I have already said, suggestions given on all issues, have been accepted by us. The para changes. Sometimes the Section also changes.

[English]

All the recommendations of the Standing Committee have been accepted.

[Translation]

There are many points in the Report, which have been duly considered but suggestions have been given in para 13. All these suggestions have been accepted.

[English]

Do not extend indiscriminate protection to foreign goods and services.

[Translation]

This has also been said that the entry of foreign companies should be banned. On one hand the hon. Members say that it should be done on reciprocal basis and on the other hand say that it should be banned. In today's world who will be a fool to say that you buy our goods but we shall not buy yours. You will not be allowed to come but we shall buy from country. Therefore all this depends on give and take policy. This has been done keeping national interests in view. As I have already drawn your attention to Section 156 I wish to tell you that the question of entry of Foreign Companies is controlled through industrial policy. In this connection our policy is to strengthen the industries so that

we participate in the world wide competition. The hon. Members have raised many points which relate to the recommendations of the Parliamentary Committee of Ministry of Industries.

We have accepted them and this has not been done under external pressure. There is nothing to fear. The number of Trade Marks given to Foreign Companies has been kept apart. But from the data it is clear that total number of foreign trade marks is 10 per cent of Trade Marks registered last year. Against 30,266 registered trade marks, 3,074 trade marks belong to foreign countries and the rest are all ours. Thus the suggestion given by Sh. Panigrahi, have been accepted by us.

In the end Sh. Girdhari Lal ji has said that this should be referred to the Standing Committee. I would like to say why to refer a second time. When your suggestions have been accepted by us and have brought in amendments raised by the Standing Committee. For the security of small industries, there are provisions for it in our economic policy of Trade and Tariffs and we provide for counter billing duties. Expansion of Modvat is also within our Trade policy. Which contains its provisions and industries should be able to compete at international level. This Bill is only to register the commodities produced.

In the end, I would like to say the aim of this new Bill is to ensure how the registration of trade marks should be made simple, effective and fast moving and how to prevent effectively its misuse. By doing this we shall receive maximum proposals for registration and the quality of the product and the service will be improved. I hope these objections will receive unanimous support.

[English]

MR. CHAIRMAN: The question is.

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

The motion was adopted.

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

Clause 2- Definition and Interpretation

Amendments made:

Page 2, for lines 13 to 15, substitute—

- (g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Partnership Act, 1932) which is the

proprietor of the mark from those of others;

9 of 1932 (3)

Page 3,

(i) after line 13, insert—

'(j) "goods" means any thing, which is the subject of trade or manufacture;"

(ii) line 14, for "(j)" substitute "(k)"

(iii) line 19, for "(k)" substitute "(l)" (4)

Page 3,—

(i) for lines 22 and 23, substitute—

(m) "Member" means a Judicial Member or a Technical Member of the Appellate Board and includes the Chairman."

(ii) line 24, for "(m)" substitute "(n)"

(iii) line 25, for "(n)" substitute "(o)"

(iv) line 27, for "(o)" substitute "(p)"

(v) line 30, for "(p)" substitute "(q)"

Page 4,—

(vi) line 6, for "(q)" substitute "(r)"

(vii) line 7, for "(r)" substitute "(s)"

(viii) line 9, for "(s)" substitute "(t)"

(ix) line 11, for "(t)" substitute "(u)"

(x) line 14, for "(u)" substitute "(v)"

(xi) line 16, for "(v)" substitute "(w)"

(xii) line 18, for "(w)" substitute "(x)" (5)

Page 4,—

(i) for lines 20 to 26, substitute

"(g) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, educations, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising."

(ii) line 27, for "(y)" substitute "(z)"

Page 5,—

(iii) line 14, for "(z)" substitute "(Za)"

(iv) line 32, for "(za)" substitute "(zb)"

(v) line 35, for "(zb)" substitute "(zc)" (6)

(Shrimati Krishna Sahl)

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.

MR. CHAIRMAN: The question is:—

"That clauses 3 to 5 stand part of the Bill".

The motion was adopted.

Clauses 3 to 5 were added to the Bill

Clause-6—The Register of Trade Marks

Amendment made:

Page 7, after line 16, insert—

"(5) The Register of Trade Marks, both part A and Part B, existing at the commencement of this Act, shall be incorporated in and form part of the Register under this Act." (7)

(Shrimati Krishna Sahl)

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.

MR. CHAIRMAN: The question is:—

"That clause 7 stand part of the Bill".

The motion was adopted

Clause 7 was added to the Bill.

Clause 8—Publication of alphabetical index

Amendments made:

Page 7, line 23 for "8. The Registrar shall" substitute "8. (1) The Registrar may" (8)

Page 7, after line 24, insert

"(2) Where any goods or services are not specified in the alphabetical index of goods and services, published under sub-section (1), the classification of goods or services shall be determined by the Registrar in accordance with sub-section (2) of section 7." (9)

(Shrimati Krishna Sahl)

MR. CHAIRMAN: The question is:

"That Clause 8, as amended, stand part of the Bill."

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 9—Absolute grounds for refusal of registration

Amendments made:

Page 7, for line 26, substitute-

"(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;" (10)

Page 7, line 38, for "made of it"

substitute "made of it or is a well-known trade mark."

Page 8, after line 9, insert- (11)

"**Explanation:** For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration." (12)

(Shrimati Krishna Sahi)

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.

MR. CHAIRMAN: The question is:

"That Clause 10 stand part of the Bill"

The motion was adopted

Clause 10 was added to the Bill.

Clause 11—Relative grounds for refusal of registration

Amendments made:

Page 8, lines 29 and 30, for "has a reputation" substitute "is a well known trade mark" (13)

Page 9, line 11, for "In determining, substitute "For the purpose of this Act, in determining" (14)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 11, as amended, stand part of the Bill."

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12—Registration in the case of honest concurrent use, etc.

Amendment made:

Page 9, for lines 19 to 29, substitute-

"12. In the case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of the trade marks which are identical or similar (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose." (15)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, as amended, was added to the Bill."

MR. CHAIRMAN: The question is:

"That Clauses 13 and 14 stand part of the Bill."

The motion was adopted.

Clauses 13 and 14 were added to the Bill.

Clause 15—Registration of parts of trade marks and of trade marks as a series

Amendment made:

Page 10, line 16, after

"marks in respect of the same" insert "or similar" (16)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 15, as amended, stand part of the Bill."

The motion was adopted

Clause 15, as amended, was added to the Bill.

MR. CHAIRMAN: The question is :

"That Clauses 16 to 21 stand part of the Bill"

The motion was adopted.

Clauses 16 to 21 were added to the Bill

Clause 22—Correction and amendment**Amendment made:**

Page 13, after line 36, insert

"Provided that if an amendment is made to a single application referred to in sub-section (2) of section 18 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided." (17)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"The Clause 22, as amended, stand part of the Bill."

The motion was adopted.

Clause 22, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 23 and 24 stand part of the Bill."

The motion was adopted.

Clauses 23 and 24 were added to the Bill.

Clause 25—Duration, renewal, removal and restoration of registration.

Amendments made:

Page 14, after line 44, insert-

"Provided that the Registrar shall not remove the trade mark from the Register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2)." (18)

Page 15,-

(i) omit lines 1 to 7.

(ii) line 8, for "(5) substitute "(4)" (19)

Page 15, line 12, omit "and surcharge" (20)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"The clause 25, as amended, stand part of the Bill."

The motion was adopted.

Clause 25, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 26 to 28 stand part of the Bill".

The motion was adopted.

Clauses 26 to 28 were added to the Bill

Clause 29—Infringement of registered trade marks

Amendment made:

page 17, line 5, for "business concern." substitute-
"business concerning dealing in goods or services
in respect of which the trade mark is registered."

(21)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 29, as amended, stand part of the Bill."

The motion was adopted.

Clause 29, as amended, was added to the Bill:

MR. CHAIRMAN: The question is:

"That Clauses 30 to 38 stand part of the Bill."

The motion was adopted.

Clauses 30 to 38 were added to the Bill.

Clause 39—Assignability and transmissibility of unregistered trade marks

Amendment made:

Page 21, for lines 14 to 26, substitute-

"39. An unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned." (22)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 39, as amended, stand part of the Bill."

The motion was adopted.

Clause 39, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That clauses 40 to 45 stand part of the Bill"

The motion was adopted

Clauses 40 to 45 were added to be Bill.

Clause 46—Proposed use of trade marks by Company to be formed

Amendment made:

Page 24, for lines 24 to 26, substitute-

"(b) the proprietor intends it to be used by a person,

as a registered user after the registration of the trade mark." (23)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 46, as amended, stand part of the Bill."

The motion was adopted.

Clause 46, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 47 to 84 stand part of the Bill"

The motion was adopted

Clauses 47 to 84 were added to the Bill

Clause 85—Composition of Appellate Board

Amendments made:

Page 38, line 37, omit "not exceeding five," (24)

page 38, for lines 41 to 43, substitute-

"(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(3) Notwithstanding anything contained in sub-section (2), the Chairman-

(a) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer a Member from one Bench to another Bench;

(c) may authorise the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Board amongst the Benches and specify the matters which may be dealt with by each Bench.

(5) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

Explanation: For the removal of doubts, it is hereby declared that the expression "matter" includes an appeal under section 92.

(6) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it."

(25)

(Shrimati Krishna Sahi)

MR. CHAIRMAN: The question is:

"That Clause 85, as amended, stand part of the Bill."

The motion was adopted.

Clause 85, as amended, was added to the Bill.

Clause 86—Qualifications for appointment as Chairman and Members

Amendment made:

Page 39,-

(i) for line 5 to 17, substitute

"(2) A person shall not be qualified for appointment as a Judicial Member, unless he-

(a) has been a Member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a civil judicial office.

(3) A person shall not be qualified for appointment as a Technical Member, unless he-

(a) has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958, or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

(b) has, for at least ten years, been an advocate of a proven specialised experience in trade mark law.;"

(ii) line 18, for "(3)", substitute "(4)

(iii) line 18, for "sub-section (4)" substitute "sub-section (5)"

(iv) line 20, for "(4), substitute "(5) (26)
(Shrimati Krishna Sahl)

MR. CHAIRMAN: The question is:

"That Clause 86, as amended, stand part of the Bill."

The motion was adopted.

Clause 86, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 87 to 111 stand part of the Bill".

The motion was adopted.

Clauses 87 to 111, were added to the Bill.

Clause 112—Forfeiture of goods

Amendment made:

Page 47, line 4, for "clauses (a), (b) and (c)" substitute

"clause (a), clause (b) or clause (c)". (27)

(Shrimati Krishna Sahl)

MR. CHAIRMAN: The question is:

"That Clause 112, as amended, stand part of the Bill."

The motion was adopted.

Clause 112, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 113 to 115 stand part of the Bill."

The motion was adopted.

Clauses 113 to 115 were added to the Bill.

Clause 116—Cognizance of certain offences and the powers of police officer for search and seizure

Amendment made:

Page 49, line 13,-

for "(4) Any police officer not below the rank of sub-inspector."

substitute

"(4) Any police officer not below the rank of deputy superintendent of police or equivalent." (28)

(Shrimati Krishna Sahl)

MR. CHAIRMAN: The question is:

"That Clause 116, as amended, stand part of the Bill"

The motion was adopted.

Clause 116, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That Clauses 117 to 160 stand part of the Bill."

The motion was adopted.

Clauses 117 to 160 were added to the Bill

The Schedule

Amendment made:

Page 63, for "Trade Marks Act, 1993", wherever it occurs substitute "Trade Marks Act, 1995". (29)

(Shrimati Krishna Sahl)

MR. CHAIRMAN: The question is:

"That the Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Schedule, as amended, was added to the Bill

Clause 1—Short title, extent and Commencement

Amendment made:

"Page 1, line 5, for '1993' substitute "1995". (2)

(Shrimati Krishna Sahl)

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

The Enacting Formula

Amendment made:

"Page 1, line 1, for "Forty-fourth"

substitute "Forty-sixth" (1)

(Shrimati Krishna Sahl)

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

MR. CHAIRMAN: The question is:

"That the Long Title stand part of the Bill"

The motion was adopted.

The Long Title was added to the Bill.

MR. CHAIRMAN: The Minister may now move that the Bill, as amended, be passed.

SHRIMATI KRISHNA SAHI: Madam, I beg to move:

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

MR. CHAIRMAN: Motion moved:

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

[Translation]

SHRIGIRDHARI LAL BHARGAVA: Hon. Mr. Speaker, Sir, I would like to say... (Interruptions).

MR. CHAIRMAN: Not at the last stage.

SHRIGIRDHARI LAL BHARGAVA: Hon. Mr. Speaker, Sir, I shall take only one minute to say my point. The Hon. Minister has to-day made a record in bringing in amendments. Till to-day no such amendments would have been brought to a Bill. The Hon. Minister have moved amendments but she does not know fully what amendments have been moved. Therefore I would like to say that the Bill has been almost squeezed of life.

SHRI GIRDHARI LAL BHARGAVA: These amendments were not there previously. They have been brought in later on. That is why I am saying again, by doing so the Bill has been squeezed of life. You have set a record. This will be good if this Bill is accorded condolences and silence of two minutes is observed... (Interruptions)

16.36 hrs.

[English]

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) BILL, 1994

MR. CHAIRMAN: Now, we shall take item no. 12, Recovery of Debts due to Banks and Financial Institutions (Amendment) Bill. Time allotted for this Bill is one hour.

Shri M.V. Chandrashekhara Murthy.

THE MINISTER OF STATE IN THE MINISTRY OF
FINANCE (SHRI M.V. CHANDRASHEKHARA MURTHY):
Madam Chairman, I beg to move:

"That the Bill to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, be taken into consideration."

The Recovery of Debts due to Banks and Financial Institutions Act, 1993 came into effect from 27th August, 1993. The Act provides for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. To begin with, the Government have decided to set up 10 Tribunals in various

parts of the country so as to cover the whole of India except Jammu and Kashmir. It was also decided to set up an Appellate Tribunal at Bombay with jurisdiction on all the Tribunals.

The Government have so far been able to establish five Tribunals at Delhi, Calcutta, Jaipur, Bangalore and Ahmedabad and one Appellate Tribunal at Bombay.

A large number of court cases have been filed in various High Courts challenging the validity of the Act. The Delhi High Court, in a case filed by the Delhi High Court Bar Association of India *versus* U.O.I., delivered the judgment on 10.3.1995 holding the Recovery of Debts due to Banks and Financial Institutions Act, 1993 as unconstitutional and void. The U.O.I. filed a Special Leave Petition (SLP) in the Supreme Court of India and the Supreme Court, *vide* its Order dated 21.4.1995, granted the SLP and also stayed the judgment of Delhi High court in this case.

The Government have so far not been able to make the remaining Tribunals functional; the main reason being non-availability of the suitable officers within the prescribed age limit for manning the posts of Presiding Officer. With a view to attract competent persons for manning these posts, it has been proposed to raise the retirement age for the Presiding Officer of Debt Recovery Tribunal from sixty to sixty-two years and from sixty-two to sixty-five years for the Presiding Officer of the Appellate Tribunal.

I, therefore, move that the Bill which provides for amendment of Section 6 and Section 11 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 raising the age limit of Presiding Officer of Debts Recovery Tribunals and Debts Recovery Appellate Tribunals from 60 to 62 years and from 62 to 65 years respectively be taken into consideration.

MR. CHAIRMAN: Motion moved:

"That the Bill to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, be taken into consideration."

SHRI V. DHANANJAYA KUMAR (Mangalore):
Mr. Chairman, Sir, I rise to oppose this Bill for two reasons. Though this Bill contains very small amendments, the intention of the Government is questionable.

Sir, an Act, titled as 'The Recovery of Debts due to Banks and Financial Institutions' was passed in the year 1993. It was to set up various Tribunals in various parts of the country and also an Appellate Tribunal to enable the banks to speed up the recovery of the moneys due. On the one hand the Government has been repeatedly saying that thousands of crores of rupees are due to be recovered by the banks and various other financial institutions. But