

MR. DEPUTY-SPEAKER : He is assuring us. He is giving the assurance.

(Interruptions)

SHRI RAJESH PILOT: I assure you one thing that I will check up with the concerned Minister and also with the Parliamentary Affairs Minister. My colleague is here. But such issues must be replied back to the hon. Members so that he can go and tell his area people what steps have been taken.

[Translation]

PROF. RASA SINGH RAWAT : Mr. Deputy Speaker, we have not received replies to such matters during the last one year...*(Interruptions)*

ONE HON. MEMBER : Mr. Deputy Speaker, I have to make one request that a ruling should be given by the chair that we get replies to such matters from Government.

[English]

MR. DEPUTY-SPEAKER : Government itself has come forward to respect to your request. Therefore, there is no need of any direction from me?

SHRI RAM KAPSE : I really thank the Deputy-Speaker and the hon. Minister, Shri Rajesh Pilot. It is our fortune that even the Parliamentary Affairs Minister is present. So, we would like that this assurance is followed by all the Ministers and that will be very helpful to the people at large.

(viii) Need to Check rise in price of News-Print

SHRI NAWAL KISHORE RAI (Sitamarhi) Mr. Deputy Speaker, Sir, a grave crisis has overtaken the newspaper industry due to about 50% increase effected in the prices of news-print during the past six-seven months. Importance and role of newspapers has increased enormously in the changing political scenario than before. But due to abnormal increase in the prices of newsprint, starting of new newspapers is impossible, even the existing newspapers find it difficult to sustain and they are being closed gradually one by one. The newspapers of Indian languages are worst sufferers as a result thereof. It is most unfortunate for the democracy in the country. Not only news-print, prices of other kinds of paper are also increasing enormously as a result of which books, note books, exercise books etc. are also becoming costlier. Education is also getting costlier as a result thereof. The Government should pay adequate attention towards this problem and suitably rectify the situation.

I, therefore, urge upon the Central Government to put a ban on the rise in the prices of news-print.

14.56 hrs.

TRADE MARKS BILL

[English]

THE MINISTER OF STATE IN THE "MINISTRY OF INDUSTRY (DEPARTMENT OF INDUSTRIAL DEVELOPMENT AND DEPARTMENT OF HEAVY INDUSTRY) (SHRIMATI KRISHNA SAHI) : I beg to move:"

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

That the Trade Marks Bill, 1993 seeks to amend the Trade and Merchandise Marks Act, 1958. The need has arisen to amend the Trade and Merchandise Marks Act because of developments in trading and commercial practices in India and abroad. There is also a need to encourage investment source and transfer of technology apart from the need for simplification and harmonisation of trade marks management system and to give effect to important judicial decisions. The most significant amendments proposed in the Bill are provision for registration of trade mark for services, provision of collective marks and establishment of Appellate Boards for speedy disposal of appeals and ratification applications. The Bill which was introduced in the Lok Sabha in April, 1993 was referred to Department-related Parliamentary Standing Committee on Industry. The Committee presented its Report on the Bill making suggestions for amendments in certain sections. The Government have agreed with the suggestions of the Committee and had accepted the amendments. I will be moving the Motion for carrying out these amendments in the Bill.

Sir, with your permission, I now ask for leave of this august House to take the Bill into consideration.

MR. DEPUTY-SPEAKER : Motion moved:

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

MR. DEPUTY-SPEAKER : Now the time allotted to the subject is three hours and the time allotted to each political party is like this.

I request all hon Members to kindly note it so that we should not face the music which we had faced yesterday

Congress	- 1 hr 27 minutes
B.J.P	- 37 minutes

* Moved with the recommendation of the President

SHRI GIRDHARI LAL BHARGAVA (Jaipur) : Only 37 minutes.

MR. DEPUTY-SPEAKER : You can put that word 'only', of course.

15.00 hrs.

CPI (M) eleven minutes, Janata Dal seven minutes, CPI four minutes, Samata Party four minutes, AIADMK four minutes, Janata Dal (A) three minutes, Telugu Desam two minutes, JMM two minutes, all other parties put together six minutes. The initiation of the debate and the Minister's reply, all these things are included within these three hours. It cannot be bifurcated.

Hon. Members can send slips duly signed by the recognised Whips of the political parties. May I request Shri Bhagwan Shanker Rawat to initiate the debate?

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra) : Sir, the Trade Mark Bill was introduced in 1993 but it could come up for discussion in the Lok Sabha today only. There is vast difference between the trade situation and policy of the Government of India at that time and as prevalent today. I feel that despite being a good Bill it will not be able to meet all the requirements which Government has in mind. It is because of this, that the Government also does not want to update the whole matter. That is why, the hon. Minister moved a number of amendments to the Bill today, although these amendments could have come at the time of its introduction thereafter. These provisions could be made at the time of its consideration by the Standing Committee and Joint Parliamentary Committee. I adversely comment upon the policy of indifference of the Government on such an important issue and also express my dissatisfaction over it.

The Government, has accepted only one out of several recommendations of the Parliamentary Committee. Article 226 of the Constitution provides that every High Court has the power, throughout the territories in relation to which it exercises jurisdiction, to issue writs. The Government says that because of this provision, there is no need of any new provision.

But the Parliamentary Committee opined that it should not be made a lawyer's paradise and advised to have such a provision under which the legal proceedings will not be costly and time consuming. I congratulate the Government for realising its importance. There is a saying in Urdu that it is better late than never... (Interruptions) However, I have reservation over one point that Joint Parliamentary Committee, which consisted of Members of both the Houses and had proportional representation of parties, did a great exercise, conducted 18-19 meetings, visited Bombay and even recorded evidences of many people, but, unfortunately, the suggestions given by that

Parliamentary Committee have not been accepted by the Government.

I would like to draw attention to Section 19. It was proposed to amend this Section by inserting Section 19 (a) to provide protection to the interests of services, artisans, literateurs, professionals and artists etc. But these suggestions of the Parliamentary Committee have not been accepted. I feel, the Government should give due weightage to what the Joint Committee of Parliament recommends unanimously and seriously look into the recommendations with a view to accept them. My grouse is that whereas interests of big persons have been protected but the interests of artists, literateurs etc. have been overlooked and by not accepting the recommendations made by the Parliamentary Committee in regard thereto.

Administration of rights of owners by Copyrights Society has not been incorporated therein. 'Copy rights Society to file a statement of fees charged on royalties' and 'Payment of remuneration by copyrights society' have also not been included therein. Many recommendations of great significance like resale share right in original copies in Section of new section 53 (a) have also not been included. Therefore, I would like to say that it would have been better if the recommendations of the Joint Parliamentary Committee were examined seriously by the Government. The need of this Bill arose because the old Bill had become obsolete and that could not meet the present day requirements. Section 38A deals with intransferable rights. It should not be there, as has been continuing till today, that teachers, professors, intellectuals write the books and the publisher purchase all their rights by paying a small amount and enjoy the royalty therefrom throughout his life. That man who by using his intellectual excellence creates some literary work or conducts scientific research or makes some piece of art or composes some music or produces some other art creation, should not be allowed to suffer on account of his poverty. Under this Section, there is a need to provide them protection. But protection has not properly been provided in this Bill. Whereas, the Committee had recommended inclusion of such a provision. I know that the evidences of the intellectuals, including professors, advocates, Artisans, literary persons, film song composers or singers, dramatis or drama artists, music instrument players or any other type of artists or creators as well as writers and journalists were recorded. In the evidences recorded by us, it was emphatically told by the film world artists that they were lured by moneyed people for a very small amount due to their helplessness and now they were unable to make full use of their art.

Secondly, I would like to say that this provision is a must. But, there are two shortcomings therein one is about registration of those trade marks which are not registered so far. If a trade mark has been continuing for a long time, say 20 or 40 years and is known to all

that it belongs to such and such company, there is no provision in this Bill to restrict and prevent any other person to fraudulently get it registered in his name. In a poor country like India, which has majority of uneducated people, this problem is very common. There are a large number of Ayurvedic medicines including herbs and neem, which are not registered but medicines are prepared by using them. After medicines are produced, no trade mark is given to them. For those people who are engaged in traditional production, there is no provision in the Bill for protecting their interests. I would like to invite Government's attention to this problem. This issue has also been discussed in the Standing Committee meeting. Perhaps, it escaped the Government's attention. The people engaged in manufacture of traditional items should get protection.

The third point is globalisation. The aims and objectives of the Bill, as stated by the Hon. Minister, are very accurate. But, when we hear about globalisation of trade, we become nervous. I have got the figures to establish that these foreign companies would get the trade marks of their products as well as our products registered in their names and thus, would render us as foreigners in our own country. For example, one Ribok Company has entered into a collaboration with Phoenix Shoe Company. Now Phoenix has become extinct and Ribok is flourishing. Now Ribok shoes will be sold by that Indian company which was once the leading shoe company in India.

When, I was young, Bata Company was called the king of Indian industry. Then, Tata, Bata and Birla were three top capitalists here. Now Bata has also entered into a pact, under globalisation of trade, with ADIDAS. As a result thereof, Bata has also been reduced to a seller of their shoes. I, therefore, strongly urge upon the Government to provide protection to indigenous companies and industries in the matter of registration of brand names. It has also been recommended by both the Committees of Parliament in their reports but the Government has failed to appreciate the necessity for making such a provision.

I have got the information that Suzuki Company of Japan, which has collaboration with Maruti Ltd, will launch its new product to be manufactured in India in the brand name of Suzuki and Maruti's name will be deleted therefrom. What will be our position then? We shall be compelled to provide them cheap labour only, which is nothing more than the job of a sub-contractor. But we will not be able to become their partners. The partnership will be there till Maruti's name is clubbed with Suzuki. When a car of Suzuki manufactured in collaboration with Indian Company will be exported, it will carry the name of that Indian Company. Then we can have a feeling of satisfaction that we are partners. In the Trade Marks Acts, there is a provision that foreign companies can get their names registered here. There is no provision to provide protection to Indian

Companies. In this way, these companies will be left with the job of providing labourers to foreign companies.

In Section 33, it is provided that even if an objection is not filed within five years period by the person earlier registered, against a trade mark registered later on the restriction will continue. I would like to say that if due to ignorance of the earlier registered person, the theft of trade mark is detected after five years, then in such a case there should not be any time bar or limitation.

The Government should make a strict provisions to provide protection in regard to transferable rights in the interest of artists, literary persons, intellectuals, services, artisans etc. as has been recommended by the committee. It would be better if two recommendations of the Standing Committee are included by the hon. Minister.

The Committee in its Eighth report has stated that in the trade mark Bill, there should not be any derogatory and obscene material. However, no such provision has been made in the Bill. No such thing should be there which may hurt the religious feelings of a community or a class of people. Had these recommendations of the Standing Committee been accepted by the Government, it would have been better.

The recommendations of the committee, inter-alia, stated:

"Some members of the committee have expressed the desire that limitation must be imposed in regard to assignment and unregistered trade marks should not be allowed for assignment. Members also opined that assignment certificate should be issued for the validity period of the assignment instead of Registrar's approval".

But this provision has not been made. Strict provisions will have to be made to encourage investment flow and transfer of technology without destroying India's talent. A large number of people in India are educated unemployed. Those unemployed persons should get employment. Further, their talent should not go waste, there should be no brain drain and foreign companies should not dominate here. It is, therefore, necessary that we should pay proper attention towards it.

Global trade is also being talked about nowadays. India's industrial activities and trade should not get crushed on account of the dominance of multi-national companies. It is essential to pay proper attention to it. Concern and anguish has been expressed all around in this regard.

When the Bill was before the committee, GATT was not signed. Had GATT been signed before the Bill came up for consideration of the committee, it was possible that more suggestions and amendments to the Bill would have been made by the Committee. I, therefore, invite your attention to the situations which arose thereafter.

and caution that if such a provision is not made a great harm will be caused to our country.

With these words, I finish my speech. While supporting this Bill, I would once again invite attention to the points raised by me. I hope the hon. Minister will keep these points in mind while replying to the debate and ensure that interests of our country and people are safeguarded and trade and industry in the country flourish.

[English]

PROF SAVITHRI LAKSHMANAN (Mukundapuram): Sir, I rise to support the Trade Marks Bill because it is to amend and consolidate the law relating to trade marks, to provide for registration, better protection of trade marks for goods and services and for the prevention of the rise of fraudulent marks, as stated by the hon. Minister on the floor of the House.

Even Though '13' is not considered as a lucky number, the 13 chapters of this Trade Marks Bill are dealing with all the possible matters concerned with this particular Bill. All the amendments are for the well being of our nation. Take for example, the amendment for sub-section (2) in section 20 (1) of the Companies Act, 1956. The said sub-section says

"without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1)"

And the amendment to that sub-section says

"without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles, - (i) the name by which a company in existence has been previously registered, or (ii) a registered trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1993, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1)."

That means, "a registered trade mark which is subject of an application for registration of any other person under the Trade Marks Act, 1993" is added to sub-section (2) in Section 20 (1) of the Companies Act, 1956.

Take the second amendment for sub-section (1) in Section 22, which says

"If through inadvertence or otherwise, a company on its first registration or on its registration registration by a new name, is registered by a name which, in the opinion

of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous Companies Law, the first-mentioned company -"

Sir, this point is being amended as:

"If Through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name which, - (1) in the opinion of the Central Government is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous Companies Law, the first mentioned company, or (ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1993, such company" Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government

That means in this amendment too, only a portion is actually added which clarifies that:

"on a application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1993, such company - Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to the notice of the registration of the company shall be considered by the Government."

Sir, in my opinion, these two amendments - I had taken them as examples - are directly helping the young aspirants of our company and paving the way to achieve their goals.

So, let me congratulate the Ministry for introducing a new Bill with these amendments to the old Act.

Since per annum, an additional 10,000 applications are expected, it is a must that to facilitate the applicants in a proper way, Trade Marks Registry should be strengthened. An additional Rs. 12.3 lakh for recurring expenditure and Rs. 2 lakh for non-recurring expenditure is nothing when one considers the long pending queue of the new applicants and the volume of workload borne by the existing Department. Also, Rs. 15.5 lakhs and Rs. 4 lakh as recurring and non-

recurring expenditures respectively for the composition of the Appellate Board should be taken into consideration, considering the fact that the Trade Marks Appellate Board could effectively handle the problems of appeals made by the desperate applicants who feel that their genuine request in somehow or the other denied by the registrar.

So, my conclusion is that the financial memorandum accompanying this Bill is also justifiable, taking into account the benefits that the Indian citizens are getting by a meagre amount spent by the Government of India.

Sir, I had gone through clauses 1-160 of the Trade Marks Bill. Relevant changes are made throughout, only for the betterment of those who seek new trade marks. It should be noted that a trade mark reflects reputation of a particular product. So, in order to satisfy the expectation of a producer, it is better to have a new Bill instead of making a number of modifications and amendments to the existing Act which is followed for more than 30 years so far. We have consider the increasing globalisation of trade also. As far as I could understand the new Bill, when it covers the clauses for registration of any mark as a trade mark, is very distinctive in no way does it create any confusion. Moreover, it does not hurt the religious susceptibilities of any class or section of our people.

The area 'Services' which was not covered so far in the existing legislations, is now incorporated in this Bill. When we introduce 'Services', it means services related to so many fields such as advertising and business, insurance and finance, construction and repair, transport and storage, material treatment, boarding and lodging, education and entertainment and so on. It is my humble opinion that any one with some common senses will appreciate these changes.

There are many effective provisions in this Bill. Imitations of well-known trade marks are absolutely prevented. The two-tier system of maintaining registers of trade marks in Part A and Part B is totally taken away. This, I think, helps a lot in distinguishing a trade mark which is distinctive in the marketplace as well as in the eyes of the law.

The Appellate Board for speedy disposal of appeals and the Registrar who is holding the final authority of registration in place of the Central Government will make the procedure relating to registration of trade marks much easier. Moreover, as in the case of the Copy Right Act, there is a provision for minimum punishment of three years for offences relating to trade marks also.

The provision for the publication of a alphabetical index of classification of goods and services which is a new one, surprised me a lot. I wonder that so far there was no such provision, even though it is absolutely necessary for easy handling of registration.

The clauses which deals with the use of names and representations of living person or persons recently died, or which provides for an application either after acceptance or before acceptance so as to afford the public an opportunity to oppose a registration of the mark, or which provides for correction of any error in, or in connection with the application either before or after acceptance etc. are either identical or almost correspond to the existing Act. There is no provision for opposing all those things, instead we have to appreciate them.

The proposal to increase the duration of registration from 7 to 10 years is to be considered in the light of international practices also. I am not elaborating such proposals. In short, I am happy to observe that most of the clauses are identical or corresponding to the existing Act with sufficient modifications. So, I fully support the Trade Marks Bill, 1993 and hope that it would be unanimously passed by this august House.

DR. SUDHIR RAY (Burdwan) Mr Deputy-Speaker, Sir, the Bill was first introduced in Parliament in 1993. Later on, this Bill was referred to a Standing Committee of Parliament. The Committee made an in-depth study and listened to the arguments put forward by different organisations and subsequently made unanimous recommendations. I would, therefore request the Minister concerned to accept all the recommendations of the Standing Committee and make the proposed bill more leak-proof.

Sir, a trade mark is generally a visually perceptible sign used in relation to goods and services. The primary purpose of a trade mark is to identify the commercial or trade origin of the goods or services. As such a trade mark distinguishes a particular product from another product. It offers an assurance to the consumer that when he is buying a particular brand, he is assured of its quality. So, a trade mark reflects the goodwill and reputation of a particular product. It is statutory, not compulsory, for somebody to register a trade mark. If a trade mark is registered by someone, in that case, he has an in-built right to the safety of the particular product.

Now, to qualify for registration as a trade mark any mark must fulfil the following criteria

(a) it should be distinctive, that is, it should be something which could be separated from other marks; (b) it must not call for any confusion or deception, (c) it must not contain any scandalous or obscene reference and; (d) a trade mark must not hurt the feelings or sentiments of any religious community living in India.

The registration of trade mark does not confer any new right on the holder of a trade mark. Now, the proposed Bill seeks to replace the Trade and Merchandise Marks Act of 1958. It is for 37 years that this Act is in existence and in the meanwhile, the country

has signed the GATT agreement and there has been a sea-change in the world of trade and commerce. There have also been many judicial pronouncements and verdicts. Therefore, to make it up-to-date, the new Bill has been proposed. In some cases, as a result of increasing globalisation of trade, some lacunae has also been found in the existing Act, as in the case of non-tariff barriers. Hence the Government felt it necessary to bring in this Bill.

Now, the present Bill is more comprehensive and more transparent as it includes not only goods but also services, and registration of trade marks which are imitations of old and well-known trade marks is not to be permitted. The grounds for refusal of registration have been enlarged. The system of maintaining two kinds of registers of trade marks is to be given up. So long two registers were maintained but the Bill proposes to maintain only one register. The Bill also proposes to simplify the procedure of registration of the registered owner. The Bill proposes to establish an appellate board for speedy disposal of appeals which presently go before the courts. Due to heavy pressure of work speedy redressal is not forthcoming and, therefore, this provision of an appellate board is welcome.

The final authority relating to registration or certification of trade marks would be left to the Registrar instead of the Central Government. The Bill proposes enhanced punishment for offences relating to trade marks at par with Copy Right Act to prevent sale of spurious goods. The punishment for misusing a trade mark would be three years while it has been only two years so far. It would be a cognizable offence. The Bill proposes to prohibit use of someone else's trade mark like the name of corporate company or a business concern.

True, there are some who criticise this Bill, Sir, as we have signed the GATT, there are apprehensions that taking advantage of this proposed Bill the multinationals will make a happy hunting-ground of the Indian market and our indigenous companies would suffer. Therefore, it has been argued even at the Committee stage that trade marks should not be given to foreign companies at present and that there should be more discussion and it should be further delayed. There were arguments that after the signing of the GATT treaty, we should have waited for some time as Indian Patents Act, 1970 is soon to be reviewed.

Sir, my humble submission is that the Bill contains many gaps which may lead to unfair trade practices. It may give some players a monopoly position. It will be against the interests of the general public. These gaps should be filled with suitable clauses so that unfair trade practices are stopped.

The definition of a mark as given in the Bill includes a device, the shape of goods and also the packaging which unlike other items possess functional values. If

exclusive right of use is given to any such functional items, it may lead to restrictive trade practice. In that case other would be denied to enjoy that functional advantage. Hence, no such item having functional use should be registered as a trade mark. Rather they can be separately dealt with by patent law. Otherwise, the use of these functional items should be properly defined or conditioned or qualified in such a manner as to provide an in-built mechanism.

The Bill should have provided adequate safeguards regarding right to use for those who are independently using or preparing to use the same type of device, or shape which has been registered as trade mark by someone else.

The Bill should not lead to such a situation as to confer exclusive monopoly right on the functional use of a particular device, shape or packaging to someone who has, incidentally, managed to win the race to register a particular device, shape or packaging since trade mark is not intended for functional use. The Bill must provide for suitable amendments to prevent such things.

The Bill provides for a series registration and also for cancellation of registration for non-use in two different clauses. But the Bill does not clearly stipulates as to what be the fate of the registration in series, if a part of the said series is subjected to non-use. There is no provision for partial cancellation. If, in spite of long non-use of some of the names in a registered series, registration is allowed to continue, it may give rise to dubious practice of getting registration in series of a wider range. The purpose would be to block the entry of new competitors. The long non-use of certain trade mark in a series would also ill-affect the consumers.

So far as the Associated Trade Mark is concerned, it also smacks of a possibility of monopolising a particular line of products, possibility of some organised establishments dealing in certain type of goods and services and forming an association, and preventing entry of others cannot be entirely ruled out. Hence there should be a clear provision that association of person dealing in the same or identical goods and services would not be permitted to use collective trade mark, unless it has open membership. In other words, there should be no restriction in respect of membership of the Association, once the basic criteria are fulfilled by the intending entrants. In other words, caution should be exercised in giving collective trade marks.

With these few words, I conclude

DR. MUMTAZ ANSARI (Kodarma): Mr. Deputy-Speaker, Sir, these days a large number of goods and services are being produced all over the world. Previously also, this trade mark was assuming such more importance. Nowadays, we have a complex production process. Different types of articles of

consumption are being produced all over the world. Identical things are being produced. Identical goods and services are being produced. A large number of identical commodities are being produced. Commodities of identical character; commodities of identical colour; and commodities of identical shape; are being produced. That is why in the set of circumstances, in these prevailing conditions, this Trade Mark Bill assumes much more importance. It was pending since 1993 and now it has been put forward before the House. So, I welcome such a Bill.

But, there are a number of anomalies also so far as registration of trade mark is concerned. A long procedure has been adopted or has been formulated by the hon. Minister for the purpose of registration. This is also a long and tedious process. Moreover whatever fees have been earmarked, they are also exorbitant.

Similarly, the periodicity ranging between seven and ten years which has been given here is also very long. It is because we see that a large number of producing units which are in existence today, after the expiry of five or six years or whatever may be that period, a large number of units will be closed down. That is why, if all these units are closed down and you just give a registration of trade mark for a longer period of time in that case it is not justified to keep the trade mark pending for such a long period of time.

Similarly, there must be some sort of a procedure for de-registration of trade mark also. This is an age competition. In the age of competition, we find that a large number of goods produced by one producer are also being produced by other producers and some time identical type of trade mark is being issued. So, there must be some sort of procedure and in the light of these provisions, there must be some sort of a short cut also. There must be a Tribunal, there must be an authority also before which representations can be made, before which appeals can be made.

That authority should decide which producer or the producing unit should use a particular trade mark. This should be decided by the authority. There is a proposal for establishment of the Tribunal Board. All such cases would be referred to the Tribunal Board or Appellate Board, whatever the name might have been assigned to it. So, this is my appeal, Sir, that in every State there must be some sort of such Appellate Boards because if it is centrally-controlled, centrally-sponsored and centrally-regulated authority, then it will not be possible for the smaller producers, owners of producing units to approach such types of Appellate Boards. That is why, the production may be made in any remote part of the country, the production may be made bearing a trade mark, maybe in the remotest corner of the country, maybe production made by certain poor class of persons, poor categories of persons. That is why, in order to provide

more facilities, this is one of my important suggestions, Sir, that whatever proposal for the establishment of an Appellate Board is there, if it is centrally located at some metropolitan place like Delhi, this will not be possible for the smaller units or those smaller and poor persons who are producing such types of units so that they can represent before the Appellate Board. That is why, this is my suggestion that if it is possible, such types of branches of Appellate Boards must be established in different States or if it is not possible, then on region-wise basis also, Sir, the whole country may be divided into certain regions and region-wise this type of Appellate Boards should be established.

The other point that I want to make is that many commodities and articles are imported from foreign countries also. If these products also bear the identical trade marks, in that case it will also create a lot of confusion in the minds of the people here in our country. So, if identical trade mark bearing products are being imported by our own countrymen, in that case there must be some sort of a clear-cut division between them and if such type of identical trade mark bearing products are being imported into our country, in that case there must be some sort of a provision for inflicting some sort of a punishment on them and if it is possible, in that case type of identical trade mark bearing products should not be allowed to be imported by our countrymen here and there must be some sort of restriction over there.

Similarly, about the company's name, according to the provisions of the Indian Companies Act 1956, it has been laid down that once a company is registered under a particular name, the same name should not be assigned to any other company. If such a type of anomaly is there, in that case, according to the provisions of the Indian Companies Act, 1956, there must be a provision for rectification also and this rectification process must be very much simple, simple in the sense that a simple resolution or an ordinary resolution can be taken to that effect or a copy of that simple resolution or an ordinary resolution can be sent to the Office of the Registrar of the Trade Mark. In that case, that can be just rectified because the companies, which are in existence, are having a reputed name and this becomes a goodwill. Once a company has been registered under a name and a company which has been working for the last many years and this has gathered reputation and goodwill over the past many years, in that case if that name will be just borrowed by any other company, it will create confusion and it will erode that goodwill of that reputed company also. So, in this case also, there must be some sort of a provision which lays down that if such a type of name has been assigned or just given to any other company and if there are some sort of conflicting claims between two or more companies, in that case there must be a clear-cut decision in this regard and it can be decided by a simple resolution, by an ordinary resolution, there should not be any need of

a special resolution and once an ordinary resolution is passed to that effect and if it is forwarded to the Registrar of that company, according to the provisions of the Indian Companies Act, 1956, accordingly that must be rectified. There should not be any need for a special resolution.

Similarly, Sir, the Object Clause of the company is very important. Now-a-days what is happening? The Object Clause is a different one.

The persons who are collecting money from different nook and corner of the country and from different categories of persons, are diverting those funds to different other channels of investment for their own ulterior purposes. That is why, once the Memorandum of Association is being drawn up by the company and once the object clause has been fixed up, according to that objects clause the transaction must be carried on, the business must be carried on and the trade must be carried on. If there is some sort of deviation from the given path and according to that objects clause, it should not be allowed because this is creating a lot of speculation in the country. This speculation is going on and so many scandals have also taken place. So many Directors and Managing Directors of a Shoe Company, this company and that company, I do not want to name all them, have been arrested and put behind the bars because they were deviating from the object clause. For whatever object the company was established, they were not trying to achieve those aims and objects, rather they were deviating and diverting the funds. So all these things should be provided for.

Similarly, there must be a provision for certain punishment. If any trade unit is just trying to adopt the same name or an identical name which has been assigned under the Trade Mark Act to any other company or if any forged company or fake company is trying to adopt that name and if it is trying to just have that reputation and in that case if they are just making infringement of all these trade marks, in that case there must be some sort of provision of severe punishment. If it is possible, the highest amount of fine should also be imposed upon them so that there should not be any sort of misuse of trade name or trade mark or whatever name has been assigned to them because this is a matter concerned with reputation and goodwill of that producing unit.

With these words I close my speech, thank you, Sir

[Translation]

PROF. RASA SINGH RAWAT (Ajmer): Mr. Deputy Speaker, Sir, I rise to welcome the Trade Marks Bill, 1993, being presented by the Government in 1995 because the Government intends to improve and regularise the expanding trade and industry in the country by rationalising trade marks. I, therefore, support the Bill.

Sir, I would like to know from the hon. Minister whether the problems, complexities and anomalies experienced in the working of the Trade Marks Act, 1958 during the last amendments in the new Bill because frequent amendments may cause difficulty for us in future. World has become a family today and no country can remain unaffected by the other countries in the field of industry and trade. It has been stated that after liberalisation of economic policy of India, signing of several trade agreements with foreign countries and signing of GATT, the doors of India have been opened for multi-national companies. We are liberally inviting inflation. I want to ask whether India's trade will increase in the competition with those foreign companies? Will it be able to maintain its credibility, progress and quality in India and world market? We should devote full attention to this aspect, lest our market will be flooded with the products of MNCs and the goods of our trade marks will be gradually reduced to subordinate position or secondary status. In this way foreign trade mark goods would obtain priority position.

Generally we have such mental desposition that when we purchase something from market, we look for the products made in Japan, America, Germany, England etc. In case Indian product is found better than the foreign product, we do not purchase Indian product. We are not able to understand this change in our mentality. Perhaps, we feel proud to purchase a product with foreign trade mark. The main reason behind this is that feeling of pride in indigenous goods in losing ground gradually. While supporting the Bill, I caution the Government, through you, not to surrender before MNCs and not to allow our industry and trade suffer. It should not happen that our companies of repute invite MNCs by entering into collaboration with them and set up joint ventures and gradually lose their names. I give an example of 'PEPSI', which came in India and launched its cola under 'Lehar PEPSI'. It is not thinking of removing 'Lehar' from its name to retain 'PEPSI' or some other foreign name.

Sir, my friend has just related the story of 'Meruti' which was earlier a Government Undertaking and later on, transferred to Private Sector. It entered into an agreement with 'Suzuki' of Japan for manufacturing cars. Now it is talking of removing 'Meruti's name and retaining only 'Suzuki'. I caution the Government not to allow such things to happen. Similarly, 'Procter And Gamble' is entering in the field of consumer goods and it is establishing its dominance gradually, thereby throwing goods of Indian trade mark into disuse. Therefore, it is the joint responsibility and duty of Indian Government and Chamber of Commerce and Industry to promote Indian Companies and Trade Marks to enable them to face competition with MNCs in an effective manner.

It has been stated that the Bill intends to provide adequate and proper protection to various services,

trade goods and to get their trade marks registered. It is a good sign that the procedure of registration has been simplified and permission has been given for enlarging the use of trade mark. Trade marks to collective marks issued by Associations, Establishments and Appellate Board is the main feature of this Bill. Till now, such a provision was very complicated. Provision for Appellate Board for speedy disposal of disputes has been made in this Bill. Instead of High Court, now the Appellate Board will dispose of appeals, applications and rectifications

16.00 hrs.

We welcome these provisions. But, I want to know whether after signing GATT, any pressure from foreign multi-nationals or I.M.F. or World Bank was there which compelled us to make all these changes or are we bringing these changes with a view to establish prestige of India's trade, extend the standards of Indian trade marks publicise Indian trade marks and to make available foreign markets to Indian goods? If that is not the intention of the Government being bringing all these desired changes. Then what made the Government to sleep over the Bill for 2 years? What are the recommendations of the Standing Committee or Joint Parliamentary Committee to which the Bill was referred to for consideration? Whether these recommendations have been incorporated in the Bill?

Everybody knows about the popularity of Dhaka's muslin. When East India Company came here, they saw our artisans who could pass a full length standard size muslin cloth through a finger ring. Such a good quality cloth used to be manufactured in our country in those days but the East India Company destroyed our artisans' traditional vocation of world fame with a view to open Indian markets for the goods made in Britain. Later on, I want to say that as there are provisions for the protections of copyright literators, artists alongwith their works, creations, activities etc as well as of various schools of arts like Kangra, Himachal, Devgarh, Nathdwara etc., we should also make suitable provisions in the relevant Bill/Act, to ensure their credibility and protection of trade mark.

We are today living in the world of competition. Hence, there is an urgent need to promote the feeling of - Be Indian, Buy Indian i.e.-Swadeshi. If this feeling develops in our mind that first of all, we are Indians and we should use Indian goods on priority basis, it would augur well for the nation. I am afraid that despite some good provisions made in the Bill, I foresee such a situation in which a burnt child dreads fire. For example the countries like Singapore, Japan and South Korea have their models in trade marks field. They have made these models popular worldwide so as that their trade could reach a great height. Those countries are now advancing towards self-reliance. We should also follow them. Foreign multi-nationals are entering into

our country openly. We should restrict their entry and allow them only in those areas in which we need upgradation of technology. In the remaining areas goods of Indian Trade Marks should be promoted so as to inculcate the feeling of Swadeshi and give boost to Indian industries. Foreign Companies should also be asked to float their names in Indian languages. We, should exercise control in the matter of name so that our trade is not put to harm at all. In our country, only goods of Indian trade marks or brand be allowed to sell. Foreign goods should not be given any protection or encouragement. We shall have to pay special attention to this important aspect.

Sir, sometimes fake brands also gain currency. A person gets a trade mark registered but some other person fraudulently sells fake goods with that name. For example, real 'Seven O' Clock' shaving blade is not available but fake one is available in plenty in the market. As a result, consumers have to suffer a lot. There should be stringent provisions for action against misuse of trade marks. We have examples of Prem Chand, Nirala and Prasad before us.

[English]

MR. DEPUTY-SPEAKER : Prof. Rasa Singh Rawat, there is a small request. You know the Chair was very liberal yesterday and there were bitter comments. Therefore, it is better that all the hon. Members stick to the time. No injustice should be caused to any other hon. Member. It is your responsibility.

PROF. RASA SINGH RAWAT : I will take only one minute more.

[Translation]

Now, the Registrar has been given all power which have been conferred or given to Registrar as were earlier vested with the Central Government. He has been made the Registrar of Certification also. The Time limit for renewal of registration has been enhanced from 7 years to 10 years. These are good provisions, but if a person by mistake does not get the registration done, we should adopt the policy of "To err is human to forgive is divine". Many people in the country are ignorant of law. If they do not get the registration done in the absence of any knowledge of the law they should be provided protection from any action, transfer of his registration to any other persons or its misuse. All efforts should be made to provide Government protections to Indian Small Industries, commercial goods produced in the cooperative sector as well as services made available by them. The foremost thing is to retain Indianism, reliability, originality of Indian goods.

Sir, our labour is undoubtedly cheap and all sorts of resources are available here. Therefore, the multi-nationals should not be allowed to exploit or misuse that cheap labour and resources in the name of making

money and converting our country into a market of consumerism. Care shall have to be taken to provide safeguards against such exploitation.

With these words, I support the Trade Marks Bill brought forward by the Government and thank you for giving me time to speak on this Bill.

MR DEPUTY SPEAKER I am thankful to you for finishing your speech.

SHRI RAMASHRAY PRASAD SINGH (Jahanabad) Mr Deputy Speaker, Sir, I support the Trade Mark Bill, 1993 because it intends to put a check on the wrong practice of fraudulently misusing trade marks or brands or goods manufactured and sold thereunder. It also provides for honouring artistic and literary creations and services.

Sir, firstly, it will further strengthen the Trade Marks Act. It was discussed in the Standing Committee meeting as well as Joint Committee of Parliament. The report of these Committees have already been submitted to the Government. But the recommendations made in those reports of Parliamentary Committees have not been fully accepted by the Government. The Government has not acted well by not accepting the recommendations of Parliamentary Committees.

16.10 hrs.

[Shrimati Santosh Chowdhary *in the Chair*]

Secondly, this Bill introduced in 1993 was delayed till now i.e. mid-1995. Everybody knows that many fake goods are being sold in the market. When a mark was issued to a particular person after registration how did another person bring a fake article under the same trade/brand? The result is that consumers are at a great loss because they get fake goods by paying price of a genuine article. The people in Jahanabad and other places in the country have suffered thereby.

Madam Chairman, the important point is that how will the Government implement the provisions of the Bill brought forward here? It cannot implement the Bill properly due to prevailing corruption and several shortcomings in it. Honesty is the necessity for implementing anything properly. This Bill cannot be implemented without honesty. In spite of its passage here by voice vote it is a good piece of legislation. It will be so only when implemented honestly and properly. We observe that a person gets his article registered, but some other person fraudulently sells its fake brand. In the existing Act, it is treated as genuine one. In such cases, money matters and with strength of money a fake thing is turned into a genuine one. How will it be checked? The provision of stringent punishment has been made but nothing concrete has happened so far.

The first and foremost requirement for proper implementation of the Bill is to stop fake goods to enter

the market. Fake Sunlight soap is being sold in plenty in our markets. Why the officers responsible are keeping mum? They will have to find out its reason. Secondly, a number of good quality articles are there without any trade mark. For example, statues of Mahatma Budha are made in a village under my constituency. These are sold in Japan for eight to fifteen lakhs of rupees. But the Government has no information about that. Efforts should be made to identify such areas and develop them. Similarly, our artists, writers, iterators, painters and other schools of arts are not provided any protection or encouragement. The people in villages generally do such works. The Government should make the people know about these provisions to enable them get the registration done for issuing trade mark and avoid exploitation by others.

It is good that some amendments are proposed to be made in the existing Act to plug these loopholes. In Section 158 of the proposed Bill, a provision is being made to empower to Central Government. In the Trade Marks Act, the process is too complicated for getting registration. Now some improvement has been proposed to be brought. The provision of 10 years is a good step.

In trade, multi-national companies are being invited. We will have to see whether our small traders who are given registration by the Government, will be able to stand before them or not. Foreign companies should not be allowed to bring such goods in our markets which are already being produced and sold by our companies. We have also observed that a company which gets registration but later crashed down and its trade mark was used by another person. We should find out the reasons behind it. It may be that the fake company started producing goods bearing the trade mark of genuine company and it resulted in its downfall. With these words, I conclude.

[English]

SHRI SYED SHAHABUDDIN (Kishanganj) Madam Chairperson, we had a Trademark and Merchandise Act in operation since 1958. It is obvious that over a period of time we found certain flaws, certain lacunae in it. And generally speaking, it is good to review a law in the light of the experience. But I have a suspicion in my mind, which I wish to share with you - the timing of this new Bill when it was drafted.

And now that it is being brought forward after a lapse of two years or two-and-a-half years it gives rise to a feeling that, it was drafted and being discussed under a certain amount of foreign pressure. Now the Bill has many welcome features. It simplifies the procedure. It increases the period for the protection of the trade mark and brand name. Had it applied only to Indian trade and services Indian trade marks for goods and services produced in India, one would have happily

and willingly welcomed it. The fact is that in the Statement of Objects and Reasons itself the *raison d'être* of this Bill has been related to the globalisation of the world economy, globalisation of trade and industry, the need to encourage investment flows and the need for simplification and harmonisation of the trade mark management systems which of course is welcome

But today after the World Trade Organisation has come into existence we are, perhaps, being pressed to legislate on the subject. Now, the element that I have in my mind is the principle of reciprocity. Are we giving these concessions unilaterally to one side to one way flow of goods and services or are we going to reap reciprocal benefits with the countries which are going to supply these goods and services whether they will also give reciprocal protection to our goods and services in equal measure? But it is a different matter altogether that we may not be able to take advantage of it fully. Obviously that will depend upon whether we have goods to sell and services to offer.

SHRI RAM KAPSE (Thane) We have

SHRI SYED SHAHABUDDIN In some cases we may have, in some cases we may not have. But at least, in principal, the door should be opened. Therefore, any extension of the facility under this Act to any goods or services of foreign origin must be subjected to the condition of reciprocity, that is, in principal that country must also, by an equal legislative measure, offer equal protection and reciprocal protection to our goods and services of a similar nature, if and when we are in a position to offer them. I see no such indication in this Bill and that is where I really feel a bit unhappy. Otherwise, the Bill has many excellent features and, as I said, I welcome them.

Having made this basic point, Madam, I would like to make one or two other small suggestions. For example, there is the membership of the Appellate Board. It says either a person "is or has been". I would think that the Government should have a wider field of choice, not only that a person "is or has been" at a certain position, but that he is eligible to be so appointed. That will give the Government a wider choice when it comes to appointing the Members of this Appellate Board. I think that should be welcomed, because many people who are not actually serving within the Government or have not actually served within the Government, but possess the necessary qualifications and experiences may be considered for these posts. Therefore, wherever the phrase "is or has been" has been used, it should be added or eligible to be so appointed. That should be added.

Secondly, why should the technical membership be limited only to a member of the Indian Legal Service and why not extended to other fields? There are people in the administrative services, there are people in the

judicial services who have got, because of their posting and because of their particular job that they have help, the necessary expertise. I would rather think that, perhaps, if the idea is to bring in people who belong to the bureaucracy, the field should, again, be wider and members of other services should also be permitted to come in.

The third point that I would like the hon. Minister to consider is Clause 14, which is about use of names and representations of living persons or persons recently dead. This is a very welcome provision. But here again, there is a lacuna which again puts a limit. It says:

"... any living person or a person whose death took place within twenty years prior to the date of application for registration of the trade mark..."

Trade mark here applies to the services. Supposing I were to open a hair cutting saloon and I call it 'Mahatma Gandhi Hair Cutting Saloon' or a particular style of hair dressing, what would happen? Of course, Mahatma Gandhi had a particular style of hair dressing. But to relate it to Mahatma Gandhi and say 'Mahatma Gandhi Hair Dressing Saloon' and I want to have it registered then in that case, this 20 years limit does not make sense to me. It should be an unlimited period so that you cannot, really, relate a brand name to the name of an eminent person whose name is saleable or marketable. The name of dignities and important persons should not become a marketable commodity and that is where my hackles rise at the particular provision given here.

Madam, I know that the hon. Minister has accepted some suggestions made by the Joint Parliamentary Committee as well as by the Standing Committee, but not all. I would like the hon. Minister, in deference to the House and in deference to these bodies that were created by the Parliament, to explain or at least to give a rationale as to why some of these suggestions and recommendations have not been found acceptable.

You are the master. You can do what you like. But at least you owe it to the House to stand up and say, 'We have accepted certain recommendations but we are not able to accept all the recommendations, for certain reasons'. I think, we should establish such a convention in this Parliament that the recommendations and suggestions made by Parliamentary bodies should not be taken lightly or brushed aside easily. I am granting, I am conceding your right to accept some of them and to reject some of them. But at least please inform the House as to why you reject some of them and you may have very good reasons for that; and you may be able to carry the House with you. The House will consider that you are not doing anything in an arbitrary manner; that whatever you are doing - either accepting or rejecting - you are doing it after due thought and

consideration and after showing due deference to the standing of these Parliamentary bodies.

Now, having made the point, I am happy that some of the recommendations were accepted. But still I personally do not feel very happy with the definition of the word "service". It appears to me to be very wide. This is just a feeling that I want it is easy to define 'goods' but it is rather difficult to define a 'service'. I know it is easy to define 'goods' but is rather difficult to define a 'service'. But the definition here is so broad that almost anything could be brought in anything related here is so broad that almost anything could be brought in anything related to its trade, to all its paraphernalia, to its financing aspect, to its public relation aspect, to its promotional aspect—almost anything could be brought in under the term "service".

What I am afraid of is that through these means we are opening the doors to services of foreign origin. Above all, our economy must resist the entry of foreign services because it is here that we are likely to be totally subdued and totally over taken. There are many goods which compete with the foreign goods and therefore even when you open the door, they could stand on their own and defend their standing in the field. But when you open the door to 'services'—particularly because we are so foreign conscious—in that case what will happen is, the nascent service within the country - whether they are in the field of public relations or whether they are in the field of advertising or whether they are in the field of promotion or in the financial or insurance sector— are likely to be overwhelmed. Therefore, I would rather say that you do not extend indiscriminate protection to services of foreign origin. That is what I would like to plead with you to kindly consider in the light of the Indian psychology. The Indian ethos today is very much— shall we say burdened with the foreign consciousness? Even a shirt bearing a brand mark of foreign origin is considered to be a matter of prestige. Although we might be able to produce equally good shirts of equally good textile within our country, yet if it carries the foreign brand name, it has a certain prestige value. This is because, globalisation is introducing into our country certain elements of consumer society, certain cultural certain elements of consumer society, certain cultural patterns, which I feel, in the long run, would be deleterious to the interest of the country. Therefore, under the guise or under the cloak or under the make of a purely technical law relating to trade marks or labels, we should not really— shall we say - encourage accelerate this process. I know we have opened the doors. But we should take protective measures; and we should try to change the psychology. I do not know whether we can change the psychology of the people or at least of psychology of the elite who are consumer, who are the basic customers of this foreign culture and this foreign goods and foreign brand names. Whether we can eliminated this brand

consciousness from the minds of the people. I do not know. Whether any Government can do it, I do not know. But at least I would request you not to aid this process; not to encourage this process. On the other hand, as one friend said here on the floor of the House, 'Be Indian, Buy Indian', should be promoted deliberately as a matter of policy by the Government.

On the one hand, as I have said, let the foreign goods and services enter India but only on the condition that reciprocal and equal measures of protection are available to our goods and services in those countries so that when we come of age, we can at least take advantage of them and to the extent that we can take advantage of them today we can. And on the other hand, let us try to preserve the Indian individuality, the Indian uniqueness perhaps the pride of being an India, the pride of being one of those or perhaps the only developing country which produces almost everything that society needs.

With these words, Madam, and with certain reservations I welcome the Bill.

16.30 hrs.

DISCUSSIONS UNDER RULE 193 Atrocities on Women and Problems Faced by them

MR. CHAIRMAN (SHRIMATI SANTOSH CHOWDHARY) : It is 4.30 p.m. and now we have to take up discussion under Rule 193. Shrimati Geeta Mukherjee to raise the discussion regarding 'atrocities on women and problems faced by them'

SHRIMATI GEETA MUKHERJEE (Panskura): Madam Chairperson, I thank you for giving me the opportunity at long last, though you are not responsible for that long last, for raising the issue of atrocities on women and problems faced by them.

On 12th August, 1990 I raised the same issue under Rule 193 where I said that I rise with a "bleeding heart and a burning shame". Today, nearly after five years, when I rise to move the same thing again, I do not know how to describe my feeling. If any word can at all be used to describe it, it is 'suffocating'.

The fact that atrocities on women are increasing constantly cannot be denied by any quarter. On 13th May, this year, *Anand Bazar Patrika*, a widely circulated Bengali Daily reported about a survey which said that in India today one woman is being raped in every 54 minutes...*(Interruptions)*

SHRI NIRMAL KANTI CHATTERJEE (Dumdum): A little more senior Minister should be here.