

[Shri Abid Ali]

Rs. 500 p.m. and not Rs. 300 p.m. A person getting Rs. 500 total emoluments a month is entitled to join the scheme.

As regards the other suggestions made by my hon. friend from Madhya Pradesh and others, I assure them all that all those suggestions will receive earnest and deserving consideration.

Shri P. C. Borooah: About the suggestion that the contribution payable by the very lowly paid employees is to be paid partly by the Government and partly by the employers, in addition to the employers' part of the contribution what is the reaction of the Hon'ble Deputy Minister?

श्री भाबिद अली: गवर्नमेंट कंट्रीब्यूट करे यह और मुमकिन है। प्रलबत्ता कुछ वर्कर्स दें और ज्यादा एम्पलायर्स दें और वह अच्छी बात है क्योंकि जो पैसा इस तरह से जमा होगा वह सब वर्कर्स को ही मिलेगा।

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Employees' Provident Funds Act, 1952, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: Since there are no amendments, I shall put all the clauses etc. to vote together.

The question is:

"That clauses 1 to 3, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clauses 1 to 3 the enacting Formula and the Title were added to the Bill.

Shri Abid Ali: I beg to move:

"That the Bill be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

TRADE AND MERCHANDISE MARKS BILL

The Minister of Commerce (Shri Kanungo): I beg to move:

"That the Bill to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise be referred to a Joint Committee of the Houses consisting of 45 Members, 30 Members from this House, namely Shri C. R. Pattabhi Raman, Shri Radhelal Vyas, Pandit Dwarika Nath Tiwary, Shri Kailash Pati Sinha, Shri C. Bali Reddy, Shri Nibaran Chandra Laskar, Shri Tayappa Hari Sonavane, Shri Akbarbhai Chavda, Shri Shiva Datt Upadhyaya, Shri K. P. Kutikrishnan Nair, Shri Ram Krishan, Shri Jaswantraj Mehta, Shri Bishwa Nath Roy, Shri Raghubar Dayal Misra, Shri Sunder Lal, Dr. Sushila Nayar, Shri Muthukrishnan, Shri K. S. Ramaswamy, Shri Jitendra Nath Lahiri, Shri M. K. Shivananjappa, Shri Chintaman Panigrahi, Chaudhary Pratap Singh Daulta, Shri J. M. Mohamed Imam, Shri Laisram Achaw Singh, Shri Balasaheb Patil, Shri Ram Chandra Majhi, Shri Badakumar Pratap Ganga Deb Bamra, Shri Motisinh Bahadursinh Thakore, Shri Nityanand Kanungo and Shri Lal Bahadur Shastri, and 15 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects, the Rules of procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Committee and communicate to this House the names of Members to be appointed by Rajya Sabha to the Joint Committee."

As hon. Members are no doubt aware, the present Trade Marks Act, 1940, is the first legislation in India for registration of trade marks. Based on the recognition of the common law right of prior user, the Act had also introduced some of the new concepts of trade marks law, such as 'defensive registration', 'registered user' and 'assignment of trade mark without goodwill' which had been introduced for the first time in the U.K. Trade Marks Act, 1938. The Act of 1940, has been amended by the Amending Acts of 1941, 1943 and 1946. By the Amending Act of 1943, the Trade Marks Registry was separated from the Patent Office and was transferred to Bombay from Calcutta, while by the Amending Act of 1946 certain provisions were introduced for reciprocal arrangements with the then Indian States, which however, were since repealed by Part B States (Laws) Act, 1951.

With the rapid growth and development of commerce and industry during the last decade, there has been a persistent demand from the commercial public for a revision of the laws dealing with trade marks and trade descriptions. It was represented to Government that the sale of articles bearing false trade descriptions and spurious labels had increased considerably in recent times, particularly in respect of drugs and articles of food, and that effective steps should be taken to prevent such fraudulent trade practices. Accordingly, in November 1953, the Government of India appointed a Committee, known as the Trade Marks Inquiry Committee to consider and report what changes, if any, were necessary in the existing Trade Marks Act, 1940, the Merchandise Marks Act, 1889, and the provisions relating

to trade marks in the Indian Penal Code.

15.23 hrs.

[SHRI C. R. PATTABHI RAMAN in the Chair]

The Committee submitted their report to the Government in April, 1954. The majority and minority reports made exactly opposite recommendations in respect of all the main matters dealt with by the Committee. This was unfortunate, and in view of the sharp divergence of opinion among the members of the Committee, the Government of India decided that the Report of the Committee, together with the entire material considered by them, should be further examined by a high judicial authority. Accordingly, by a resolution dated 22nd January, 1955, Shri Justice N. Rajagopala Ayyangar of the Madras High Court was requested by Government to go into the matter and make his recommendations on the changes necessary in the present laws bearing on trade marks. After a careful examination of the entire material and of Mr. Justice Dean Committee Report on Trade Marks Law Revision in Australia, Shri Justice N. Rajagopala Ayyangar submitted to Government in October 1955, a very valuable and comprehensive report on 'Trade Marks Law Revision'.

The Judge did not agree with the views expressed in the majority report, on the three main recommendations of the Committee, namely, (1) the necessity for a Special Tribunal, (2) the extension of defensive registration to trade marks consisting of other than invented words and (3) making cognisable all offences relating to trade marks in the Penal Code. It was in regard to these three matters that the third member of the Committee had expressed his dissent from the recommendations of the majority. The reasons for rejecting the proposals made in the majority report of the Committee on the above three matters are carefully consider-

[Shri Kanungo]

ed by the Judge in paragraphs 15—38 of his Report. The Judge also very carefully examined the several sections of the Trade Marks Act, 1940, as well as the Indian Merchandise Marks Act, 1889, and the relevant sections of the Indian Penal Code, and also independently considered the problems arising in the working of these Acts. His recommendations both as to substantial provisions and as to drafting changes have generally been accepted by Government.

I would like to take this opportunity, on behalf of Government, of paying tribute to Shri Justice Rajagopala Ayyangar for the very able manner in which he has discharged his heavy and difficult task and to express thanks to the Government of Madras and the Chief Justice of the Madras High Court for agreeing to the Government of India being enabled to avail themselves of the services of the learned Judge for this purpose.

With a view to ascertain the views of the commercial community, a 'List of Amendments to the Trade Marks Act, 1940' based on the Judge's Report, together with an explanatory statement, was thereafter circulated for opinion to the chambers of commerce and trade associations, State Governments, High Courts and Bar and Advocate Associations in December 1956. After an examination of the opinions thus received and the Report of the Trade Marks Enquiry Committee and of Shri Justice Rajagopala Ayyangar, a draft amending Bill was prepared. This draft amending Bill sought to implement generally the recommendations of Shri Justice Rajagopala Ayyangar but introduced certain important changes, which in the light of the opinions received from commercial bodies and having regard to modern requirements, Government deemed necessary.

For instance, in view of the objections by a section of the commercial

community to the originally proposed requirement as to user for two years for the purpose of registration in Part B register, assignment of trade mark without goodwill and registration as to registered user, the above proposed condition as to use was in each case deleted in the draft Bill. Another important change was the substitution in place of the existing sub-section (8) of section 10 of a new and more elegant provision based on section 34(2) of the Australian Trade Marks Act, 1955, enabling the Registrar to defer consideration of a later numbered application for registration until the earlier numbered application was disposed of. Again, the provisions relating to 'old marks', (that is, marks used before the 26th February 1937), 'division of application', and exclusion of Part B marks from defensive registration, were all deleted.

On further consideration, it was felt that, having regard to the large number of amendments to the Trade Marks Act which were being proposed under the Bill, it might be advantageous to re-enact the Trade Marks Act as a comprehensive law on the subject of Trade and Merchandise Marks, by combining the existing provisions with the proposed amendments in the Trade Marks Act, 1940, the Indian Merchandise Marks Act, 1889, and the relevant provisions in the Indian Penal Code. This Bill, which is now before the House, thus combines the existing laws, civil and criminal, on the subject of trade and merchandise marks and incorporates the proposed amendments.

Sir, that is the history of this measure. I should like to say a few words on the measure itself. Hon. Members will notice that as stated in the preamble, the Bill seeks to combine both the civil and penal laws for trade marks. The penal law relating to trade marks and trade descriptions is contained in Chapter X, while the other Chapters of the Bill deal with the civil law relating to registration and protection of trade marks.

An important feature of the present Bill is the introduction of Part B of the register which was recommended by both the Trade Marks Enquiry Committee and the Judge. The Register of Trade Marks is to be divided into two parts, called Part A and Part B. The existing register is to be incorporated with and to form part of Part A of the register and trade marks which are distinctive, that is to say, 'adapted to distinguish', may be entered in this register. Trade marks which, although not distinctive, are nevertheless, 'capable of distinguishing', will not be refused registration hereafter, but may, if the applicants so desire, be entered in Part B of the register. It may be mentioned that the question of introducing Part B register was considered at the time of enacting the first Trade Marks Act of 1940, but it was not deemed desirable at that time.

It is to be remembered in this connection that even in the UK, the B register was introduced for the first time only in 1919, that is to say, 44 years after the first Trade Marks Act of 1875, that the intended purpose of the B register, namely, to get on the register all common law trade marks had not been fulfilled, as several common law marks are still not registrable even in the B register by reason of their not being 'capable of distinguishing', and that the difference between the expressions 'adapted to distinguish' used in relation to B register marks have not been clearly explained by the English Courts. In the circumstances, it was thought that it would be desirable to postpone the introduction of the B register in India till the commercial communities had acquired some knowledge of the actual working of the Trade Marks statute, which was then being introduced for the first time in this country. I would invite the attention of those hon. Members who may be further interested in the history of B register to Dr. Venkateswaran's book on the *Law of Trade & Merchandise Marks Act in India* where the matter is discussed in detail. Nevertheless, it would seem that the B register in the

United Kingdom has served a useful purpose in her export trade. It has now been represented by Indian commercial communities that, with the expanding exports of our manufactured goods since 1947, the protection of India trade marks in foreign countries has become of much importance and urgency to the trade. There are many good common law trade marks, which are not now registrable, as they fail to satisfy the rigorous test of distinctiveness laid down under the existing Act. These Indian marks, even though they may satisfy the requirements of the relevant statutes in certain foreign countries, cannot now obtain registration in those countries, for the mere reason that the certificate of home registration, which is a condition precedent to obtaining the foreign registration, is not available to the owners of these marks. As far as India is concerned, non-registration of these trade marks does not deprive their owners entirely of protection as their rights to passing off action under the common law remain unaffected. But the owners of these marks are put to difficulty in those foreign countries, where common law rights of user are not recognised, and trade marks rights have of necessity to be acquired only by registration. There is also the danger of an Indian mark being misappropriated by registration by another person in these foreign countries and the Indian owner being blackmailed and prevented from lawfully using his trade mark in those countries.

It is accordingly now proposed that, even though a trade mark does not satisfy the stringent test of registrability required under section 6 of the existing Act, it may, nevertheless, be put on Part B of the register. It is clear that the deposit system of registration cannot be adopted for the B register and that certain limits of registrability have necessarily to be laid down for registration so that marks which are laudatory or purely descriptive or which consist of the names of well-known cities or generic terms may be excluded. It is accordingly provided that in order to entitle a trade mark for Part B registration,

[Shri Kanungo]

the mark must be capable of distinguishing even though it is not adapted to distinguish. As the test of registrability in Part B register is thus less stringent than for Part A register, it is proposed that the rights conferred by registration Part B register should be of a lower order than those conferred by registration in Part A of the register. So, in an action for infringement of a trade mark registered in Part B of the register the plaintiff will not be granted any relief if the defendant proves that the use of the mark complained of is not likely to deceive or cause confusion [Clause 29(2)].

Again, clause 32 which provides that the registration is to be conclusive as to validity after seven years does not apply to B register marks. Sub-clause (6) of clause 9 provides that the same trade mark may be registered in Part A as well as in Part B register in the name of the same proprietor. I may mention there that the United Kingdom Act of 1919, which introduced for the first time Part B register, required that in order to be registrable in Part B register a mark must have been used bona fide for not less than two years in the United Kingdom in connection with the goods of the proprietor of the mark (section 2 of the United Kingdom Act of 1919), but this condition as to user was removed in the United Kingdom Trade Marks Act of 1938 (section 10 of the U.K. Act of 1938).

In view of the fact that the B register is sought to be introduced for the first time in India, a similar condition as to user for registration in Part B of the register was originally proposed but, as already stated, in deference to the objection to this provision raised by commercial bodies the requirement as to user has been deleted in this Bill. The provisions in the Bill as to registration in Part B of the register now follow the corresponding provisions in the present United Kingdom Trade Marks Act, 1938.

Another important new provision deals with the amalgamation of the

Trade Marks Registry and the Patent Office. Both the Trade Marks Enquiry Committee and Shri Justice Rajagopala Ayyangar have recommended the amalgamation of these two offices for reasons of efficiency and economy. Expert opinion is also in favour of amalgamation of the two offices. Again in the U.K., Australia, U.S.A., Germany, France, Sweden, Switzerland and most of the other foreign countries the administration of the laws relating to patents and designs and trade marks is vested in a single head. The administration of the two departments by a single head will also remove the possibility of conflicting expert advice being given to Government in respect of international matters relating to industrial property. It has accordingly been decided by Government that the Patent Office and the Trade Marks Registry should be combined and that the head of the combined offices should be designated 'Controller General of Patents, Designs & Trade Marks' as in the United Kingdom.

One matter may be made clear in this connection. It is stated in sub-clause (2) of clause 5 that the head office of the Trade Mark Registry shall be at Bombay. In order to remove any doubts or fears on the part of some of the hon. Members of this House I should like to make it clear to the House that the provision to locate the head office of the Registry at Bombay does not in any manner affect the issue as to the final location of the head office for Patents and this question will be considered by Government only at the time of formulating the new Patents Bill for which preparatory work is in progress. Due regard will, no doubt, be given at the time to the long historical association of the Patent Office with Calcutta, administrative convenience and other relevant matters.

Clause 3 of the Bill deals with the jurisdiction of High Courts for the purposes of filing appeals from the Registrar's decision and for filing applications for rectification. At present, the head office of the Registry

is located at Bombay with two branch offices at Calcutta and Bangalore. Conflicting views have been expressed by the different High Courts on the question as to whether any of the several Indian High Courts may hear appeal from the Registrar's orders or only that High Court which has territorial jurisdiction over the Registry. The preponderance of judicial opinion is in favour of the latter view.

Again, in a vast country like India, the need for providing branch offices of the Registry to facilitate the public has been pointed out by the State Governments and commercial bodies even at the time of enactment in 1940 of the existing Trade Marks Act. It has been represented that the owner of a trade mark residing or carrying on business at places far away from Bombay or Calcutta, for instance, in the Punjab or Madras State, is put to great hardship at present, that such person should not be compelled to travel thousands of miles to attend to his trade mark matter and that he should be placed in a position to make his application and attend to other proceedings concerning his mark reasonably near his place of business. It is, accordingly, now proposed to open new branches of the Registry and to provide that only the High Court having jurisdiction over any office of the Registry within whose territorial limits the principal place of business in India of the proprietor of the trade mark is situate, should be vested with jurisdiction to hear appeals from the Registrar's orders or hear applications for rectification in respect of the mark. This will remove the conflict of decisions that now exists regarding the proper forum for hearing appeals from the orders of the Registrar and for rectifying the entries in the Register of Trade Marks.

It is further proposed that when an applicant for registration has no place of business in India, the address for service given in his application for registration should determine the relevant office of the Registry. The territorial jurisdiction of each office of the Registry will be defined in the

Rules. While the filing of an application for registration of a trade mark and further proceedings relating to the mark have to be made at the relevant office of the Registry, the examination of all applications for registration will be made at the Central Office at Bombay to ensure uniformity. Needless to say, registration confers protection throughout India, irrespective of the office of the Registry where the application for registration is made. Copies of the register and certain other important documents will be available for public inspection at the branch offices of the Registry. It is clear that the opening of a Branch Office will have to be determined by considerations such as the quantum of work expected at the office, geographical distribution and other special circumstances. The present intention of Government is to divide the country into 4 regions, which might broadly be designated the Western, Eastern, Northern and Southern, and to locate Registry offices of these areas at Bombay, Calcutta, Delhi and Madras.

Shri Ranga (Tenali): What about the Centre?

Shri Kanungo: Delhi?

Shri Ranga: Nagpur or somewhere, Bhopal.

Shri Kanungo: An analysis of the total number of applications for registration of trade marks filed in the Registry during the years 1944-54, classified according to the principal places of business of the applicants as falling within the above regional distribution, shows that there were 23,243 applications from the Western Region, 9732 from the Eastern Region, 9,777 from the Northern Region and 14,239 from the Southern Region.

Shri Narayanankutty Menon (Mukandapuram): Sir, let us now have quorum.

Mr. Chairman: The hon. Minister will resume his seat. The Bell is being rung.

3.41 hrs.

[Mr. DEPUTY-SPEAKER in the Chair]

Mr. Deputy-Speaker: Now, there is quorum. The hon. Minister may continue his speech.

Shri Kanungo: This would indicate that Government's proposals for the regional offices are fair and equitable and are calculated to conduce to the convenience of the merchants spread out in the country.

An important change has been made in the provision relating to the infringement of trade marks in section 21 of the existing Act. Clauses (a) and (m) of this section which define infringement of a registered trade mark, follow the language of the corresponding clauses (a) and (b) of sub-section (1) of section 4 of the U.K. Act of 1938. Two types of infringement are contemplated by these two sub-clauses. Clause (a) deals with the type of infringement where the wrongful user complained of is user as a trade mark. This is in accordance with the definition of infringement as set forth in the earlier U.K. Trade Marks Statute of 1905 and also in accordance with the common law. But the type of infringement contemplated under clause (b) of section 4(1) of the U.K. Act of 1938 is a novel one. Judicial decisions in U.K. are not free from ambiguity and the latest Australian statute does not have any similar provision. Mr. Justice Rajagopala Ayyangar, after careful consideration of the whole matter, recommended that the provision in clause (b) of the corresponding section 21 of the existing Act of 1940 should be deleted and the Bill before the House implements his recommendation. Opportunity has been taken to recast the provisions relating to rights conferred by registration and definition of infringement on the Australian model for the purposes of clarity.

The working of the existing provisions relating to 'registered users' ('licensing of trade marks') has shown that decisions as to licences for the use of trade marks should be made only after due consideration of the overall interest of the trade of the

country, since the Government has adopted a policy of regulated development. It is, therefore, necessary that, regulatory provisions in industrial and commercial property should be complementary to the Industrial Policy. In the context of those factors which have emerged in recent years, it would be clear that the authority who could judge of the propriety or necessity for a registered user with reference to these factors can only be the Central Government and not as at present the Registrar. The considerations involved in the acceptance of such an application would involve not merely any trade mark law, but the economy of the country, which can be judged only by the Government and not by the Registrar. Having regard to these facts it was recommended by Shri Justice Rajagopala Ayyangar that the responsibility for granting registration should be vested in the Central Government, as the latter will be in a position to assess authoritatively how far public interest is either fostered or hurt by the registration of such licences. The present Bill seeks to implement this recommendation. I may mention that licensing of trade marks is not permitted under the common law, as a trade mark indicates the trade origin of the goods and the use of the same mark by more than one person is likely to cause deception or confusion and lead to trafficking in trade marks. The evil of having too many registered users in respect of a trade mark has, therefore, to be avoided on grounds of public interest and public policy. The statutory provisions as to the 'registered users' have therefore necessarily to include certain restrictions as to the number of permissible licencees. But to avoid any possible inconvenience it is expressly provided that these restrictions are not to apply in two cases, namely, (1) where the proposed registration of registered user is used solely in relation to goods for export from India and (2) in the case of related companies where there is common business control. The rights of existing registered users are also expressly saved by sub-clause (1) of clause 50.

Clause 28 of the Bill deals with the exclusive right to the use of the trade mark conferred by registration. As enacted in 1940, the existing section 21 used the qualification, 'if valid' to describe the registration of the mark. The effect of this was that when the registered proprietor sought to enforce his statutory right by filing a suit for infringement the defendant could plead invalidity of the registration as a defence. The words 'if valid' were removed by the amending Act of 1946, as it was thought that under the reciprocal arrangements with the then Indian States, which was introduced under that Act, administrative and legal difficulties might result by those words. The said reciprocal provisions under the amending Act of 1946, were however repealed by the Part B State (Laws) Act, 1951, and the words 'if valid' are accordingly now reintroduced in clause 28. The Bill expressly provides that where the defendant in a suit for infringement questions the validity of registration the issue can be tried only in a proceeding for rectification of the register before the High Court having jurisdiction. It may be pointed out that under the existing Act the validity of registration can always be disputed by any person aggrieved by filing an application for rectification, that the words 'if valid' which are now proposed to be included merely indicate this state of law and that the onus is always on the applicant for rectification. I may point out further that the words 'if valid' have appeared in the corresponding sections of the UK Trade Marks Acts since 1905 and they appear also in the Australian enactment and have been found to be useful and necessary.

Under the existing Act the expressions 'trade mark' and 'certification trade mark' are separately defined. The definition of 'trade mark' is now proposed to be enlarged so as to include both ordinary trade marks and certification trade marks for the purposes of registration. This change was recommended by the Trade Marks Enquiry Committee and was accepted by the Judge. The effect of this

amendment would be that where applications for registration of either type of mark are examined for conflicting marks under clause 12 the search would include the other group of marks as well, and any confusion likely to be caused by the co-existence of the same mark being registered both as an ordinary trade mark and as a certification trade mark would be eliminated.

Under section 18 of the existing Act registration of a trade mark is for a period of seven years but may be renewed for successive periods of 15 years. It was recommended by Mr. Justice Rajagopala Ayyangar that the duration of the term on a renewal may also be limited to a period of seven years. This would serve two purposes, namely, the elimination from the register of marks which the proprietor is either not using or does not think worthwhile to renew, and secondly to increase the revenue of the department and thus permit extension of its useful activities. Clause 25 of the Bill gives effect to this recommendation.

Clause 32 of the Bill which corresponds to section 24 of the existing Act introduces certain amendments for clarifying the law. The expression 'including applications under section 56' has been inserted to place it beyond doubt that in the case of an application for rectification of the register, the onus is on the applicant to establish the invalidity of the registration and that the expression 'local proceedings' referred to in this clause includes an application for rectification. Clause (b) of existing section 24 has been made free from ambiguity in accordance with the recommendations of Mr. Justice Rajagopala Ayyangar in his report where the case law is discussed. The scope of the clause is sought to be enlarged by the addition of a new clause (c), which provides that registration is not to be valid if the trade mark is not distinctive at the commencement of the proceedings. There are several marks which for some reason or other have got on the register notwithstanding that they consist of generic terms, but

[Shri Kanungo]

their validity cannot now be challenged as the seven year period has expired. At the initial period after the Trade Marks Act, 1940 came into force there was a rush of applications and this has resulted in many wholly descriptive marks being registered. The new clause will, therefore, serve a useful purpose. A similar provision exists in section 81(c) of the Australian Trade Marks Act, 1955, and section 18(1)(b) of the present Canadian Trade Marks Act. This is only a drafting change to clarify the law even as it is now conceived to be.

Among other new features contained in the Bill may be mentioned the provisions stating the several reliefs which are available to the plaintiff in an action for infringement, savings in respect of innocent infringement, and a provision enabling the Registrar to give preliminary advice to applicants as to whether a mark is *prima facie* distinctive or capable of distinguishing.

Sir, so far I have dealt with some of the salient features of the provisions as to the civil law contained in the Bill. I shall now proceed to deal briefly with the penal provisions contained in Chapter X of the Bill. As I have already stated these provisions are based on the Indian Merchandise Marks Act, 1889, and Chapter XVIII of the Indian Penal Code and include such amendments of the law as are considered necessary or desirable by Government. The criminal law relating to false trade marks and false trade descriptions contained in these provisions was enacted at a time when commercial advertising in this country had not been much developed. Having regard to the appeal and power of modern advertisement and the widespread sale in this country of spurious goods, particularly drugs and medicines and articles of food, a fresh approach to this problem has now become necessary. It is accordingly proposed to strengthen the penal law in two respects.

First, the punishments in the existing statutes for offences relating to false trade marks and trade descrip-

tions are proposed to be enhanced to two years and where the offences are in relation to drugs and articles of food the punishment is proposed to be enhanced to three years. Secondly, the present definitions of "trade description" and of "false trade description" in the Indian Merchandise Marks Act are sought to be expanded generally by including trade descriptions "as to the standard of quality of any goods", and in respect of drugs and articles of food, trade descriptions "as to fitness for purpose, strength, performance or behaviour" also. These expanded definitions are based on paragraphs (aa) and (ab) of section 1(1) of the recent Merchandise Marks Act, 1953, of the United Kingdom, and their effect is to extend the arm of the penal law to some more types of false trade descriptions that are not now punishable under the Indian Merchandise Marks Act, 1889. It is also proposed to empower the Central Government to require that goods notified should have applied on them the name and address of the manufacturer or of the person for whom the goods are made. Opportunity has been taken to remove an ambiguity in the language of the present section 15 of the Indian Merchandise Marks Act, dealing with limitation of prosecution, which has given rise to conflicting decisions. In descriptions relating to linear measurement, additional references to metres wherever there are references to 'yards, feet and inches' are proposed to be incorporated in view of the Government's decision to introduce the metric system. Certain consequential changes in the Sea Customs Act are also proposed.

Sir, that is the Bill which I have the honour to move to be read for the second time. It is hardly necessary for me to say that the whole subject is highly technical and difficult and that accordingly Government have spent much time and thought in the preparation of the Bill. It will be seen from the history of the Bill that the revision of the trade marks law has been undertaken at the request of the commercial bodies, that the question has been before the public for

consideration for some years past, that the views of the commercial community and expert opinion have been ascertained at every stage, and that the present measure is the result of conclusions of Government after careful consideration of the entire material. Government have every hope that the Bill will modernise the law and prove of great use and benefit to the commercial community to foster and develop trade keeping all unhealthy and unsocial trade practices in check, if it does not succeed in eradicating these altogether.

Sir, I move.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise referred to a Joint Committee of the Houses consisting of 45 members; 30 from this House, namely:—

Shri C. R. Pattabhi Raman Shri Radhelal Vyas, Pandit Dwarika Nath Tiwary, Shri Kailash Pati Sinha, Shri C. Mali Reddy, Shri Nibaran Chandra Kaskar, Shri Tayappa Hari Sonavane, Shri Akbarbhai Chavda, Shri Shiva Datt Upadhyaya, Shri K. P. Kuttikrishnan Nair, Shri Ram Krishan, Shri Jaswantraj Mehta, Shri Bishwa Nath Roy, Shri Raghubar Dayal Misra, Shri Sunder Lal, Dr. Sushila Nayar, Shri M. Muthukrishnan, Shri K. S. Ramaswamy, Shri Jitendra Nath Lahiri, Shri M. K. Shivananjappa, Shri Chintaman Panigrahi, Chaudhary Pratap Singh Daulta, Shri J. M. Mohamed Imam, Shri Laisram Achaw Singh, Shri Balasaheb Patil, Shri Ram Chandra Majhi, Shri Badakumar Pratap Ganga Deb Bamra, Shri Motisinh Thakore, Shri Nityanand Kanungo and Shri Lal Bahadur Shastri and 15 members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliament Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

Shri Narayanankutty Menon: Mr. Deputy-Speaker, Sir, as the Bill is going to the Joint Committee and as regards the principles of the Bill as well as the details and procedure of the Bill, there is a large volume of evidence available for the Joint Committee, I do not propose to make detailed comments on the various clauses of the Bill.

The only point that I wish to make out is regarding certain principles involved in the Bill which have been already the subject-matter of the recommendations of Justice Rajagopala Ayyangar and accepted by the Government, but, at the same time, the points require further elucidation in the Bill and also more reconsideration.

As far as the courts of law in India are concerned, in dealing with the matters of trade marks, just there have been inherent traditions of the past courts in not realising the substantive rights of human liberty and freedom, they have also taken more time to realise the importance of the rights involved in patents and trade marks. A large number of cases, right from the beginning to the end, have arisen out of the original Act. If the judgments are read, you will find that the courts have taken more time to realise whether any right is involved in a patent or a trade mark. Ultimately, when the realisation that a moral right is involved the relief that the afflicted party got, used to be very symbolic. That shows that the courts were very astute in recognising the right itself, and it is a welcome

[Shri Narayanankutty Menon]

feature that in many clauses and sub-clauses of the Bill there is a positive recognition of certain valuable rights involved in the patents and trade marks. I congratulate the Government in accepting the minority report of the Committee which was originally appointed—the three-man committee—and which made certain recommendations. When the Government found that many of the majority recommendations of the Committee were not at all in consonance with public good, the Government did well to refer the matter again to Justice Rajagopala Ayyangar, and on the basis of the minority report, Justice Rajagopala Ayyangar has made recommendations and almost all the recommendations of Justice Rajagopala Ayyangar have been incorporated in the Bill.

Mr. Deputy-Speaker: He may continue tomorrow. We pass on to the next item now.

MOTION RE: ANNUAL REPORT OF INDUSTRIAL FINANCE CORPORATION

Shri Harish Chandra Mathur (Pali):
I beg to move:

“That the Annual Report of the Industrial Finance Corporation for the period ending June, 1957, laid on the Table of the House on the 11th November, 1957, be taken into consideration.”

My intention in giving notice of this motion is to maintain a living interest of Parliament in these industrial enterprises and public autonomous bodies. I consider such living interest of Parliament not only necessary but expedient in view of the increasing and the growing importance of these institutions in the development of our social economy.

It is not always that we come here to discuss the reports only to offer adverse criticisms. I consider that that would be a wrong approach, and it would, as a matter of fact, detract public faith and confidence in these autonomous bodies which are going to

play a very important role in future. Of course we will never be wanting in offering ruthless criticisms where they are wanted as was done by my hon. friend here while discussing in some other form another institution, the L.I.C. But I think it is equally

16 hrs.

important that we give an unmistakable impression on the one hand to these autonomous bodies that they enjoy perfect autonomy so far as their day-to-day working is concerned and in so far as we enable them to take quick decisions and running the institutions efficiently, but at the same time, they should realise that they are constantly under public gaze, that they are accountable to Parliament and we discuss these reports to give them approbation or appreciation where it is necessary and at the same time to give guidance and direction for their future working. It is in this background that I have moved this motion and I shall offer my criticisms.

The first thing I would like to mention is about the directorate. I would like to submit that I do not feel very happy about the way the directorate is composed. I think it should be realised now by the Government that this is an institution which should not be equated with a banking institution. As a matter of fact, while we were discussing the amendment to the Industrial Finance Corporation Act in 1956, we gave expression to our apprehension. Not only one Member, but that apprehension was supported by Member after Member that the Government should take particular care to see that those institutions do not degenerate into merely banking institutions providing certain facilities to the capitalists to advance their schemes here and there, but they have to fulfil a much larger and a much bigger purpose, the purpose which was discussed when this Corporation was itself set up.

If you look at the directorate, you will find that it is overburdened with banking interests. There is represen-