

12.02 hrs.

## MESSAGES FROM RAJYA SABHA

Secretary: Sir, I have to report the following messages received from the Secretary of Rajya Sabha:—

- (i) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on the 25th August, 1958, agreed without any amendment to the All-India Services (Amendment) Bill, 1958, which was passed by the Lok Sabha at its sitting held on the 12th August, 1958"
- (ii) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on the 25th August, 1958, agreed without any amendment to the Code of Criminal Procedure (Amendment) Bill, 1958, which was passed by the Lok Sabha at its sitting held on the 18th August, 1958"

BANARAS HINDU UNIVERSITY  
(AMENDMENT) BILL

## REPORT OF SELECT COMMITTEE

Sardar Hukam Singh (Bhatinda). I beg to present the Report of the Select Committee on the Banaras Hindu University (Amendment) Bill, 1958

12.03 hrs.

TRADE AND MERCHANDISE  
MARKS BILL

Mr. Speaker: The House will now take up the Trade and Merchandise Marks Bill, 1958, as reported by the Joint Committee. As the House is

aware, five hours have been allotted for all the stages of the Bill. I would like to take the sense of the House as to how these five hours should be distributed among the various stages of the Bill

Shri Naushir Bharucha: (East Khandesh): Four hours and one hour.

Mr. Speaker: Four hours for general discussion and one hour for clause by clause consideration and Third Reading?

Some Hon Members: Yes.

Mr. Speaker: Therefore, four hours are allotted for General Discussion and one hour for clause by clause consideration including the Third Reading stage

The Minister of Commerce (Shri Kanungo): Mr Speaker, 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, as reported by the Joint Committee, be taken into consideration"

I do not propose to inflict a speech on this motion. The Bill was introduced in the Lok Sabha on the 28th March, 1958. The motion for reference of the Bill to a Joint Committee of the Houses was moved on the 5th of May and there was discussion on two days, 5th and 7th. As you will observe, the principles of the Bill and the contents of the Bill were very widely discussed and there was consensus of opinion that the Bill as framed and introduced was acceptable to the House. Thereafter the Bill was committed to the Joint Committee which had more than 12 meetings and went thoroughly into it. They have made certain alterations in the wording of the Bill which are improvements more or less. But, the main

structure of the Bill has remained as it was. Therefore I would commend that the Bill as amended by the Joint Committee may be accepted.

**Mr. 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, as reported by the Joint Committee, be taken into consideration."

May I know how many hon. Members want to take part in this general discussion? (Some Hon. Members rose). Then, why so many hours?

**Shri Naushir Bharucha:** I think the general discussion might end much earlier.

**Mr. Speaker:** I think so.

**Shri V. P. Nayar (Quilon):** I would like to speak in the General discussion.

**Shri C. R. Pattabhi Raman (Kumbakonam):** Some of us were in the Joint Committee.

**Mr. Speaker:** If hon. Members want to say anything regarding the Joint Committee or minute of dissent, I will allow them subject to limitation of time.

**Shri Naushir Bharucha:** As the hon. Minister has observed, the Bill has emerged from the Joint Committee more or less intact. There were several views expressed by various hon. Members on different aspects of the Bill and I desire to invite the attention of the House to certain major aspects which, unless properly taken into consideration will leave this Bill in actual practice without any effect. I have tabled four amendments. But, the gist of my amendments is that wherever any offence has been committed in respect of trade marks—offence as defined in clauses 77 and

78—then, a new type of procedure will have to be recommended if these particular clauses are to be made really effective. These clauses are on pages 48, 49 and 50. Section 76 gives us the meaning of applying trade marks and trade descriptions. Clause 77 reads thus:

"A person shall be deemed to falsify a trade mark who, either—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; or

(b) falsifies any genuine trade mark, whether by alteration... and so on.

Clause 78 says:

"Any person who,—

(a) falsifies any trade mark; or

(b) falsely applies to goods any trade mark; or

(c) makes, disposes of, or has in possession, any die... etc.

shall be punished with imprisonment which may extend to three years. Clause 79 deals with penalty for selling goods to which a false trade mark or false trade description is applied. Several people have told me in this connection, and I think their observations are correct, that no matter how very well worded your Acts may be, unless the remedy is enforced and the penalties are brought within the practical ken of the aggrieved parties, your Act has no effect. It is rather unfortunate that the Joint Committee has not taken into consideration the operative part of the Act and how the Act is going to be enforced.

For many years past, we have noticed that the business community is harassed not so much by the defective wording of the Act as by the fact that whenever a trade mark has been infringed, the remedies against the offender have become impracticable. I can give a number of instances; for instance, the trade marks in respect

[Shri Naushir Bharucha]

of consumer goods very widely used in the country—for example Tata Oil Co.'s Bar soaps—are infringed with impunity. Infringement takes place not in the town of the registered office of the aggrieved company, but anywhere in the country. Even these infringements are on such a wide scale that it becomes impossible for a person who is aggrieved to run to the particular province or town where the offence has been committed. It will be observed that the scheme of the Bill with regard to prosecution is that it leaves intact the provisions of the Code of Criminal Procedure.

In other words, the aggrieved party has to go to the town where the offence has been committed. Now, often these offences are committed in small towns where it is impossible for people to find facilities for prosecuting a case, and often if prosecution is launched by the aggrieved party under the provisions of clauses 77, 78 and 79, it becomes impossible to carry on the prosecution because the accused being in his home town is in a position to exhaust the aggrieved party by various legal devices.

In the very first place, it may be extremely difficult to get the summons served on him. He can always evade it. Secondly, even if the summons is served, he can apply for any number of adjournments which in mofussil courts are very readily granted—that has been my experience—and he may harass him. Then, he may put in a transfer application and have his case transferred. All these difficulties pile up to such an extent that the aggrieved party would have to pay his counsel each time and take him to a distant spot where they may not have even proper facilities for anything whatever, and then he may have to come back. The result is that the hardship which the law provide becomes for more costly than the grievance itself, and the aggrieved party has to

abandon it. I ask this House to consider dispassionately: what is the use of making the Trade and Merchandise Marks Act on paper compact and capable of being enforced when in actual practice it cannot be done? What is the use of conferring certain rights on the proprietors of trade marks when those rights in actual practice in 95 cases out of 100 cannot be exercised? I ask whether it is not our duty to look to the practical aspects of the whole problem because unless we do that, the most salutary provisions of this Bill are likely to be nullified.

Take the case where a particular trade mark has been infringed, and the aggrieved company or the aggrieved proprietor desires to proceed against that party by way of obtaining an injunction. The procedure would be that he would have to file a suit. In which court can he file a suit? It can only be the court where the cause of action has arisen according to the Civil Procedure Code and that would be the place where the offence has been committed. Now, does any of us—I speak of the lawyer Members of this House—think that it is humanly possible for anybody to go to the home town of the offending party and file a suit and apply for an injunction and see that the injunction is properly enforced, or to carry on the suit, run after the party for two or three years and then obtain a permanent injunction? These things are absolutely impossible. With the result that the most important companies which have got financial resources and which are capable of taking action against such offenders leave the whole thing as it is, and then the infringement of the trade mark goes on merrily.

I ask this House to consider whether it was not desirable on the part of the Joint Committee to have introduced in the Bill certain provisions along the lines on which I have given my amendments. It should have been provided by the Joint Committee

by suitable provisions, by introducing an additional clause 89A if necessary, whereby notwithstanding anything that is said in the Code of Criminal Procedure. It should be possible to file a complaint for offences mentioned in clauses 78 and 79 in a court under whose jurisdiction the aggrieved party has got either its main registered office or a branch office. This is very necessary because without that I am afraid the entire Act is going to pieces.

The same thing would apply with regard to modification of the Code of Civil Procedure in its application to civil proceedings under this Bill. That, to my mind, is most important.

There is, of course, I understand, an argument that if they permit the aggrieved party to launch prosecutions at the place where its registered office is situated, will not the accused be placed at a disadvantage? Therefore, in my amendment I have made the provision that it should be open to the accused party to make an application to the High Court, and the High Court may ultimately decide whether, having regard to the circumstances of the case, the trial should be within the jurisdiction where the aggrieved party has its registered office, or it should be at a place where the offence has been committed. And surely, the thing could be left to the High Court to decide in the light of the circumstances, and there would be no fear of any injustice being done.

Also, in this connection, we have got to bear in mind that in 99 per cent of the cases where complaints or civil proceedings are filed in respect of infringement of trade marks, it is the aggrieved party that is in the right, because unless a company has got well-known, well-advertised goods with a very well known trade mark, nobody would bother to imitate or infringe that trade mark. And our experience in law courts also shows that the aggrieved party has a just cause, I would dare say, in 99 per cent of the cases. It is the small, petty manufacturer who infringes trade

marks, and it is very difficult to track him.

Therefore, I submit that the major point has been missed by the Joint Committee and unless we make provisions in this connection, all the good provisions of this Bill will have no meaning to my mind. It is no use giving ample rights to the owners of trade marks and then provide him with a legal remedy which it is impossible to exercise for the enforcement of those rights.

The second point which has to be noticed is that in many cases it is in the interests of the public that the law should be properly enforced. It should not be felt that because in a stray case, one in a hundred, perhaps some hardship is caused to the accused or the defendant, in 99 per cent of the cases such impediment should be placed in the path of the aggrieved party exercising his rights. I submit that it is in the interests of the public that this amendment should have been made.

There is another point to which I would like to invite the attention of the House. The remedy provided for infringement is—what? Two or three years. In the first place, it is very difficult to obtain convictions, because today also we find that numerous trade marks are being infringed and nobody bothers about that. But the punishment provide is two or three years. I should have liked that Joint Committee to have taken a serious view of these infringements. Firstly, a minimum term of imprisonment should have been prescribed. Secondly, the law should have laid down the seizure of goods of the offending party. Naturally he would have been a trade man or a factory owner, and his stocks should be seized and frozen on the principle that if he is imitating, for example, the trade marks of certain drugs, it is a most dangerous thing to do. Then the whole stock must be seized and frozen. There should have been power given for this purpose.

[Shri Naushar Bharucha]

Thirdly, I should have prescribed disqualification for such manufacturers for a period of three years or so for making application for any trade marks. People who are anti-social, who have not got the slightest scruples in exploiting either the distress of the people or their pressing requirements, must be disqualified from applying for any trade mark whatsoever on the ground that they are unfit by their conduct to have any trade mark.

And last but not the least I would suggest what may seem rather a strange and novel procedure but what to my mind appears extremely good. Whenever a person has been convicted, let us say, for using false trade marks or labels on drugs and other articles, he should be compelled for a certain period by the Judge or the court trying him, to place a board in a prominent place in his own shop saying that his firm has been convicted under the Trade and Merchandise Marks Act. Unless we resort to new methods of penalty, these old provisions for imprisonment extending to two years and three years have no meaning, especially in view of the fact that it is extremely difficult to catch hold of the offenders and bring them to book. Therefore, my submission is that the entire conception of punishment should have been completely altered.

Apart from that, there is one thing which has been brought out in the minutes of dissent. I agree with those who have appended their signatures to the minutes of dissent that in many cases petty manufacturers do not require that their trade marks should be protected all over the country. All that they ask for is that they should be protected within the limits of a certain State or within a certain number of districts. I think in India there are something like 256 districts; at least, that used to be the case some years ago; I do not know exactly how many there are today.

And each district means about 1,000 square miles. Surely, the petty traders, quite a large number of whom go in for an application for registration of trade marks do not require all-India protection; and provision should have been made in the Bill for application for limited purposes. Similarly, benefit should have been given either in the form of low fees or mitigation of other conditions of application, so that petty traders could have their rights protected within certain districts only.

Also, it has been provided that there should be a separate branch of trade marks registry, but it has not been mentioned that every State should have it. I think this is such an important subject on which depends the commercial honesty and integrity of our manufacturers, that order to promote that facility should be provided by the establishment of trade marks registry in every State. I do not think there is a single State in our country where the registry office will not facilitate and help the manufacturers or trade mark proprietors.

These are some of the main objections to the Bill, which have not unfortunately been met in the Joint Committee. I would, therefore, appeal to the Minister in charge to see that these defects are remedied. It is no use giving to the public a Bill which is sound on paper, but which in its application may prove totally ineffective. I have, therefore, drawn the attention of the Minister to these aspects, and I hope that he will apply his mind to them.

Shri Panigrahi (Puri) I would like to welcome the Bill as it has emerged from the Joint Committee, because some improvements have been effected on the original Bill, but I would like to make a few observations of a general nature.

Under the present scheme of the Bill, we envisage only four or five

branches of the trade marks registry. That is because Government think that there are not enough cases for our going in for a trade marks registry in each of the States in India. But I would like to plead for that on behalf of the petty manufacturers who are having their business in every State of India. From my own experience, I can cite a few instances. In Orissa, in almost every district, there are a number of manufacturers of biris, soaps, and also special kinds of foods. But these biris or soaps have not got an all-India market, or they do not aspire to have an all-India market. That is because they have not invested the required amount of money or capital by which they can aspire to expand their trade into a wider market covering the whole of India. But, sometimes, it has happened that some rich petty merchants in Calcutta because they have got enough capital with which to go in for cases or to file suits have filed cases against so many of these traders or petty merchants who manufacture biris or soaps in Orissa in unknown places, and these petty merchants or traders from Orissa have been dragged to court for months and years together. As a result, they have suffered heavily; and they have been completely rooted out from their petty business which was a source of income to them. So, I would like to plead for these petty manufacturers of biris, soaps and special types of food or edible oils which have got a limited market only.

In this connection, I share the feelings of my hon. friend Shri Naushir Bharucha who has also supported this view. When we are not proposing to open a branch, in every State, of the trade marks registry at least some provision should be made for these petty manufacturers or traders who do not have big aspirations or who do not aspire to have an all-India market for their products, but who want a limited trade within a particular area or within a particular zone. These points should be

taken into consideration seriously by Government, so that we can afford some relief to the petty traders and manufacturers.

I would like to draw the attention of the Minister to clause 3. Here, the jurisdiction of the High Court extends to the trade marks registry which is situated within that particular zone. Suppose there is a branch office in Calcutta, and there is a petty trader who has his place of business somewhere in Koraput district; naturally, if any merchant in Calcutta files a suit against him for infringement or for any action against him, that petty trader from Koraput will have to come all the way to Calcutta to fight his case. That is very expensive for him. If he goes twelve to thirteen times to Calcutta, I think the entire capital which he has invested in his trade will completely go out, and within a year, he will be completely finished by the big merchant who sits in Calcutta. So, for the present, when we are not proposing to have a trade marks registry in each State of India, which we say we cannot afford today, in order to provide some relief to the petty traders at least we can empower the High Court in each State to receive appeals or to hear cases of these small petty traders where the place of business of the traders is situated.

Secondly, I would like to refer to clause 11. In that clause, provisions have been made for prohibiting the registration of certain marks. We welcome that. But we had suggested, and I would still like to press for it, that the symbols of political parties should also be prohibited under this clause. But there is no such provision in this clause. It may be that in certain places in India, there may be a fascination for a pair of bullocks. If any trader uses this symbol of the pair of bullocks as his trade mark, or, for that matter, the symbol of any political party, then, the political parties are not in a position to say that nobody can use their symbols. So some provision should be made to

[Shri Panigrahi]

see that symbols of political parties are not used as trade marks by different traders.

In this connection, I would also like to point out that the names of leaders of political parties also should be prohibited from being used as trade marks. We find in the market today 'Mahatma Gandhi bidis' and 'Jawaharlal Nehru Snuff' and many such things. How to prevent it? Tomorrow someone may probably use a trade mark 'EMS Snuff' profiting by the name of some person who is becoming popular. The question is, how to prevent this. Some provision should be made so that the names of leaders of political parties, which have really got a stake in our country, whom we all respect should not be used as symbols by nefarious traders to make profit out of such names. The provision in the clause is not very clear. It does not say that names of political leaders or political parties which have got a stake in India today are not to be used. So a specific provision prohibiting the use of such names should be made in the Bill.

Then I will refer to clause 109. In the original Bill, though under clause 70 we gave certain powers to the Central Government to intervene in certain cases, still the right of appeal was provided for. But according to the present scheme of the Bill—clause 109—there is no right of appeal against any decision of the Central Government. It is possible—it is sometimes a fact also—that to err is human.

For any Government to err is natural, and for the present Government to err is very natural. So at least provision should be made for appeal against any decision of the Central Government.

With these few words, I would like to request the hon. Minister that these harmless suggestions of mine may be accommodated in the scheme of the Bill so that we give a comprehensive

and complete enactment to our people.

Mr. Speaker: Shri C. R. Pattabhi Raman.

Shri V. P. Nayar: On a point of order. There is no quorum in the House. There are hardly 20 Members in the House.

Mr. Speaker: They are anticipating lunch time! Anyway, the bell may be rung.

I intend appointing a Committee with the consent of Members to make the House more interesting. Not that it is not interesting now. There is no place outside, either in Delhi or anywhere else in the country which is full of such eminent men and women as this House. There cannot be any more representative Assembly. I am not able to understand why this is being made greater use of. I shall receive all suggestions to make it more interesting so that no Member may leave it.

Shri Asoka Mehta (Muzaffarpur): On a previous occasion, you had said that you would offer us coffee!

Mr. Speaker: I have no objection.

Shri Panigrahi: There must be some scarcity everyday.

Mr. Speaker: I would like to make the proceedings as interesting as possible so that Members may continue to sit here.

Shri T. B. Vittal Rao (Khammam): More time should be given for Opposition Members to speak.

Mr. Speaker: I will do so.

At least, the hon. Deputy Ministers may sit here.

Shri Ferose Gandhi (Rai Bareilly): Parliamentary Secretaries also. There are 54 in all.

Mr. Speaker: The moment any hon. Member becomes a Deputy Minister, he ceases to take interest in the general work of Parliament. These Deputy Ministers confine themselves to their immediate work; they are detached because they become 'nominal' Members of Parliament. Hereafter, I will also call upon them to speak on other subjects.

Now, there is quorum. Shri C. R. Pattabhi Raman.

Shri C. R. Pattabhi Raman: Mr. Speaker, Sir, we have now got a comprehensive piece of legislation governing trade and merchandise marks and, if I may say so, it is really a compliment to Government that to a Bill which covers nearly 100 pages they have had only four amendments from only one Member, Shri Naushir Bharucha, and the rest of the Bill has not been adversely commented upon by any one in the House.

We have profited by the experiences of countries like the United Kingdom and Australia so far as trade marks law is concerned, and we have endeavoured to bring ours in line with present-day legislation. As you are aware, the principles governing trade marks ownership have changed and we have sought to catch up with the advances made in this direction. In this, as in many other instances, there cannot be any policy of *laissez faire*, pure and simple.

I shall confine myself to the amendments tabled by Shri Naushir Bharucha. The first seeks to fix the jurisdiction of criminal courts in respect of offences under clauses 78 and 79. Under the ordinary criminal law, offences are triable within the jurisdiction of the court within whose limits they have been committed. There is, for example, section 177 of the Criminal Procedure Code. This amendment seeks to alter the provision by vesting jurisdiction in courts within whose limits the registered office of the proprietor of the trade

mark is situate. Such an amendment is not only unnecessary but will also lead to a lot of harassment. The alleged accused may be a poor person residing in one corner of India. He may, for example, be in Kanya Kumari. Fancy his being dragged to Calcutta where the registered office would be. To say that he can always move the High Court and get suitable remedy is hardly an answer because even to move the High Court, he will have to travel to Calcutta. I submit that in a poor country like India it will lead to a lot of harassment if this amendment of Shri Naushir Bharucha is accepted.

In the second amendment, he wants deletion of all references to the Sea Customs Act. In clause 90, reference is made to the relevant clauses of the Sea Customs Act. The object seems to be that nothing with reference to the Sea Customs Act should be referred to in the Trade and Merchandise Marks Act.

Shri Naushir Bharucha: I shall speak when we are in the clause by clause stage of the discussion. I cannot reply now.

Shri C. R. Pattabhi Raman: I thought I might take note of what fell from the hon. Member. I have been a Member of the Joint Committee myself. I feel a certain delicacy in referring to these matters. But I thought I would take time during the general discussion.

So far as the Sea Customs Act is concerned, that itself refers to the Trade Marks Act in two or three places. It refers to false trade descriptions which are all matters being regulated by this law. And this being a consolidated Bill, there must be reference here to the various relevant sections in the Sea Customs Act also.

With regard to 'prosecutor' and 'defendant' which are raised in the third amendment of his, I am not really fighting for the words. It is



[Shri C. R. Pattabhi Raman]

true that in the Indian Merchandise Marks Act, 1909, these expressions are used, namely, prosecutor and defendant. I am not going to fight for words so far as that is concerned, but the intent is clear. Therefore, I do not see any substance in that amendment also

So far as the fourth amendment is concerned, that is the civil aspect of it, the Civil Procedure Code, section 20 will regulate the place or situs where the proceedings are to be instituted. That enshrines well-known equitable principles; and I would submit that there is no need at all to alter those well laid principles. Actually, there is a lot of case law on the subject; and all the benefit that we have got from out of the various decisions will vanish the moment we try to change situs so far as civil suits are concerned.

Shri Panigrahi was referring to the harassment of the poor person. There too, I want to impress on him that so far as the action of infringement is concerned, it is the District Court which, in the first instance, has the jurisdiction. He will be pleased to note that 'in any Court inferior to a District Court' is referred to. Therefore, in the first instance, the action will be in the District Court. Appeals may be in the High Court later on. So, I submit there won't be any harassment so far as the poor person is concerned.

With these words I submit that the Bill be accepted by the House

Shri Panigrahi: What about appeals?

Shri V. P. Nayar: Mr. Speaker, I do not want to go into the detailed provisions of the Bill. I say that the Bill as it has emerged from the Joint Committee has, no doubt, made some improvements to the original Bill. I want to impress another point about this legislation. I am afraid that in

drafting this Bill, Government has not paid any particular attention to the context of our economy and the role which trade marks play at the present time.

We know several cases where trade marks are being used for relentless exploitation, especially by firms which have roots elsewhere. We know that the trade mark is different in its concept from either a copyright or a patent. But, what is the position in our country today? When tooth paste, for example, can be made by anybody, there are tooth pastes with certain trade marks and backed by a very powerful medium of advertisement over which they spend lakhs and lakhs of rupees. When some of us go to the market, we have a particular preference to a tooth paste with a particular registered trade mark. And, what does that contain? We know that the art of advertisements has developed to such an extent today that it can rightly be called the commercial art of harnessing the lie to the truth. Whatever we see in the advertisements may not be there at all. We find that there is hardly any tooth paste or tooth brush with a registered trade mark which does not have all the desirable and necessary qualities. What is it that we find? All of us who use such pastes and brushes, relying on the trade mark and also relying on the advertisement, find to our dismay that not merely do they have no effect but they bring some more trouble also. It happens in the case of other patent drugs. We know of fruit salts with a trade mark with nothing of the fruit in it at all. There are other remedies for chronic diseases.

My point is that when our people are suffering from chronic diseases they will try to take anything. Because there is a trade mark and because unfair competition is sought to be protected, what is called a trade mark comes to their help and they can do anything with it.

There are specifics for asthma. We find in the daily papers even cures for leprosy available for one rupee. They sell in thousands. I submit that Government has not paid any attention to this aspect especially in view of the plunder and loot which results from the uncontrolled use of the trade marks by certain monopoly manufacturers.

When I speak of this I am reminded of an instance where one of the leading manufacturers of India with a trade mark for Chicken Essence has been manufacturing chicken essence without touching a chicken. And it so happened that when there was a case of a worker in a Tribunal it came out that the chicken essence was all along being manufactured out of veal with a higher protein content. When the technician was asked why the chicken essence did not contain the protein content of the chicken the answers was that as there was a ban on the sale of veal they necessarily had to resort to something. The point was that the chicken essence manufactured by that company had either veal or beef but no chicken.

In our place there is another racket. There is a famous medicine with a trade mark called the *Karinkurangu Rasayanam*—that is, an extract of the black monkey. And thousands of lbs. of that are sold from the shops in almost every village. There are many manufacturers using similar trade marks and saying that it is black monkey extract. Our forests do not have so many black monkeys.

Once I casually walked into the manufacturing house of one particular firm and asked for one or two hides of these black monkeys. They said that it was only an advertisement. As Shri Bharucha says, because he had a trade mark he managed to sell hundreds and thousands of lbs. of something which he called a *rasayanam* made out of the vitals of the black monkey. What have we

done to prevent it? It is not only a question of exploiting but it is exploiting to a measure which we must cry a halt to at this juncture. I am sorry that in this Bill there is no attempt at all, although we know that the protection of the trade mark is entirely of a different nature.

As far as I could understand, trade mark has certainly to be taken as entirely different in legal character from a patent or a copyright because in the case of a trade mark, as we all know, the symbol adopted which gives the right to protection designates the goods for something. It may not be so in the case of the copyright. That is all the more reason why when we protect a private right, the right to profit, by legislative measures and safeguards against unfair competition or unhealthy competition, it is our duty also to see that, using such protection which is afforded by special legislation, such people should not cause any trouble to the public. The public interest is also involved in such measures and I am sorry to say that Government have not paid any attention to this.

I would also refer to another point with regard to which I thought Government ought to have had some provisions in this Bill. There are so many other enactments which have some bearing on this patent law and I am not going into them. My hon. friend, Shri Bharucha was saying something about the Tata Bar soap. I personally do not see any harm in a manufacturer imitating it for practical purposes, because a local manufacturer finds to his dismay that unless he imitates something of a reputed manufacturer with a trade mark he cannot sell his goods. Secondly, the manufacturer whose trade mark he wants to imitate or whose pattern in the manufacture he wants to imitate has spent crores of rupees to market his goods. They have money enough to spare at the rate of eight annas in the rupee for advertisement. We have no control in this. The trade marks are

(Shri V. P. Nayar)

advertised in such a way that they create a fascination among the entire people although it does not at all mean that the advertised goods will conform in quality to the advertisement.

Therefore, in such cases when monopoly capital employees a trade mark exploitation of the people, we should have some check to see that at least the goods which they sell conform to certain standards and also observe certain rules.

These are the matters for which the hon. Minister should have used this occasion to bring forward certain measures. I am sorry to say again that he has not considered them.

There is also a third aspect of the problem, the aspect of profit. We know that in some cases pills are sold at two annas Take, for example, ordinary ANACIN or ASPRO of some of these pills which we commonly use. I was amazed the other day to hear that in these the profit is nothing less than 500 per cent. Every man with a headache necessarily goes to a shop and buys one pill. The pill has a trade mark; and behind this particular trade mark there is an international combine. The entire machinery of advertisement available in this country through the daily Press and other medium of advertisement is there. What do we do? It is because there is a trade mark. It is certainly not necessary that to get relief of a headache or a cold one should necessarily use a particular pill or a pill with a particular trade mark. Anybody can make it but the only thing is that people cannot sell. Nothing can be imitated as there is the infringement of the trade mark law. Therefore, only the biggest manufacturer can push his goods. In this law, there is nothing that we could do. If the Government had taken particular care and had a perspective to legislate keeping in view what we have to do and also taking into account

how the exploitation is being made by the powerful combines, I am sure then that Government would have thought of some measure whereby the unhealthy employment of these trade marks in commerce and trade could have been prevented. I wish the hon. Minister pays same attention to this and ensures that, while we protect the rights to sell merchandise under particular trade marks, we also take into account the public interest involved in it and take some measures whereby the maximum benefit would be afforded to the public.

Shri Kanungo: My task is very simple since there is scarcely any notice of any amendment except Shri Bharucha's which we will take up when the relevant clause comes up. In any case, the arguments of Shri Bharucha have been sufficiently met by my hon friend, Shri Pattabhi Raman

Shri Bharucha referred to the enhancement of the severity of the punishment. I would ask the House to remember that trade mark and the property of trade mark have a very limited application; the property here is intangible. The value of a trade mark depends upon the effort, labour and investment which is made by a person in popularising his mark in association of the particular goods to which that trade mark refers. The provision that any false trade description would be an offence ensures to a great extent that wrong descriptions are not associated with trade marks in advertisement and popularising and marketing goods under a particular trade mark, sufficient care has been taken so that false qualities are not attributed.

Profits etc. had been referred to by Shri V. P. Nayar. I suppose the fiscal provisions of this House have got enough teeth to take care of that. If anybody chooses to be misled and to buy a tooth paste or something else the intrinsic worth of which is nothing almost, I suppose the remedy lies elsewhere.

**Shri V. P. Nayar:** Where?

**Shri Kanungo:** That means the prevention of the number of mugs growing in this country and this is not the only one country where there are mugs. The whole world is now under the influence of high pressure advertisements.

**Shri V. P. Nayar:** I have a better opinion of my country.

**Shri Kanungo:** I have a better opinion of myself and my country. That is what I say. Our country is less susceptible to this high pressure advertisement than other parts of the world. Therefore, as I submitted earlier in this House, we should confine our attention to the limited purpose of this piece of legislation and should not import other purposes and objectives into it.

I am glad that there was a considerable amount of support in this House for this Bill in the shape in which it has come. Whether we make it more restrictive or less restrictive will depend upon the circumstances and I would submit the conditions of trade and economic development in our country being what they are this Bill as placed before the House serves the purpose adequately. I would only invite the attention of the House to Chapter VI of the Bill which provides the necessary strategic control upon factors of exploitation which are inevitable because of our undeveloped condition in industry and trade. A careful perusal of that chapter will show that adequate powers have been taken and will be exercised in consonance with the conditions existing at the time. When the conditions change it will be the duty of this House and of the executive Government of the time to suggest the necessary amendments.

**Shri Bharucha** has suggested that the protection offered to registered owners is almost illusory in the sense that it looks so good in the paper but it is difficult to implement. All that

is provided for in this Bill is some facility for registration and certain privileges flowing from that registration remembering all the time that a trade mark has its value to the proprietor irrespective of the registration rights flowing under the common law whether it is registered or not. These rights exist and they are respected by the courts. Registration merely gives, if I may say so, certain privileges regarding the prescriptive value of the rights. The purpose being limited to that extent, I submit that the Bill as amended by the Joint Committee is the best that could be suggested to the House for acceptance.

13 hrs.

**Mr. Speaker:** The question is:

"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 as reported by the Joint Committee, be taken into consideration."

*The motion was adopted.*

**Clause 2.—(Definitions)**

**Mr. Speaker:** The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

**Shri Kanungo:** There are amendments only to clauses 89, 90, 91 and 105.

**Mr. Speaker:** So, I shall put clauses 3 to 89, together.

The question is:

"That clauses 3 to 89 stand part of the Bill."

*The motion was adopted.*

*Clauses 3 to 89 were added to the Bill.*

## New Clause 89A

Shri Naushir Bharucha: Sir, I beg to move:

Page 55,—

After line 6, insert—

“89A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, a prosecution for an offence falling under Section 78 or Section 79 of this Act in relation to a trade mark may be instituted in the Court of a Presidency Magistrate or of a First Class Magistrate having jurisdiction in the place where is situate the registered office or the principal place of business in India or the address for service in India of the Company or other proprietor of the trade mark in question in the case.

(2) A prosecution may also be instituted in the Court of a Presidency Magistrate or of a First Class Magistrate having jurisdiction in the place where a branch office of the company or other proprietor of such trade mark is situate if such place is nearer to the place where the offence has been committed than the registered office or the principal place of business referred to in sub-section (1)

(3) A High Court within the limits of whose appellate jurisdiction a prosecution under sub-section (1) or sub-section (2) has been instituted may on an application made to it by or on behalf of the accused, order:

(a) that such cases be transferred to any other court within such limits; or

(b) that the prosecution be stayed and the complainant be directed to institute a fresh complaint in a court outside such limits having jurisdiction in the place where the cause of action accrued:

Provided that the High Court is satisfied that the complaint does not disclose offence of a serious nature and that grave inconvenience and expense would be caused to the accused if the complaint were allowed to be heard and determined in the court in which it has been instituted.

(4) If a fresh complaint as directed by the High Court's order made under sub-section (3) is filed within two months of the date of the said order, the original complaint shall be deemed to have been withdrawn with the Court's permission. The period of limitation mentioned in Section 92 shall not apply to the fresh complaint so filed. If no fresh complaint is filed within two months as aforesaid, the original complaint shall be dismissed by the Court in which it was filed.”

I shall analyse the implications and incidentally try to answer the point which has been raised by my hon. friend Shri C. R. Pattabhi Raman. Sir, my amendment falls into four parts. In the first place I have said that “notwithstanding anything contained in the Code of Criminal Procedure, a prosecution for an offence falling under section 78 or Section 79 of the Act in relation to a trade mark may be instituted in the Court of a Presidency Magistrate or of a First Class Magistrate having jurisdiction in the place where is situate the registered office or the principal place of business in India or the address for service in India of the company or other proprietor of the trade mark in question in the case.”

It is true that this section seeks to alter the principle underlying the Code of Criminal Procedure that the place where a person should be prosecuted should be the place where the offence has been committed. Now let us make a distinction between the offences under the Code of Criminal Procedure and those committed under this Act. Supposing, for instance a

murder is committed, it is obvious it must be tried in the place where the offence was committed. But in this case, if we turn to clauses 78 and 79, we will find that a variety of offences are described, and the very nature of the offences is such that they could be simultaneously committed at several distant places by different persons. It is not as if there is one specific offence which is committed by one particular person. Here the aggrieved party may be called upon simultaneously to go to several States, a dozen States, or scores of towns, where the same offence is committed. If we say that the aggrieved party must run to the various States it means that it has to run all over the country, instead of all those offenders being brought to one place. It is humanly impossible if effective implementation of the Act is contemplated, that any aggrieved party will successfully carry on litigation in a dozen different places. It is absolutely impracticable. In other words if litigation is to be carried on at so many different fronts it will be humanly impossible to seek redress. So, what I suggest is that notwithstanding anything contained in the Code of Criminal Procedure, having regard to the nature of the offences, the party should be brought and tried, where the aggrieved party has his place of business.

The second point is this. Supposing a particular aggrieved party has got several branches. It has been provided that the complaint can be instituted in a court nearest to the offender. The idea is that, as far as possible, inconvenience caused to the accused should be minimised. Take for instance the case of a manufacturer having his office in Bombay. The offence is committed at Calcutta. If he has got a branch office there the proceedings must be instituted in Calcutta. The High Court is given power, if necessary, to see that a complaint is not instituted where the principal office is situated, but only where the offence is committed. My hon. friend while criticising this said: supposing the offender, the accused person, is in

Delhi, is it just and fair to ask him to go to Bombay or Calcutta? If a person has committed an offence and if there is *prima facie* evidence, I do not see any reason why that person should not be subjected to that much of inconvenience. As the scheme of the Bill now stands, the aggrieved party is to be subjected to all inconvenience, but not the accused. As I asked, how is it humanly possible for an aggrieved party to run to a dozen different places? The more popular the goods the greater the number of imitations and therefore it is no use making an enactment, unless we provide a practical remedy. In view of the changing and complex commercial system everywhere, our old notions of law have to be revised. It is no use trying to go along the beaten path and expect certain results to follow.

It is considered that in some cases out of sheer spite a person may be prosecuted and probably brought from a distant place. Surely in that case the power can be given to the court to prescribe that before the admission of the complaint the prosecuting party should be made to deposit a certain amount in the court out of which the expenses of the accused will be defrayed. Let us appreciate the fact. When a complaint is instituted in a criminal court the complainant has to produce not only his trade mark but also the label and the trade mark which has been imitated. If there are packages and cartons they have to be produced. Often the imitation is so complete that there is not a shred of doubt which way the judgment will go.

Therefore my submission is this. Unless you do this it is humanly impossible for the proprietor of a trade mark to resort to a remedy which can be useful to him.

Shri Achar (Mangalore): I am afraid I have to oppose this amendment. No doubt this law regarding trade marks is cleverly and ingeniously offended in several parts of the country. We know in the practical

[Shri Achar]

administration of this branch of law it is very difficult to book the persons. I do see that point which my hon. friend Mr Bharucha has in mind. Often it is done so cleverly that it is almost impossible to find out the offence and the man who is aggrieved finds it still more difficult to prosecute the person. That may be true. But on account of that we cannot change the common procedure of law. Of course it is a commonplace that just because there is a complaint against a person, even if it is a *bona fide* complaint, it cannot be said that a person should be asked to proceed somewhere else and the trial should be there. The presumption of law is that every man is innocent until the contrary is proved. We cannot have any prejudice against that man. Therefore, it is not only the person who is aggrieved who has to be taken into consideration, but we have to consider this aspect of the matter from the point of view of the accused also. When we look at it from that point of view, I am inclined to think that the general principle of law is quite correct even with regard to trade marks offences. Therefore, I feel the amendment has to be opposed, and I oppose the amendment.

Shri Mulchand Dube (Farrukhabad): Mr. Speaker, Sir, I am afraid I must also oppose the amendment moved by my hon. friend, Shri Bharucha. If the argument of my hon. friend is accepted, it will revolutionise the entire law of jurisdiction. He wants that a person who, according to the prosecution, has committed an offence must be dragged to the place where the prosecutor lives or carries on his business. He asserts that on the assumption that it is only the prosecutor, or the person whose trade mark has been infringed, who is the aggrieved person. He does not seem to take into consideration the fact that the person against whom the complaint has been made may also be an aggrieved person. There may be no basis for the complaint. The complaint may be absolutely baseless, and

the prosecutor may be absolutely wrong as to whether an infringement has or has not taken place. Similarly, Sir, in the case of civil cases the jurisdiction lies at the place where the cause of action accrued or where the defendant resides. It is wrong on principle to start proceedings at the place where the plaintiff resides. Therefore, it is a revolutionary amendment and against all principles, I submit, of the law of jurisdiction. I, therefore, oppose the amendment.

Shri Kanungo: Sir, the Trade Marks Owners' Association, which submitted a very well reasoned memorandum to the Joint Committee and also tendered evidence before it, never suggested that the *situs* of the trial should be shifted as suggested by Shri Bharucha. They did bring out all the difficulties which a complainant has to face either in civil or in criminal proceedings connected with trade marks, and, certainly, they argued before the Joint Committee about the infringement of physical property as distinct from the infringement of property in a trade mark. All they wanted was that the offences should be made cognizable, so that search, discovery and all that could be done by the Government's prosecuting agency. But they never suggested that the *situs* should be changed either for the civil law or for the criminal law.

The Joint Committee gave considerable thought to these submissions and came to the conclusion, with which the Government agree, that the present conditions being what they are, there is no ground to undertake a violent change in the established procedural law, both civil and criminal. Also, after a great deal of discussion and consideration, the Joint Committee decided that criminal offences under this particular legislation should continue to be governed by the summons case procedure of the Criminal Procedure Code. Certainly prosecution is rather difficult in any summons case as compared to a cognisable case, but

the distinction has been made deliberately—certain offences have been made cognizable and certain other offences have been made non-cognizable. Therefore, Sir, there is no ground for making this violent change in the established procedural law, both civil and criminal, of the country.

There is one more little point. I would submit, Sir, that it is not merely by the complainant or the accused in criminal law, or the plaintiff and defendant in civil law, who are concerned. There are witnesses also and, in any case, wherever is the situs of the trial, the witnesses have to go and give evidence. The convenience of the witnesses, I submit, for the purposes of justice, is also important. Therefore, I am sorry I cannot accept this amendment.

**Mr. Speaker:** I shall now put the amendment, amendment No. 1 seeking to introduce New Clause 89A, to the vote of the House.

The question is:

Page 55, after line 6, insert—

“89A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, a prosecution for an offence falling under Section 78 or Section 79 of this Act in relation to a trade mark may be instituted in the Court of a Presidency Magistrate or of a First Class Magistrate having jurisdiction in the place where is situate the registered office or the principal place of business in India or the address for service in India of the Company or other proprietor of the trade mark in question in the case.

(2) A prosecution may also be instituted in the Court of a Presidency Magistrate or of a First Class Magistrate having jurisdiction in the place where a branch office of the company or other proprietor of such trade mark is situate, if such place is nearer to

the place where the offence has been committed than the registered office or the principal place of business referred to in sub-section (1).

(3) A High Court within the limits of whose appellate jurisdiction a prosecution under sub-section (1) or sub-section (2) has been instituted may on an application made to it by or on behalf of the accused, order:

(a) that such cases be transferred to any other court within such limits; or

(b) that the prosecution be stayed and the complainant be directed to institute a fresh complaint in a court outside such limits having jurisdiction in the place where the cause of action accrued:

Provided that the High Court is satisfied that the complaint does not disclose offence of a serious nature and that grave inconvenience and expense would be caused to the accused if the complaint were allowed to be heard and determined in the court in which it has been instituted.

(4) If a fresh complaint as directed by the High Court's order made under sub-section (3) is filed within two months of the date of the said order, the original complaint shall be deemed to have been withdrawn with the Court's permission. The period of limitation mentioned in Section 92 shall not apply to the fresh complaint so filed. If no fresh complaint is filed within two months as aforesaid, the original complaint shall be dismissed by the Court in which it was filed.”

The motion was negatived.



Clause 90—(Evidence re: Goods imported by Sea)

Mr. Speaker: Then we come to clause 90.

Shri Nanshir Bharucha: Sir, I beg to move.

Page 55, lines 9 to 11,—

omit "or under clause (d), clause (dd), clause (e), clause (f), clause (h), clause (i), or clause (j) of section 18 of the Sea Customs Act, 1878."

Sir, I may be allowed to briefly say what is intended by this amendment. Clause 90 reads as follows—it relates to evidence of origin of goods imported by sea:

"In the case of goods brought into India by sea, evidence of the port of shipment shall, in prosecution for an offence under this Act or under clause (d), clause (dd), clause (e), clause (f), clause (h), clause (i) or clause (j) of section 18 of the Sea Customs Act, 1878, be *prima facie* evidence of the place or country in which the goods were made or produced."

The words sought to be omitted are those with reference to section 18 of the Sea Customs Act. The idea is that these words could fit in more appropriately under the Sea Customs Act rather than in the Trade and Merchandise Marks Act. It is not my intention that the purpose of these particular words should not be fulfilled. The only point is that these words fit in more appropriately under the Sea Customs Act. After all, what does this clause 90 say? It says that where goods are brought into India by sea then evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced. Where does the question of clauses (d), (dd), (e), (f), (h), (i) and (j) of section 18 of the Sea Customs Act come in. If it is sought to be enacted under the Sea Customs Act also, the same presumption should apply. Then this particular section should be lifted

and put in there. That is why I have put in this amendment saying that these words should be deleted. It is not that I want to whittle down the scope of that, but the proper place for these words is in the Sea Customs Act and not in the Trade and Merchandise Marks Act.

Shri Kanungo: Sir, the original clause 90 as introduced in the Bill reads as follows:

"In the case of goods brought into India by sea, evidence of the port of shipment shall, in a prosecution for an offence under this Act or section 18 of the Sea Customs Act, 1878, be *prima facie* evidence of the place or country in which the goods were made or produced."

The Joint Committee discussed this matter and decided that the words "under clause (d), clause (dd), clause (e), clause (f), clause (h), clause (i) or clause (j)" should be included. They wanted to make it more explicit. Therefore, when the matter has been discussed thoroughly and this has been done, and the purpose of the Mover of the amendment is the same, I do not think that these words should be deleted.

Mr. Speaker: The question is:

Page 55, lines 9 to 11, omit

"or under clause (d), clause (dd), clause (e), clause (f), clause (h), clause (i), or clause (j) of section 18 of the Sea Customs Act, 1878."

The motion was negatived.

Mr. Speaker: The question is:

"That clause 90 stand part of the Bill"

The motion was adopted.

Clause 90 was added to the Bill.

Clause 91—(Costs of defence or prosecution)

Shri Nanshir Bharucha: I beg to move:

Page 55, for clause 91, substitute

"91. In any prosecution under this Act, the Court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the Court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties. Costs so awarded shall be recoverable as if they were a fine."

This clause relates to costs of defence. It will be observed that clause 90 related to goods imported into India by sea. Now, clause 91 says:

"On any such prosecution as is mentioned in section 90, the court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively"

The idea is this. So far as my amendment is concerned, I say why should cost be made payable by one party or the other only in cases where the goods have been imported into India by sea and not otherwise. Why should there not be a general clause whereby sea and not otherwise. Why should either the complainant pay the cost to the accused or the accused to the complainant, whatever the case may be instead of restricting the question of payment of costs only to those cases which fall under clause 90. My amendment is this:

"In any prosecution under this Act,"—

It is not merely confined to those prosecutions which arise out of clause 90.

"...the Court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the Court deemed reasonable, having

regard to all the circumstances of the case and the conduct of the parties. Costs so awarded shall be recoverable as if they were a fine".

My amendment, therefore, makes the scope of clause 91 logical. There is no logical reason why costs in cases falling under clause 90 only should be awarded and not in other cases. Surely, it is not the intention, I presume, of this hon. House or the Minister in charge to say that in other cases costs must not be awarded. It is a very big flaw, and I think the Minister should look into it

Shri Kanungo: I would only mention that this clause, as it stands, has been bodily lifted from the existing Mercantile Marine Act. There must be decisions based on the wording as it stood, and as it stands, here. However, I have no objection to accept the amendment as moved by Shri Naushir Bharucha.

Mr. Speaker: Is he accepting it?

Shri Kanungo: Yes, Sir.

Mr. Speaker: The question is:

Page 55, for clause 91, substitute—

"91. In any prosecution under this Act, the Court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the Court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties. Costs so awarded shall be recoverable as if they were, a fine."

*The motion was adopted.*

Mr. Speaker: The question is:

"That clause 91, as amended, stand part of the Bill"

*The motion was adopted.*

Clause 91, as amended, was added to the Bill.

Clause 92 to 105 were then added to the Bill.

**Clause 105A — (New clause)**

**Shri Kanungo:** I would suggest to Shri Naushir Bharucha that he need not move it, because we have argued it already

**Shri Naushir Bharucha:** I am, of course, moving it, but I am not going to make a long speech. I beg to move:

Page 58, after line 14, insert—

"105A (1) Notwithstanding anything contained in the Code of Civil Procedure a suit or other proceeding in respect of a cause of action arising under section 78 or section 79 of this Act in relation to a trade mark may be instituted in a civil court of competent jurisdiction in the place where is situate the registered office or the principal place of business in India or the address for service in India of the company or other proprietor of the trade mark in question in such suit or proceeding

(2) A suit or other proceeding may also be instituted in a civil court of competent jurisdiction in the place where a branch office of the company or other proprietor of such trade mark is situate, if such place is nearer to the place where the cause of action arose than the registered office or the principal place of business referred to in sub-section (1)

(3) A High Court within the limits of whose appellate jurisdiction a suit or proceeding under sub-section (1) or sub-section (2) has been instituted, may on application made to it by or on behalf of the defendant order:

(a) that such suit or proceeding be transferred to any other court within such limits; or

(b) that the suit or proceeding be stayed and the plaintiff be directed to institute a fresh suit or proceeding in a court outside such limits having jurisdiction in the place where the cause of action accrued:

Provided that the High Court is satisfied that the cause of action disclosed in the plaint is not of a serious nature and that grave inconvenience and expense would be caused to the defendant if the suit or proceeding were allowed to be heard and determined in the court in which it has been instituted

(4) If a fresh suit or proceeding as directed by the High Court's order made under sub-section (3) is filed within two months of the date of the said order, the original suit or proceeding shall be deemed to have been withdrawn with the Court's permission. If no fresh suit or proceeding is filed within two months as aforesaid, the original suit or proceeding shall be dismissed by the court in which it was filed."

The point that I am making is that these arguments which arise in relation to the criminal cases are also the same and they hold good in relation to civil proceedings, because, between them there is no difference, so far as the hardship to the complainant or the accused party is concerned.

I might only add that the previous amendments Nos. 1 to 3 and this amendment, relating to these provisions, were drafted on the advice of a Presidency Magistrate of Bombay, who for many years, held the post of the Chief Presidency Magistrate. It is not as if I am giving these amendments

without adequate reason. I have made slight modifications so that they would be logical. If it is the wisdom of the hon. Minister and the House to throw it out, I cannot help it.

**Shri Kanungo:** I have already replied to these points before. I do not want to take the time of the House any more on them. I do not accept the amendment.

**Mr. Speaker:** The hon. Member evidently does not press his amendment. I need not put it to the vote of the House.

*The amendment was, by leave, withdrawn.*

**Mr. Speaker:** The question is:

"That clauses 106 to 136 stand part of the Bill".

*The motion was adopted.*

*Clause 106 to 136 were added to the Bill*

*The Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.*

**Shri Kanungo:** I beg to move:

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

**Mr. Speaker:** Motion moved:

"That the Bill, as amended, be passed"

**Shri L. Achaw Singh (Inner Manipur):** The present Bill seeks to consolidate the different enactments in regard to trade and merchandise marks. After coming out from the Joint Committee, it seems the Bill has been improved a lot, and it has found the general acceptance of the House. Most of the changes in this Bill are based on the recommendations of Mr. Justice Rajagopala Ayyangar. In the Joint Committee most of the differences have also been ironed out and most of the amendments and suggestions have been accepted by the Government. That is why this is a better Bill and also an improved one.

There have been conflicting opinions on many of the provisions of this Bill, and the Government has tried its best to compose all the differences and accommodate all the different viewpoints. The aim in introducing this Bill is to protect genuine trade marks and also to protect the genuine consuming public and discourage the use of fraudulent trade marks. Trade marks have now become, like other items of industrial property, like patents, designs and copyrights an industrial property. The law seeks to guarantee to each man the profits accruing from his property. It is highly essential that in the interests of trade, commerce and public health, unfair and improper trade practices should be suppressed and that fair and legitimate competition is not unduly interfered with. So, the Bill has been able to achieve this double objective.

It should be noted that this legislation has a limited purpose namely, to define the rights and privileges and the liabilities and obligations of the parties who take the trouble and the precaution of registration. The working of the Trade Marks Act of 1940 emphasises the fact that it is necessary to provide better facilities to merchants in distant parts of the country for registration of their trade marks. A provision has been made for the establishment of branch offices of the Trade Marks Registry in different parts of the country. In the interests of better co-ordination of the administration and greater efficiency as well as economy, the two departments, namely, the Trade Marks Registry and the Patents Office, have been amalgamated under one head. That is also provided in this Bill. In order to safeguard the interests of the proprietors, provision has also been made in clause 3 to provide machinery for the enforcement of their rights in a very clear and unambiguous way.

With regard to the criminal laws relating to false trade marks and

[Shri L. Achaw Singh]

false trade descriptions, the penal law has been strengthened properly and adequately. The punishment has been increased to two years and three years respectively. The practice of selling spurious goods, particularly drugs and medicines, is widespread in this country. The punishment for offences relating to false trade marks and false trade descriptions has been enhanced and the definition of trade marks and trade descriptions has also been expanded.

It seems to me that there has been a controversy with regard to the power of the Government to intervene in certain matters. In the original Bill, there was provision for appeal against the decision or direction of Government with regard to certification trade marks in Part B of the register, but that has been done away with now, and no appeal can lie in any court against the order or direction of Government. I am of the opinion that the powers are sweeping and too much and there is no necessity for such a provision. Such powers of the Government should be done away with.

In regard to clause 9 which deals with the opening of Part B of the register, it has been found necessary that there should be such a register for those trade marks which could not be included in Part A, in the interest of the export trade in the country. Provision of Part B register has been necessitated because the pre-requisites for registration in Part A have been found to be too rigid. Now it has been made less rigid. For that the Government should take the necessary precautions and see that it may not be too wide. In certain countries, there is a provision of making some deposits because of the large number of applications made by different persons. But our country is unsuited for such a system. So, I request the Government that they should take

enough precautions with regard to entry in Part B register.

Mr. Speaker: It was pointed out here that Gandhiji's portraits were associated with beads, etc. Is there any provision to prevent that?

Shri Kanungo: That has been provided for; it cannot be done.

Mr. Speaker: Probably the hon. Minister is thinking of clause 14. It makes a reference or creates an impression that the particular article belongs to a particular person. Clause 14 says:

"Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person or a person whose death took place within twenty years prior to the date of application..." etc

Of course, nobody will think that Gandhiji was connected with it, merely because his portrait appears on a cigarette packet. It is absurd to associate Gandhiji with that. Then, merely for the love of the portrait of Shri Ramchandramurthi and Sita, it is used in advertisements. Some people brought these advertisements and said, "Look, is this the method?" I am afraid clause 14 does not serve the purpose. It is not as if Gandhiji has got connection with that, but all the same, it is wrong. Even now it is not too late. This is so dangerous. In our country, any person, however big he may be, may be associated with a bottle of whisky. Sufficient provision has not been made for that in this Bill. Fortunately, they have saved women. Their names are not associated with drinks and cigarettes.

An hon. Member: Portraits of Lakshmi are used.

Mr. Speaker: Even now it is not too late. If it goes to that House

and comes back to this House with a suitable amendment, there is no harm. There must be something done for this. I am sorry I am not sitting there to make a suggestion.

**Shri S. M. Banerjee (Kanpur):** They use these portraits in the hair cutting saloons.

**Mr. Speaker:** There is no harm, if we pass the Bill. The hon. Minister may think over it and remodel clause 14 so as to cover this. Even if it goes to that House, an amendment may be made and brought to this House. It seems to be very wrong that we should allow such advertisements and trade marks.

**Shri Naushir Bharucha:** I want to make one or two observations. Firstly I would like to know what is the intention of the Government with regard to establishing different branch offices for registration of trade marks in every State. Apart from what the law says, I want to know whether it is the intention of the Government to see that in every State one branch office is opened. I would like to know whether the reason is only administrative, or whether there are any difficulties in connection with that, apart from the question of expenditure that be involved.

Secondly, I have got my doubts as to how this Act will really function. I am still of the opinion that very grave difficulties would be encountered by the aggrieved parties in prosecuting the offender. I would like to ask whether the Government could place before this House a sort of administrative report as to how in actual practice this particular Act will function, because unless we have some sort of report from the hon. Minister about the functioning of this particular Act, I think the House will remain in ignorance about it. People will continue to suffer the hardships and infringement of trade marks will continue to take place. If, for instance, we can know from an

annual report or some other periodical report that certain difficulties have to be encountered, then the House may suggest certain amendments. I would like to have a reply from the Hon. Minister to these two questions.

13.35 hrs.

[MR. DEPUTY SPEAKER in the Chair]

**Shri Panigrahi:** While going through this Bill, a doubt arose in my mind as to whether there is any provision for protecting a *bona fide* user of a false trade mark. For instance, suppose in England there is a person by name Ford. He may not be an efficient engineer, but still he somehow forms a company, manufactures cars and exports them. Similarly, suppose there is a person whose name is Pears. He may not be a very worthy man, but still he manufactures soaps in his name and sells them. Some *bona fide* trader in India imports those Ford cars and Pears soaps and sells them. I want to know whether there is any protection in this Bill for such a person who imports such kinds of soaps and cars which are really not worthy of use, but still so far as that person is concerned, he honestly believes that they are genuine and worthy of use.

**Shri Kanunge:** With regard to Mr. Bharucha's suggestion, this point was raised in the Joint Committee and the Joint Committee added a new clause.

**Shri V. P. Nayar:** Mrs. Bharucha?

**Mr. Deputy-Speaker:** I also heard it as Mrs. Bharucha.

**Shri Kanunge:** The Joint Committee has added a new clause, clause 126, which makes it obligatory for the Government to place before the House the report of the Registrar every year.

**Shri Naushir Bharucha:** I wanted to have a report from the Government about the functioning of the Act. The Registrar's report may not

[Shri Naushir Bharucha]

cover any thing more than what is required. We want to know what difficulties are encountered in the actual enforcement of the provisions of the Bill.

Shri Kanungo: I can only say that he may wait for the first report. After going through the report, if he wants to place any suggestions before the House, he may communicate with me. We will see whether Government can collect this information and whether it is worthwhile collecting it and placing it before the House.

Regarding the other point by the hon. Member opposite about appeals, the right of appeal has been curtailed only in such cases where the decision of the Government is of an executive nature. Wherever there is an element of judicial nature, the right to appeal is always there. But, as a matter of policy, certain orders of Government are not appealable. It was thoroughly discussed in the Select Committee.

About the problematical question which was posted by Shri Panigrahi, I would suggest that he may consult a competent solicitor. I have nothing more to add.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

13.43 hrs.

#### CENTRAL SALES TAX (SECOND AMENDMENT) BILL

The Deputy Minister of Finance (Shrimati Tarkeshwari Sinha): Mr. Deputy-Speaker, I beg to move:

"That the Bill further to amend the Central Sales Tax Act, 1956, as reported by the Select Committee, be taken into consideration."

I had already explained to the House the important changes proposed to be made by the Bill at the time of moving the motion for reference to the Select Committee. I do not, therefore, wish to take the time of the House by recapitulating them now.

Shri V. P. Nayar (Quilon): When there is plenty of time, nobody wants to take time.

Mr. Deputy-Speaker: Those who usually complain should utilize this opportunity.

Shri V. P. Nayar: I never complain about time.

Shrimati Tarkeshwari Sinha: I would touch only a few changes made by the Select Committee and reply to some of the points raised by the hon. Members in their minutes of dissent.

In clause (2) of the Bill, the definition of "place of business" has been redrafted to include also the place of business of an agent where a dealer carries on business through such an agent. This would resolve any possible doubt in determining the State which could levy the tax in cases where dealers with one place of business in one State move goods to a different State through brokers or agents. In a minute of dissent an apprehension has been voiced that the definition of "place of business", as adopted, would result in taxation by two States of a single transaction of inter-State sale. I want to dispel any such doubt. In clause (8) of the Bill it has been clearly laid down that that State alone from which movement of goods commences would normally have jurisdiction to levy tax on that sale.

In clause (5), another important change has been made to the original draft Bill, and the scope of that amendment is fully explained in the report of the Select Committee, which has been already circulated to the hon. Members.