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LOK SABHA

JOINT COMMITTEE ON THE TRADE AND MERCHANDISE MARKS BILL, 1958

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
July, 1958.

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WITNESSES EXAMINED

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2. Shri A. N. Nagpaul		
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2. Shri W. S. Kane		
3. Shri R. S. Amladi		
III. Trade Marks Owners Association of India, Ltd., Bombay.	8-7-58 & 9-7-58	41—115
Spokesmen :		
1. Shri K. T. Chandy—*Chairman*		
2. Shri A. C. Manchanda—*Vice-Chairman*		
3. Shri K. S. Medhora—*Member of the Council*		
4. Shri B. C. Ojha—*Secretary*		
5. Shri S. H. Gursahani.		

THE JOINT COMMITTEE ON THE TRADE AND MERCHANDISE MARKS BILL, 1958

Minutes of Evidence taken before the Joint Committee on the Trade and Merchandise Marks Bill, 1958.

Monday, the 7th July, 1958 at 09.30 hours.

PRESENT

Shri J. M. Mohamed Imam—*Chairman*

MEMBERS

Lok Sabha

Shri C. R. Pattabhi Raman
Shri Radhelal Vyas
Pandit Dwarka Nath Tiwary
Shri Kailash Pati Sinha
Shri C. Bali Reddy
Shri Nibaran Chandra Laskar
Shri Tayappa Hari Sonavane
Shri Akbarbhai Chavda
Shri Shiva Dutt 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 Chintamani Panigrahi
Chaudhary Pratap Singh Daulta
Shri Laisram Achaw Singh
Shri Balasaheb Patil
Shri Ram Chandra Majhi
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Shri Motisinh Bahadursinh Thakore
Shri Nityanand Kanungo

Rajya Sabha

Shri K. P. Madhavan Nair
Shri Mahesh Saran
Shri Adityendra
Moulana M. Faruqi
Shri Akhtar Husain
Shrimati Chandravati Lakhanpal
Shri Swapnanand Panigrahi
Shri V. C. Kesava Rao
Shri Devendra Prasad Singh
Shri V. Prasad Rao
Shri B. D. Khobaragade
Shri B. V. (Mama) Warerkar

DRAFTSMEN

Shri G. R. Rajagopaul, *Additional Secretary and Chief Draftsman, Ministry of Law.*

Shri G. R. Bal, *Deputy Draftsman, Ministry of Law*

REPRESENTATIVES OF MINISTRY AND OTHER OFFICERS

Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Commerce and Industry.*

Dr. S. Venkateswaran, *O.S.D., Ministry of Commerce and Industry.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

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Spokesmen:

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Shri F. C. Shah — Shri R. S. Amladi
Shri W. S. Kane

I. THE PATENT OFFICE SOCIETY, CALCUTTA.

Spokesmen:

(1) Shri C. S. Pai

(2) Shri A. N. Nagpaul

(*Witnesses were called in and they took their seats*)

Chairman: I would like to state to you the rule under which witnesses are examined before this committee.

"Where witnesses appear before the Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It shall, however be explained to the witnesses that even though they may desire their evidence to be treated as confidential, such evidence is liable to be made available to Members of Parliament."

You are agreeable to this.

Witnesses: Yes.

Chairman: You represent the Patent Office Society?

Shri Pai: Yes.

Chairman: May I know the composition of this Society, whether the membership is confined only to employees or it is open to non-employees also?

Shri Pai: It is restricted only to the employees of the Patent Office. The Controller is the *Ex-officio* Chairman of the Society.

Chairman: What is your designation?

Shri Pai: I am holding the post of Examiner of Patents, in the Patent Office. I am also Secretary of the Patent Office Society.

Chairman: Is there any other Society sponsored by non-officials or persons who are owners of patents?

Shri Pai: Not to our knowledge.

Chairman: What is the membership?

Shri Pai: We are just now 45 members.

Chairman: We have got your memorandum before us. You are against the amalgamation of the Patent Office and the Trade Marks offices. May I know if there is any justification for having separate offices? How many applications are filed and how many applications are disposed of? What is the work involved?

Shri Pai: Just now, the Patents Office and the Trade Marks office are separate and the amount of works keeps us all very busy. I do not think we or the Head of our Department has sufficient time to take up additional responsibilities of the Trade

Marks Act which is not to a very large extent similar to the Patents Act.

Chairman: I want to know how many applications are filed every year.

Shri Pai: On an average, we get 300 applications per month.

Chairman: How many are disposed of?

Shri Pai: About 3000 applications per year are disposed of.

Chairman: Don't you think that there will be better efficiency and better co-ordination if both the offices are amalagamated together as in other countries where they have rich experience of the amalgamation?

Shri Nagpaul: In this connection, I would like to place before you certain facts, in regard to unification of offices. In 1940 we tried this experiment of having a unified office. At that time, it was discarded deliberately after giving a trial for two years. For the last 15 years we have been having separate offices for Trade marks and Patents after deliberately discarding the first system. These two offices have been functioning very efficiently at the two places. The necessary co-ordination is being done at the Ministry level by a section known as the T.M.P. Branch. To our knowledge, there has been no case in which we have suffered any handicap at any level simply because there is no proper co-ordination in both the offices.

In this conection, I would like to state that the concepts of Patents and Trade marks rights are based upon two different fundamental principles. In one case, it is a novelty. In the case of a patent, what we want is that the invention must be novel. It should not be disclosed to anybody unless an application is filed at the Patent Office. In the case of Trade marks, the conception is quite different. The user of the trade mark has a better claim for registration. The second fundamental difference is about the asset value of Patents and Trade marks. In the case of a patent, our experience is, 80 per cent of the patents are not workable commercially so much as to get some benefit out of it. It is only 20 per cent of the patents which when exploited commercially, give a profit. In the case of a trade mark, it is meant for marking articles for particular purposes and the asset value is there. There is no speculation. In the case of a patent, there is speculation. Whether it is workable or not, the inventor does not know. In the case of a trade mark, it has a definite value.

The third difference lies as regards financial position. In the case of the trade mark, the community which is interested is the commercial community. In the other case, the inventor is not financially so well off. These are the three basic distinctions between Patents and Trade marks.

The distinctions go to minute details. As we look at these details, it will not be possible to have co-ordination in the minute details of these two Acts. Co-ordination can possibly be done in respect of broad principles of administration, supervision, general establishment. In the case of details of administration, it is not possible because the conception is different. This co-ordination has been done by the T. M. P. Branch at the Ministry level for the last 15 years and as far as our knowledge goes, we have not come across a single case in which it has been felt at the Ministry level or by the Controller or by anybody that due to lack of co-ordination, we have suffered any handicap. In this connection, I may say we have got no question of cross-reference between the Patent Office and the Trade Mark Registry. There has been no case so far. In view of this, what we feel is that in the absence of any public demand or agitation, to which I shall come later, and in view of the fact that up till now no public opinion has been elicited on this very specific issue....

Chairman: Are we to presume that you represent not only the interests of the employees, but also the public?

Shri Pai: Being Government servants, we have at least to look to the interests of the people whom we are serving from our office.

Chairman: We have not received any representation against this proposal from the public.

Shri Pai: There was a well-represented Patent Enquiry Committee.

At that time, all the views of the public were taken, a large number of persons were interviewed and memoranda received and ultimately this small Act which is so vital to the Patent Office is slowly appearing in the Trade Mark Act which is an entirely different thing. That is why people having interest in patents have lost the chance of coming forward and giving their views.

Chairman: I find the Trade Marks' Association and other people have welcomed this suggestion for amalgamation.

Shri Pai: I do not know whether they have to come to the Patent Office. It might be that their main interest is to enrich their own State. It is equally our interest to bring down the Trade Marks Office to our State, but we would not like to trouble the people of Bombay knowing that conditions in Calcutta are equally bad, if not worse than Bombay, in so far securing places of residence and office is concerned.

Chairman: The shifting of offices from Calcutta to Bombay is welcomed by many associations except perhaps by your association and another. It is felt that there is distinct advantage in transferring the office from Calcutta to Bombay. What are the disadvantages you contemplate?

Shri Nagpaul: This question was considered by the Patent Enquiry Committee, and they maintained that Bombay was equally as bad as Calcutta.

Chairman: Then, let us have it in a third place.

Shri Nagpaul: That is why they suggested they should be taken to Delhi, but they deferred it because the accommodation postion was very acute in Delhi.

At Calcutta, the Patent Office is 100 years old practically, and there we have a large corps of patent agents who have established themselves there. If the office is to be shifted to another place, they cannot shift so immediately, with the result they will have to deal from there with the Patent Office wherever it is situated, and it will bring in a lot of inefficiency and other things, especially because 90 per cent of the patent applications are filed in India through the patent agents in Calcutta.

Chairman: That may be because the Patent Office is there.

Shri Nagpaul: Because the patent agents are established there.

Chairman: Because the office is there.

Shri Nagpaul: Yes. If we shift to Bombay or any other place, the patent agents cannot shift so quickly. They will take 10 or 15 years, or they may not want to, and we think the efficiency of the office working will go down. Calcutta is equally an industrial city as Bombay.

Secondly, if we see the statistics of the Indian applications filed in the Patent Office from the two States, they are practically the same—the difference is only five or ten, and that too in 1956, in West Bengal the applications were 162 and from Bombay 140. This is a fluctuating figure. Some

time it will go down. Even if it goes down, it is only by five or ten. For the sake of this small difference, it is not justifiable to shift the office and entail some expenditure which at the moment Government may not like to incur.

Shri Prasad Rao: It is the practice in the U.K. as well as in Canada to have a common Controller-General for patents and trade marks. Can these friends explain whether the efficiency there has been in any way impaired, whether the reports which have been statutorily placed on the Table of Parliament in U.K. prove that efficiency has been in any way affected by having close co-ordination under the same Controller-General?

Shri Pai: The point is, we cannot compare ourselves with the other countries in this respect firstly because we had tried it as in other countries and felt there was no need to have a combined head. So, those who feel the two should be combined into one should come forward with very valid reasons why it should be done, because such a head will be a very expensive head as it is going to be at the very top level and he will be a very highly paid man. To our knowledge, it will not be easy to get such a highly qualified man in our country just at present. Even if we can get such a costly man as they have in the U.K. or USA, it will be too much for the people in India to pay for such a highly paid man.

Shri Prasad Rao: The Report of the Trade Marks Enquiry Committee states that at present we have two heads each drawing Rs. 2,000 and that it will be much more economical if they are merged together. They say:

> "We, therefore, suggest that the Patent Office should be removed to Bombay. The question whether the Patent Office should be shifted from Calcutta was considered by the Patents Enquiry Committee, whose somewhat inconclusive finding that the 'Patent Office should remain in Calcutta for the next five years' indicates that that office may be removed to Bombay thereafter. If that is done, the Trade Marks and Patent agents can, if they wish, be concentrated in Bombay which would be convenient to all concerned. Furthermore, we recommend that the now-separate posts of Controller of Patents and Designs and Registrar of Trade Marks should be combined and held by one person. At present the two officials holding the separate posts receive a total of Rs. 4,000 in salaries. Instead of two such persons it is desirable, in our opinion, to have one person with high qualifications at a salary of Rs. 3,000 or Rs. 3,500."

They definitely and emphatically argue for the merger of both the offices. In view of that, what answer have you got for this committee's findings?

Shri Nagpaul: Referring to the first portion of the extract read out, if you will excuse me, I may say that it is a misrepresentation of the PEC Report.

Shri Prasad Rao: That is there in your memorandum. We have seen that.

Shri Pai: That is our first objection. He has not come to the conclusion that therefore it should be shifted to Bombay.

Chairman: The conclusion was that after five years the entire position should be reconsidered.

Shri Nagpaul: Regarding the second part, it will be an economy of Rs. 500. First of all, we do not exactly know what is the position Government have decided upon, because Justice Rajagopala Ayyangar has given one set of schemes in which the post of Controller-General has been put down; the posts of Controller and Registrar will

be dispensed with, and there will be one post of Controller-General of Patents and Designs and Trade Mark, and work on both sides will be disposed of by a Deputy-Controller on the Patent side and a Deputy Controller on the Trade Mark side. But we find some other thing in the Bill before Parliament. If you dispense with the Controller's post and have a Controller-General and have two Deputy Controllers on the two sides, our submission is that the economy of Rs. 500 is not sufficient to justify this amalgamation.

Coming to the second alternative, as far as our knowledge goes, the Controller of Patents is quite busy with his own work. He has got no spare time at present. We have been in arrears for the last three months although we are heavily working nowadays. We publish an abridgement, a sort of small abridgement of the various patents which we grant, for the public knowledge. That work which was to have been completed in 1948 has not been completed till today. That is the state of affairs at the Patent Office. The work is very heavy.

Similarly, I presume the work in the Trade Mark Office is also equally heavy. If the Controller of Patents who has his hands full in his own office is to be given the additional responsibility of the Registrar of Trade Marks, it will not bring about efficiency, but will bring about only inefficiency because his hands are already full. There may not be any economy whatsoever because some further hands may have to be given to him to improve the efficiency of both the offices.

Shri Prasad Rao: There are two aspects of the same question, trade mark and patent. A producer who wants to get trade mark of his merchandise registered may also want the process to be patented. Do you not think that for such persons it would be much better if both the offices are located at one and the same place, even if they are not merged together?

Shri Pai: To that extent, I would say yes, but that does not justify amalgamation. But Mr. Justice Rajagopala Ayyangar's Report has not suggested that the two offices should be together. He has suggested that the Trade Mark Registry should continue as it is in Bombay and the Patent Office should be as it is in Calcutta. So, just now they are not going to have the benefit of it. He has only suggested a combined head, and I do not think the people who have to come for patenting or registering designs will need any approach to this combined head.

Shri Prasad Rao: The witnesses have pointed out that the number of cases is almost the same. But the statistics supplied to us in the Trade Marks Enquiry Committee's Report reveals a different story. As far as registration of designs is concerned, in Bombay, in 1951, there were 648 applications, whereas in West Bengal (that is, including Calcutta), it was only 60.

Chairman: For trade marks registration?

Shri Prasad Rao: That is for the registration of designs, which is at present done by a patent office as such.

As for the applications for patents, in Bombay, in 1951, it was 139 as compared with 118 for West Bengal. I am not referring to the applications that had come from foreign countries; naturally, they could be either at Calcutta or at Bombay. If only the Indian applications are taken into consideration, then, naturally, the applications that had come to the Bombay office are higher.

So, how do you explain the fact that it would be much more convenient for the public, if it is located in Calcutta?

Shri Pai: Again, that is a question entirely for the Government. It is not for the legislature to limit the place. The latest report that we have from the Patent Office is the one for 1956.

Shri Prasad Rao: Do you contradict these figures?

Shri Pai: I am not contradicting. What I am saying is that the latest report reverses the position. So, I do not think that just by going by numbers, we shall have to shift the office from one place to another. Such a thing was done by Mohammed Tughlak, but that is not fair.

Chairman: That analogy does not hold good here.

That is a far-fetched analogy.

Shri Pai: The analogy that I give can be understood if you take into account the position in the foreign countries. Take, for example, London. The Patent Office there, since the conception of the Trade Marks Registry, has not moved into Manchester simply because there are more textile trade marks from Manchester. Similarly, the Patent Office in U.S.A. which is also doing trade mark work is in Washington and not at a place where there are more applications from one State or another. I do not think it is a feasible idea to shift the office from one place to another just because there are a few more or few less applicants. Whenever it is to the advantage of Government to shift, they can do so. They need not be bound by any restrictions by the legislature to locate the office at a particular place just because there is a slightly greater demand there.

Shri Prasad Rao: Do you agree to the proposal that both the offices should be located in Delhi even if they are not merged together?

Shri Pai: I do not think so, because the number of applications in Delhi is not to any great extent. I may just tell you that for the convenience of Government, Government can shift it anywhere. If they want to shift it to Delhi, they can do so.

Chairman: Not for the convenience of Government, but for the convenience of the public.

Shri Pai: For the convenience of the public? I do not think that, as it is, the public has ever complained. Until there is a complaint from the public, we need not take the question very seriously. The suggestion for shifting has come from Government.

Shri Prasad Rao: In your memorandum, you have suggested that the Controller should submit annual reports. What do you think that these reports should contain?

Shri Pai: Sorry, that is not in our memorandum.

Shri Kanungo: That is in the memorandum of the patent-owners.

Shri Muthukrishnan: What are your grounds to say that there are no qualified men available in India for the post?

Shri Pai: The reason for that is that the two offices have been working separately, excepting for a small period between 1940 and 1943. There were some persons who had qualifications suitable for both these offices, but most of them have retired, and I do not think there is any possibility of their coming back to Government except in an advisory capacity. So, it is not possible for them to hold the post of Controller-General of Patents and Designs, and even if they come, it will be for a very short time. Thereafter, as the Act is suggesting, we shall again have to look forward for people, and ultimately we may have to take their help again, and I hope they will live long enough to advise us.

Chairman: If they retire, there are other people who could take their places?

Shri Pai: No, I do not think there will be such a possibility, because the suggestion is that there will be a Deputy Controller and a Deputy Registrar at each place; and the Deputy Registrar of Trade Marks will not be knowing anything about Patents, as suggested in the Trade Marks Enquiry Committee's Report or the other report. So, the next man is also a problem.

Shri Nagpaul: May I throw some more light on this point? We need men with sufficient experience for doing patents work. In that respect, I may say that even at lower levels today, we have got some distinction in the recruitment of examiners in the two offices, the patent office and the trade marks registry. In the Trade Marks Registry, a man with a degree in arts, having an LL.B. degree can be taken as an examiner. Naturally, it may not be possible for him to examine patent applications where one has to go into the minute details of either the chemistry side or the scientific or technological side. Of course, there are some very good people who have risen from that position and today they are occupying very good positions. But they will not be such science graduates having some sort of technological experience. But supposing an order is passed and the qualifications are laid down that the man must be having scientific experience *plus* experience of patents work, then certain people in the trade marks registry may stand to suffer, and that would result in some sort of dissatisfaction and frustration.

Shri Kanungo: You mean the prospects of the present employees of the two offices may be affected?

Shri C. R. Pattabhi Raman: I am rather inhibited by the situation here. I understand that the persons who are speaking here are Government servants?

Shri Pai: Yes.

Shri C. R. Pattabhi Raman: Their observations are with regard to the administrative side of the adjectival law, as they say, or the administrative side of the patent section of law. That being so, I wonder, especially when it comes to a question of policy of administration, whether we could have detailed evidence taken from Government servants who are governed by the Government Servants' Conduct Rules and so on.

Shri Kanungo: The Chairman has already ruled on that.

Shri C. R. Pattabhi Raman: That was why I was a bit apologetic in the beginning. I have nothing against what they are saying. What they are saying is very valuable. But should we go into the minutia of the administration? Is that what we are prepared for?

Chairman: We are considering the advantages and disadvantages of having a combined office.

Shri C. R. Pattabhi Raman: The witnesses are telling us that for particular posts, the persons should be science graduates. Are we going now into the administrative aspects of the patent office?

Chairman: It is not administrative aspect.

Shri C. R. Pattabhi Raman: According to the witnesses, the person must not only be a graduate but must have experience to go into the scientific aspect of it and then decide on the nature of the patent and so on. All this is very illuminating. But are we to go into all these aspects now?

Shri Prasad Rao: In this Bill, we are also discussing the qualifications of the Controller-General. So, we can go into that question also.

As regards the point that they are Government servants, I would say that it is for them to decide what they want to give in evidence.

Shri Kanungo: In the Bill, the qualifications have not been defined for any post.

Shri C. R. Pattabhi Raman: But I find only the Controller-General being mentioned. In Rajagopala Ayyangar's report, I understand him to give the name of the Australian and the Englishman only, and he says that they are also scientifically qualified people. That is all that he says in his report.

Chairman: It is left to Government to select a suitable person.

Shri C. R. Pattabhi Raman: In my opinion, we are getting bogged on administrative details.

Dr. Sushila Nayar: It seems to me that the whole question of finding qualified or suitable persons is that the witnesses here are thinking in terms of the prospects of the present employees of these offices and of what would happen to them and where they would fit in. They do not seem to be looking at the picture from the broader perspective.

They themselves have stated that at present co-ordination is being effected at the Ministrial level. So, there are certain Government servants who are dealing with both sides of this picture, and, therefore, if need arises to select somebody, it is not such a problem as they seem to make it out to be. We would request these gentlemen to tell us, without thinking in terms of the prospects of their present employees in the patent office or any other office, what will be in the larger interests of the public both from the point of view of economy as well as from the point of view of convenience.

They said that economy would be effected only to the extent of Rs. 500. That, first of all, is not a correct representation.

Chairman: We shall consider that separately.

Dr. Sushila Nayar: Actually, there will be a larger economy. Secondly, they have assumed that the present heads of these organisations should be the Deputy Controllers. The Minister may be able to throw some light on this and say whether that is contemplated, because if that is contemplated, then there would not be economy. What I find on looking into these papers is that there is to be one head. When two offices are combined, naturally, certain staff becomes superfluous, and they can be used in other ways, but there is always an economy in that. On the other hand, when one office is split into two, there is extra expenditure. So, the question of economy cannot be brushed aside as they have done.

Then, I come to the question of the convenience of the public. They have said that the public has not so far complained, but that is because these two Acts are not very widely known to the public, that is, what they can get, how they can get, and what conveniences they can ask for and so on. So, it is in view of the background and history that these two have been kept separate in the past, so that till the people get used to these new Acts they may be kept separate. But, now that the public is becoming used to it, and they know more about these things, and industrialisation is going ahead more and more, it is quite conceivable that the patents of today would be the trade marks of tomorrow. Even if today they are not all the time asking for registration on both sides, yet that is going to be the order of the day hereafter. The witness says that only 20 per cent. are exploited commercially. But as the number increases, this is going to become more and more important, and the total number is also going to increase. So, from the point of view of the convenience of the public also, the question of location at one place is there. Have the witnesses any arguments against that?

Shri Nagpaul: In that respect, I have still to say the same thing. If this question was so important, then it was more desirable that this should have been put in the questionnaire either by the Patent Enquiry Committee which was set up in 1948 by Government or by the Trade Marks Enquiry Committee set up in 1953. At that time if this question was very important and Government were definitely sincere to bring it about, then it would have been desirable that they should have put this in the questionnaire. But as it is, this does not find any place in the questionnaire. So, no public opinion has been elicited on this point.

Dr. Sushila Nayar: This is no answer.

Chairman: We shall discuss that later. We shall come to our own conclusions later.

Shri J. R. Mehta: We were just now told that there was a fundamental difference in the conception of a patent and a trade mark; yet, in the same breath, we talk of co-ordination. If the conception is fundamentally different, how does the question of co-ordination arise? What are the points of similarity between patents and trade marks?

Shri Nagpaul: The only similarity between the two is that both are species of industrial property. But in so many other respects, they differ from each other. As regards co-ordination between the two, the only co-ordination we think possible is in the broad principle of administration and other things, nothing more than that, not in the minute details of administration. That co-ordination has been effected by the TMP branch at the Ministry level for the last 15 years. It is in charge of one Deputy Secretary and one Joint Secretary. They do this in addition to their normal duties. We can presume thereby that the work won't be sufficient to create a separate Controller-General to do the work of co-ordination.

Shri Pai: Even when we make our references, they have to take the opinion of the Law Ministry. It is not that it is done at their own level there. That is why the question of qualifications also comes.

Chairman: You need not bother about what happens there.

Shri C. R. Pattabhi Raman: The previous Controller himself wanted these to be made into one.

Shri Pai: This point has never come up before us.

Shri Prasad Rao: It is stated in para 10 of their memorandum:

> 'At the present moment, the Patent Office and the Trade Marks Registry are efficiently combined as a single section in the Ministry of Commerce & Industry...."

So they agree to the principle that there is not only co-ordination but also combination. What harm is there if both are done not in the Ministry but by one person, the Controller-General?

Shri C. R. Pattabhi Raman: The previous Controller seems to have suggested that this should be one.

Shri Pai: I am not aware of that.

We can only say that there will not be sufficient economy in having a separate officer. This is only the opinion which we have expressed. It is for Government to decide.

As far as efficiency is concerned, we have already decentralised. By centralisation, there will be further problems, because cases have to go through a third officer. Today our appeals and other things go from the Controller to the Ministry; when you have an officer in between the effective head of the Patent Office and

that of the Trade Marks Registry, all that we can know is that it has to wait for the opinion of the middle officer, and there will be delay.

Shri Kanungo: Even under the present Act, the quasi-judicial and judicial work of the Registrar or the Controller cannot be decided by the Ministry.

Shri Pai: No.

Shri Radhelal Vyas: How many items are there (in percentages) which are both patented and also registered as trade marks?

Shri Pai: It is difficult to answer that offhand.

Shri Radhelal Vyas: What were the reasons taken into consideration in amalgamating the two offices previously and the reasons for which they were separated later?

Shri Pai: Those details are not with us. They should be with the Ministry.

Shri Radhelal Vyas: Have you tried to ascertain them?

Shri Pai: We have tried to find out. Only from one book we could get some information. It only said that the working of the two offices, together had been made difficult. That was why it was separated. We got this from the proceedings of the Legislative Assembly at that time.

Shri Radhelal Vyas: Is it a fact that after this separation the co-ordination wing in the Ministry was started? Or was it done before?

Shri Nagpaul: We have no material to come to any conclusion about that.

Shri Pai: As it was the practice in other countries, the Trade Mark office was started in the Patent Office. To that extent, we know that is where co-ordination started. But why it was separated afterwards and why co-ordination is effected at the Ministry, we are not aware of the details.

Shri Radhelal Vyas: They have made a reference to Justice Ayyangar's Report about amalgamation. But in his Report, he only says: "I am however of the view that the consideration of this question may be deferred for the present". So he never meant that this should be taken as decided finally.

Shri C. R. Pattabhi Raman: I now learn that the C. & I. Ministry underwent a bifurcation in 1943. Commerce was separated and it took up trade marks and industry, which was separated, took up patents. Then there was a reunion. So that was the reason for the dichotemy.

Pandit D. N. Tiwary: The question we are considering has two aspects. One is whether there should be amalgamation of the two offices. Then, where these offices should be located. As regards whether these should be amalgamated or not, we have to see whether by amalgamation efficiency would suffer, and if we keep them separate, efficiency would increase. The second point is whether there is some saving, big or small, by amalgamation. Then we come to the question as to where these offices should be located.

Shri Nagpaul: As far as we know, there are four reasons put forward in the note on clause 4: uniformity with other nations, co-ordination, efficiency and economy.

As regards uniformity, we have already submitted that simply copying other nations won't do, unless of course we come to the conclusion that the system does not work. We once amalgamated and again discarded that principle. That finishes the first point.

Concerning co-ordination, we have already stated that it can be possible only in the broad principle of administration, which has been done by the TMP branch efficiently. Uptil now we have no evidence of anybody, the Ministry or anybody else, having suffered for lack of co-ordination.

As regards efficiency, we have already submitted that there are two possible alternative proposals. One is in Justice Ayyangar's report. We have already said that if we follow that, the economy expected is only Rs. 500.

Pandit D. N. Tiwary: That is in respect of one officer. By amalgamation of the whole offices, there will be further saving.

Shri Nagpaul: Amalgamation can be only at the top; fundamentally, there can be no amalgamation. This is because the two systems are different, with different budgets, different cashiers, different administration etc.

Chairman: So far as the staff is concerned, Government will look into it.

Shri Nagpaul: The question was whether any other economy was possible. We say that it may not be possible.

Chairman: Economy consistent with efficiency.

Dr. Sushila Nayar: By amalgamation, it is not our understanding that it is only amalagamation at the top.

Shri Nagpaul: It is only amalgamation in show. In reality, there is no amalgamation between the two.

Shri Prasad Rao: There is no panacea in regard to that. At a particular stage, perhaps merger might lead to efficiency; at another stage, perhaps decentralisation might contribute to efficiency. So we cannot be absolute.

Shri Pai: If you kindly refer to the procedure recommended by Justice Ayyangar in his report (para 76, page 24), it is his opinion also that the two offices should be kept separate.

Pandit D. N. Tiwary: His opinion may be another thing. What is your experience? Is there enough work to justify the two offices at separate places?

Shri Pai: There is more than sufficient work at our office at Calcutta. About the Trade Marks Office, I am not aware.

Shri Kanungo: These are matters to be left to the Estimates Committee.

Pandit D. N. Tiwary: I wanted his opinion only.

Shri C. R. Pattabhi Raman: Please see what Justice Ayyangar has recommended in paragraph 78, page 25 of his Report.

> "I would suggest that in accordance with the practice in England, all orders and decisions in respect of Patents and Trade Marks matters from the several offices may be issued in the name or on behalf of the Controller General, although the orders may have been passed by his deputies or other subordinate officers. In addition to being in charge of the administration of the unified Patents and Trade Marks Office, the Controller General will also have under his direct control matters relating to copyrights and the International Convention for the Protection of Industrial Property and will be the Secretary of the Industrial Property Department. This is also in accordance with the practice in the U.K."

He envisages a central office where patents, copyrights, trade marks will be there. It may be that the scientist may have a patent to his credit. He may not make it a trade mark.

But some other industrialists may have a trade mark which has already been patented. It is therefore necessary that all should be co-ordinated in the head. It may be that in the day to day administration, the particular officer may be different, his qualifications may be different. The channel comes later. It is a common stream. That is what is envisaged.

Pandit D. N. Tiwary: The next question is about the location. In U.K. and other places it is the number of applications which decides the location of the headquarters at a particular place. In that particular respect, we can have Calcutta or Bombay. But, will it be desirable to shift it to some other place like Kanpur or Delhi? What is your opinion?

Shri Pai: We cannot give any opinion because it is for the Government to decide which is the best place in the interests of the public and other things. All that we have brought out in our memorandum is that the Legislature should not make it a practice to restrict the headquarters to the headquarters of the Central Government.

Pandit D. N. Tiwary: Do you mean to say that the question of location should not be in the Act itself but it should be left to Government?

Shri Pai: Government is the best party to look into the entire question and find out which is the best place for both Government and the public. It should not be restricted say to Bombay; this was done for separating the two offices. It is for the Government to select the best place; it should not be restricted by the Act because this will have a bearing on the Patent Act which is just to follow.

Chairman: So, you do not want any provision about the location?

Shri Pai: It may be anywhere; but the Legislature should not put any restriction.

Shri Akhtar Husain: Is your Society registered?

Shri Pai: It is not registered.

Shri Akhtar Husain: Have you got any register of members?

Shri Pai: Yes; we have a register in our office showing the number of members.

Shri Akhtar Husain: What is the total membership?

Shri Pai: Forty-five till now.

Shri Akhtar Husain: Since when has the Society been functioning?

Shri Pai: Since 1947.

Shri Akhtar Husain: Is there any membership fee?

Shri Pai: There is no membership fee as yet.

Shri Akhtar Husain: When this memorandum of yours was submitted, was it put before the Society?

Shri Pai: It was considered by all the members of the Society.

Shri Akhtar Husain: Will you please state the number of members present when this memorandum was passed?

Shri Pai: About 40.

Shri Akhtar Husain: What other work has this Society done apart from submitting this memorandum?

Shri Pai: To begin with, we have collected a number of statistics in Calcutta which are required by the Patents Enquiry Committee. That is a main work which we have done for Government. We had organised an exhibition at Calcutta to bring forward the poor Indian inventors and to provide them space to exhibit their articles. The main idea of this society is to popularise the patent system. In the next exhibition also we are trying to help the inventors to come forward with their exhibits.

Shri Akhtar Husain: Wherefrom the funds for this expenditure were provided? Was it by the Society itself?

Shri Pai: Whenever we require funds we approach Government. They have been good enough to give us grants.

Shri Akhtar Husain: Will you please state your views about the location of this office at Calcutta? Are you aware that one of the reasons why the location of the office in Calcutta is opposed is that it is on the eastern border of the country?

Shri Pai: Yes; we are aware of this.

Shri Akhtar Husain: Are you also aware that close to Bombay is the Portuguese border?

Shri Pai: Yes.

Shri Akhtar Husain: Are you also aware that the Portuguese border is much nearer to Bombay than the eastern border of this country is nearer to Calcutta? In view of this do you think it would be safer to shift the offices or the combined offices—whatever it may be—to a place which is more central than either of these two places?

Shri Pai: That is what appears to be good to commonsense; but we leave it entirely to Government.

Shri Akhtar Husain: You agree that commonsense dictates that it should be located at a central place. Do you also agree that it should be located at a place which is an industrial centre?

Shri Pai: If you look at other countries you will find that London is not an industrial city nor New York.

Shri Akhtar Husain: So far as Indian conditions are concerned, would you agree that it should be located in an industrial centre of this country?

Shri Pai: It might be helpful to some people.

Shri Akhtar Husain: Are you aware that Kanpur is an important industrial centre?

Chairman: We may consider it afterwards.

Shri Pai: I think these are questions which I need not answer.

Chairman: His question is, can you think of a place which will be convenient for the location of this office from all points of view?

Shri Pai: Then, Nagpur is the most central place.

Shri Prasad Rao: How many exployees are at present working in the Patent Office and what is the rough estimate of the expenditure involved in shifting the office from there to Bombay or to some other place?

Shri Pai: We have no such figures. We have about 200 people working in the Patent Office.

Shri Prasad Rao: How many, according to your information, are working in the Trade Marks Office?

Shri Pai: I have not considered that aspect.

Shri Khobaragade: I think the applications from foreign countries for patents are coming to Calcutta. Can you give any reasons for that?

Shri Pai: It is because well established Patents agents are settled in Calcutta and most of the patent applications received from abroad are sent there to these agents.

Shri Khobaragade: I mean foreign companies sending their applications to Calcutta for registering their patents.

Shri Pai: Most of the foreign companies have their branches here. The practice is that these agents of the companies come into contact with the Patent agents in Calcutta because the foreign companies are settled in Calcutta. Most of the work is done directly with the assistance of the Patent agents.

Shri Khobaragade: I put it that because the Patent Office is situate at Calcutta, these applications are filed in Calcutta. If we shift the office to any other place, then the foreign applications will be filed directly.

Shri Pai: It is true; but the difficulty of shifting will come in.

Chairman: Thank you.

Shri Pai: Thank you for giving this opportunity to put our views before you.

(The witnesses then withdrew.)

II. THE PATENT AND TRADE MARK PRACTITIONERS ASSOCIATION, BOMBAY

Spokesmen

1. Shri F. C. Shah
2. Shri W. S. Kane.
3. Shri R. G. Amladi.

(Witnesses were called in and they took their seats).

Chairman: Where is your office situated?

Shri Shah: Dhobitalau. Bombay.

Chairman: What is your membership?

Shri Shah: Twenty.

Chairman: Do all of them come from Bombay or do your activities extend beyond Bombay to other cities also?

Shri Shah: Mostly they come from Bombay; but our activities extend to cities like Ahmedabad also.

Chairman: Shall we take it, if you agree, that this is presumed to consist only of practitioners living in Bombay?

Shri Shah: Yes.

Chairman: Generally you appear in trade mark cases and lawyers do not appear. Have you specialised in this?

Shri Shah: Yes; we have specialised in that.

Chairman: Do you get cases from all over the country?

Shri Shah: Yes.

Chairman: At present, all the appeals have to be filed at Bombay?

Shri Shah: At Calcutta and Bangalore also.

Chairman: With the increase in the number of offices, jurisdiction will be vested in more High Courts. Don't you think it will be to the advantage of the public and we will be saving much trouble and cost?

Shri Shah: We do not think so.

Chairman: I am sure you are lawyers duly qualified and you have appeared in a number of cases.

Shri Shah: Yes. It would not help the public because appeals from the Registrar are very few. Hardly about 5 per cent of the cases go up in appeal. All the cases do not go up in appeal. So far, there have been 250,000 applications. There have been 50 appeals in 15 years. It is not likely to inconvenience the public.

Chairman: If we increase the jurisdiction, there will be greater scope for filing appeals and people will take advantage. Many aggrieved people, considering the difficulties, might have abstained from filing appeals. If we create better facilities, it is possible that more persons will file appeals.

Shri Shah: That is possible. We are suggesting an appellate tribunal between the Registrar and the High Court. The appellate tribunal will hear the first appeal.

Chairman: We have got a tribunal here which consists of a High Court Judge or Registrar.

Shri Shah: It is not an appellate tribunal. This refers to the Registrar in his own capacity. The tribunal is another thing which hears appeals.

Chairman: In addition to this, you want to have an appellate tribunal?

Shri Shah: The provision is that appeals from the Registrar go to the High Court. We want a tribunal in between. Appeals should go to the tribunal and from the tribunal to the High Court.

Shri C. R. Pattabhi Raman: There will be enough work?

Shri Shah: There will be.

Shri C. R. Pattabhi Raman: Why do you say that the Registrar is not a tribunal?

Shri Shah: Because he himself administers the Act.

Shri C. R. Pattabhi Raman: They say that they want a tribunal over the Registrar. Actually wherever any decision has to be taken, certain norms have to be observed. There can be an one man tribunal. They want a tribunal above the Registrar.

Shri Shah: There can be an one man tribunal. We want one tribunal in between the High Court and the Registrar.

Shri C. R. Pattabhi Raman: Why do you want applications to be confined to Bombay?

Shri Shah: If the applicant wants to file in Bombay, he should not be forced to file the application at the place of the Trade Marks Registry Branch within whose jurisdiction the principle place of business is situate. He can file applications wherever he likes.

Chairman: What is the disadvantage in this?

Shri Shah: Supposing he is connected with us in Bombay and we are handling all his cases for the last ten years. He may like to file the application in Bombay.

Chairman: You want them to come to you.

Shri Shah: They can file in Delhi. It is for them to choose. If they want our services, they should have the option.

Chairman: Such a provision may handicap some people.

Shri Kane: The party should have the liberty to choose.

Shri C. R. Pattabhi Raman: The modern trend is to set the forum in the place in which the business is situate.

Shri Kane: He should choose it. If he wants to choose Bombay, he should have the liberty.

Shri C. R. Pattabhi Raman: Supposing he does business in Kanya Kumari or Kerala, you want to drive him to Calcutta or Bombay.

Shri Kane: It is a question of filing appeal. If he wants, he may file in Madras or Bangalore. If he chooses Bombay, he should have that option. He should have the liberty to file the appeal wherever he likes. It is in the interests of the applicant that he should have this liberty.

Shri Kanungo: In the common civil law, the choice of tribunal is fixed by the law itself. Here, they want to leave it to the parties to chose their forum.

Shri Kane: Yes. There is another difficulty. Supposing he files the application in Madras. That application will have to be sent to Bombay Head office for examination. From there, they will have to be sent to the various branches for hearing. If he chooses to file the application in Bombay, he saves time. He gets the services he wants. At the time of the hearing

also, we contemplate this difficulty. There are four or five branches in India and there are conflicting marks. Hearings take place at the various branches on the same conflicting marks. All these have to be collected at the time of hearing because the Deputy Registrar and Assistant Registrar have to look to all these things. The hearing may be at Calcutta. In a fortnight's time there will be another hearing in Madras and another in Bombay. The difficulty which we find nowadays is that there are four or five branches and some applications will be lying somewhere and there will be a lot of inconvenience to the applicants as well as to the Registrar.

Shri C. R. Pattabhi Raman: You are talking of delay.

Shri Kane: There will be conflict. There are practical difficulties. Some application is heard by one branch. At the same time, some other branches want to hear another conflicting application of a similar nature. After all, if you want to look after the convenience of the applicant, he should have the choice. If he chooses to file in Madras or Bangalore, let him do it. If he wants to file in Bombay, he should have the liberty.

Shri Kanungo: If X chooses Bombay and another application by Y is pending in Bangalore, the same trouble will be there.

Shri Kane: We have no solution for that trouble.

Shri C. R. Pattabhi Raman: You cannot get away from the fact that the Controller General is in Bombay. That does not mean that the jurisdiction of the various High Courts is taken away. As time goes on, we will have Trade Mark journals and Trade Mark practice and there will be a common practice prevailing throughout India.

Shri Kane: We realise the difficulties of the applicants. Therefore we submit that the choice should be left to them.

Shri C. R. Pattabhi Raman: Suppose there is one action in Calcutta and another in Allahabad. To drag the man to one place would finish the business.

Shri Kane: We realise the difficulties of the applicants. At the same time, we would submit that the Head office is in Bombay. All the applications are examined in Bombay. Therefore, the choice should be given to the applicant to file in Bombay or the place where the business is situate.

Shri Shah: We have given the alternative: at the place of business on the place of his choice.

Shri Kane: About the appellate tribunal, our submission is this. The appellate tribunal should consist of a High Court Judge. If it is in the Madras High Court, it will be a Judge of the Madras High Court.

Chairman: Retired or ruling?

Shri Kane: Ruling Judge.

Shri C. R. Pattabhi Raman: Very few High Courts will agree. They have their own work.

Shri Kane: There will be very few cases like this. An appeal lies to the High Court and they will have to dispose of the case. In this case, there will be one appellate tribunal for the whole of India.

Shri C. R. Pattabhi Raman: One Judge or two?

Shri Kane: Our submission is, one Judge. In addition, there will be a representative of the trade and industry to assist the Judge. Trade marks cases are of a very complicated nature. If the trade and industry has to be supported and protected, that representative will be helpful to the Judge to appreciate the implications and the conflicts. There will be one tribunal for the whole of India. Supposing there is a hearing in Calcutta. The

Calcutta High Court Judge will be the High Court Judge. Along with him, there will be one representative from the trade. Our experience is, in many cases which we expected to be decided in our favour on facts, the decision went against.

Shri Kanungo: You say that the judiciary in India is not aware of this particular branch of law. This matter has been discussed by the Majority committee as well as by Shri Ayyangar.

Shri Kane: Our submission is that the representative of trade and industry will be helpful to the Judge in coming to conclusions about the particular branch of the trade or industry. There are particular trade usage, there are trade customs. Take the pharmaceutical trade. Unless there is a man who knows all the details of that branch,....

Shri C. R. Pattabhi Raman: What do the counsel do? They submit to the court all the facts.

Shri Kane: Certainly. The counsel is expected to assist.

Shri C. R. Pattabhi Raman: You will agree that some of the Trade Marks judgments have been applauded all over the world. Much depends on the assistance of the lawyers. It may be that some may have an indifferent judgment when they are not assisted by competent lawyers. I do not know what you are having in mind when you say that they have not come up to the mark. When you say assist, is that an Assessor or juror?

Shri Kane: One man to assist.

Shri C. R. Pattabhi Raman: It will be a novel procedure. Some of the High Court Judges sit on the Public Service Commission, but they are not performing judicial functions. You are referring to judicial functions. The cart must be drawn either by two oxen or two horses. You cannot have one of either. You want a High Court Judge to sit with a trade mark man on this tribunal. If they disagree what will happen? I challenge you to get a single High Court Judge who will sit under these conditions.

Shri Khobaragade: I think the help and assistance of experts can be availed of any time, and they can send their opinions on the problems which is difficult for the judge to understand. The expert will be only a witness and he will assist the Judge. There is provision in the Evidence Act to examine experts. I think that will be sufficient.

Shri Kanungo: You have suggested an appellate forum between the Registrar and the High Court. What is the necessity for this?

Shri Kane: Our point is this. The Registrar, of course, does have good deal of experience of the various branches to consider the trade mark cases, but the tribunal will consist of a High Court Judge and another person representing the industry so that that tribunal will be able to go into the whole question which is decided by the Registrar. The question is moreover of cost.

Shri Prasad Rao: They also suggest that the tribunal can consist of only one Judge. What is the use of having a tribunal of one High Court Judge when you can appeal over that tribunal to the ruling High Court?

Shri Shah: The Tribunal must be of two Members.

Shri C. R. Pattabhi Raman: I can understand if you say that you want an appellate tribunal like the Income tax Appellate Tribunal, but do not bring in the Judge.

Shri Kanungo: But what is the necessity for the tribunal?

Shri Shah: The Registrar has a lot of discretionary powers, and it is likely they may not be used judicially every time.

Shri Kanungo: All those matters can be agitated in the High Court. So, the only reason that you envisage is that two appeals will be less costly than one appeal to the High Court!

Chairman: There is a suggestion somewhere that the appeal should lie straight to the Supreme Court from a single Judge's decision.

Shri C. R. Pattabhi Raman: In the last 15 years there have been 50 appeals, and I think only five last year. For that you want a tribunal?

Shri Shah: There will be more appeals if this tribunal is provided. The party who is aggrieved can appeal. At present, many appeals are not filed because the cost of appealing to the High Court is prohibitive.

Shri Prasad Rao: What do you exactly mean? You argue that as far as clause 3 is concerned there is no justification to extend the appellate jurisdiction to many High Courts because there are hardly 10 or 15 appeals a year. That is what you state here in your memorandum. At the same time, you argue here that there may be an appellate tribunal—in between the Registrar and the High Court—consisting of a High Court Judge. What plausible reason could there be for this appellate tribunal when you say there is no necessity to extend this thing to the High Court itself? You talk about cost and all these things. How can we comprehend this?

Shri Shah: That will save the cost to the parties.

Shri Prasad Rao: You say the appellate tribunal should consist of a High Court Judge, and over and obove that, you agree there should be another appeal to the High Court. You have said in your memorandum:

> "Appeal to the High Court is a costly affair and the party has also to pay the costs of the Registrar even though he is successful, and this deters the aggrieved person from filing the appeal. It is therefore suggested that an intermediary Appellate Tribunal on the lines of Income-tax Appellate Tribunal be provided for, to which all appeals in the first instance against the decision of the Registrar be filed."

There are only 10 or 15 cases. Secondly you admit there should be an appeal to the High Court at the same time, and you say there should be an appellate tribunal in between the High Court and the Registrar.

Shri Shah: At present the appeal lies only to the High Court. We want a tribunal.

Shri Prasad Rao: You must understand you are against even that, because in your memorandum you say.

> "There are only 4,000 oppositions and 300 rectifications during the period of about 15 years. There are hardly about 50 appeals in Court against the decisions of the Registrar or rectification proceedings. It may come to hardly about 10 to 15 appeals a year. This clause is proposed to be introduced only for the convenience of very few persons hardly about 10 or 15...."

If it is only 10 or 15, why do you want another intermediate stage?

Shri Shah: This appeal goes to the Court, and it is only against the decision of the Registrar. It does not go to the interim jurisdiction. This appeal to the High Court is costly to the litigants.

Shri Prasad Rao: You contemplate another appeal to the High Court?

Shri Shah: On points of law, just as in the case of the Income-tax Appellate Tribunal.

Shri Prasad Rao: How can two appeals be less costly?

Shri Shah: Same thing in the case of the Income-tax Appellate Tribunal.

Shri Prasad Rao: The incidence of appeal is much higher in income-tax. There is no comparison between the two. You yourself state there are hardly 10 or 15 cases per year.

Shri C. R. Pattabhi Raman: I do not think you are taking the time-lag into account,—how much delay there will be if you have an interim tribunal between the Registrar and the High Court.

Shri Prasad Rao: In clause 5 you suggest the number of branches should be the minimum possible. How many branches do you think would be conducive to the convenience of all the people?

Shri Shah: The present branches are already sufficient.

Shri Prasad Rao: How many branches could there be? You are practitioners. You suggest there should not be many branches of the Registry as it will be expensive to run branches and provide the branches with necessary reference libraries and other documents. You say it should be restricted to the minimum. How many branches do you think there should be? Or, do you need no branches, or only one at Bombay?

Shri Shah: Four branches.

Shri Prasad Rao: Where should they be located?

Shri Shah: Madras, Delhi, Calcutta and Bombay.

Shri Khobaragade: What about the central part of the country?

Shri Shah: They can go to Bombay or Delhi. Both ways it is the same for them.

Shri Khobaragade: That will be 600 miles. What about a branch in Nagpur?

Shri Shah: From some part of the country or other, there will be always some distance—for instance from Kanya Kumari to Madras.

Shri Khobaragade: In Australia for each State they have got an office.

Shri Prasad Rao: In regard to clause 21 (1) and (2) you state:

> "Fixing of such rigid time limit will affect adversely many aplicants and opponents."

You think no time-limit should be fixed?

Shri Shah: Not in the Act. The Registrar should be given the discretion to give a maximum limit of six months.

Shri Prasad Rao: Do you not think that litigation should be expedited instead of being prolonged?

Shri Shah: But the Trade Mark Journal is not so much widely circulated as other newspapers, and sometimes it takes a lot of time to know a particular trade mark advertised in the journal.

Shri Prasad Rao: There is three months provided. It is sufficient for those who are actually in the profession to know all these things. Do you think the time should be extended further? If you are taking of foreigners dealing with these things, I can understand it, but here only a few persons who practise in patents and trade marks are there, and they must be acquainted with all these things.

Shri Shah: But all persons do not come to us. Some people go direct to the Registrar

Shri C. R. Pattabhi Raman: In England, it is one month.

Shri Shah: They are much more advanced.

Shri C. R. Pattabhi Raman: We are advancing very fast.

Shri Shah: So far, we have not advanced to that level.

Shri Khobaragade: If we fix this limit as two months with the provision that the time may be extended up to six months?

Shri Shah: That would be alright.

Shri Prasad Rao: The time should be statutorily fixed as two months with the provision that the Registrar could extend it by another two months?

Shri Shah: Up to six months.

Shri Prasad Rao: For valid reasons?

Shri Shah: Yes.

Shri Prasad Rao: Why do you want it for six months when in England it is only one month?

Shri Shah: To day it is four months. We find people coming in the fifth month, and they want to oppose it. We have to move for rectification proceedings again.

Shri Prasad Rao: If there is valid reason, the Registrar can extend it by another two months.

Shri Shah: Up to six months.

Shri Khobaragade: Supposing an opposition is presented, why should the party concerned require two months because he knows his case. Immediately the opposition is filed, he can file the rejoinder. Two months time is rather too much. One month's time would be sufficient.

Shri Shah: Sometimes people do not know the technicality and they come very late. That is what we have found. That is our experience.

Shri Kane: We have to give instructions by correspondence, and it takes time.

Shri Prasad Rao: You have pointed out another thing. It is perfectly right that many of the merchandise are produced and consumed locally. So, you suggest there should be a provision for registering a particular trade mark for a limited locality, not for the whole of India. Should the limited locality be the district or the State or the zone?

Shri Shah: We have to divide India into four zones—east, west, north and south.

Shri Prasad Rao: Centre?

Shri Shah: That difficulty will be always there for boundary people. We cannot provide for all things. This will facilitate most of the merchants.

Shri Prasad Rao: Have you got any objection to have a central zone as such?

Shri Shah: No objection.

Shri Prasad Rao: You want there should be provision for registration of a particular trade mark confined to a particular zone. Suppose another manufacturer in another zone uses the same trade mark, how would that fit in? Supposing the brand becomes popular in a particular zone and the person wants to expand.

Shri Shah: Then he can have central registration. There should be a central registration for the whole of India.

Shri Prasad Rao: He has already registered in, say, the south zone. In the north zone some other person has the same trade mark registered. Then he cannot have all-India registration.

Shri Shah: Then he should from the very beginning apply for all-India registration.

Shri Prasad Rao: According to your scheme, he is a local manufacturer. But as his trade expands, naturally, he might be sending his products to Delhi which is in the northern zone. For instance, the Char Minar *biris* which are prepared in Hyderabad have become popular here.

Shri Shah: In that case, either he has to change the mark or get his trade mark registered for the whole of India.

Shri Prasad Rao: But, according to your scheme, he cannot do it because some other fellow must have done it in the north.

Shri Shah: So, from the very beginning, he must decide whether he wants all-India trade mark or local trade mark.

Chairman: The proposal is that there may be two kinds of registration for trade marks, one confined to a particular zone and the other for the entire country. On that point, Shri Prasad Rao has been eliciting some information.

Shri Shah: Our suggestion is this, that there are people who want registration for a particular territory, such as the south, east, or west or north or the central zone, and for this purpose, India may be divided into different zones, and the applicant can apply for registration for the particular zone for which he wants, but in case he wants to register for an all-India trade mark, then he must get registration for the whole of India. That is our suggestion.

Shri C. R. Pattabhi Raman: The whole scheme is to have an all-India system available for every Indian citizen. But what you are suggesting is a new kind of trade mark law. Supposing we accept it, and supposing a person who produces certain goods in the south exports them to the north, and they become very popular there, then is there an infringement or not?

Shri Shah: It will be an infringement if the same mark is registered by another party.

Shri C. R. Pattabhi Raman: So, you want to stop it at the border. My colleagues must understand this. Now, there are certain manufacturers who manufacture only for local needs. Take, for instance, *pappadams*, which are used in the south.

Shri Prasad Rao: They are used here also.

Shri C. R. Pattabhi Raman: Now, they have become popular here also.

Shri Prasad Rao: Only they are different sort of *pappadams*.

Shri C. R. Pattabhi Raman: Your point is that the *pappadams* should not cross that zone and come here if they become popular.

Shri Prasad Rao: Same thing in regard to Ambal snuff also.

Shri Shah: There is no attempt to ban; they can do it under different trade marks.

Shri Prasad Rao: If there is no all-India trade mark, then he must choose for himself in the beginning that his products should not cross a particular zone.

Shri Shah: That is for him to decide beforehand, whether he wants an all-India trade mark or a zonal trade mark. That is for the applicant to decide.

Shri Prasad Rao: In the general suggestions you have suggested that the practice of the Trade Marks Registry be published for public guidance. Do you not think that these practices are already being published in the trade marks journals?

Shri Shah: No.

Shri Prasad Rao: You mean that the case law should be published?

Shri Shah: For instance, there are certain words like *Ajanta and Ellora.* Formerly, they were not treated as geographical names, but now they are, in trade marks practice. At present, a particular word, it may not be a geographical name, but it may become a geographical name after a week if the practice of the Trade Mark Office changes. We want that these changes in practices should be published for public information.

Shri Prasad Rao: Would it be sufficient if such things are also published in the trade marks journals?

Shri Shah: They are not published in the trade marks journals.

Shri Kanungo: You want that the decisions of the Registrar of trade marks should be published?

Shri Shah: Not decisions, but the practices. For instance, the words *Ajanta and Ellora* may be geographical names, but after a week, they may become a trade mark practice. If these things are published, then the agents as also the individuals may know whether the practice has changed or not.

Shri Kanungo: That means, particular decisions of the Registrar?

Shri Shah: Decisions on practices which are decided in the day-to-day administration must be reported to the public.

Chairman: You mean all important decisions and imported changes in policy.

Shri Prasad Rao: Under clause 9, you have stated that there are no reference books so far as Russian, Japanese or Chinese names are concerned, and it is likely that if such references are made available, then many of the words registered as invented or claimed as invented words would fall in the category of personal names and surnames. Do you think that any other individual names or names of any Japanese or Russian family and so on should be registered here?

Shri Shah: At present, we do not know. They might be registered in India unless evidence is filed to the contrary.

Shri Prasad Rao: There is no question of any Russian or Chinese name here, because we do not have any reciprocal arrangements as far as patents and trade marks are concerned.

Shri Shah: Any word with a personal reference will not be registered. That is the scheme of the Act.

Shri Prasad Rao: Suppose a Japanese firm producing a certain brand of goods wants to have their personal name registered here, you think that should not be allowed?

Shri Shah: That is not our suggestion. But it can be registered in India. At present, certain words are there which are treated as personal names, and we do not know.....

Shri Prasad Rao: How can you have reference of all those names here?

Shri Shah: We want to have reference only about the personal names which have reference to India only and not with regard to other countries.

Shri C. R. Pattabhi Raman: But the evidence is there. Take the case of Johnson's powder, for instance. Their evidence is used, and they have got it registered; and it is a name.

Shri Shah: Sometimes, we coin a word or invent a new word, and unfortunately it happens to be somebody's name in Japan or Germany.

Shri Prasad Rao: What about Ambal snuff and Ashai snuff?

Shri Kanungo: Personal names are also invented sometimes.

Shri Shah: True, sometimes, they are invented. Supposing that independent personal name which has been invented is in the Russian language, then the Registrar willl refuse my registration, even though I have coined the word independently on my own.

Shri Prasad Rao: What is your opinion about merging both the patent office and the trade marks registry?

Shri Shah: Our experience is that we have been working quite well independently in both the offices so far.

Shri Prasad Rao: I am asking for your opinion whether it would in any way impair the efficiency.

Shri Shah: We do not think it will improve the efficiency. But if the trade marks registry is situated at Bombay, whether it is merged or not, we are not very much interested in that.

Shri Prasad Rao: Suppose we shift it to Delhi or Nagpur. Then, you would be certainly opposed to it?

Shri Shah: Yes, certainly oppose.

Shri Prasad Rao: Your clients will take you to Nagpur.

Shri Kanungo: Do the members of your association have any practice in patents?

Shri Shah: Yes.

Shri Kanungo: You say are going to Calcutta to practise?

In Calcutta, you have got your own agents?

Shri Shah: We have got arrangements with other agents. If there is necessity we also go there.

Shri Prasad Rao: If there is any patent case, you would not be dealing with them directly?

Shri Shah: No, we also go there and handle them.

Shri M. B. Thakore: What is the number of such kind of cases?

Shri Shah: About fifty to sixty all over India.

Shri Khobaragade: I think the Deputy Registrars and Assistant Registrars are doing work independently of the Registrar?

Shri Shah: Yes.

Shri Khobaragade: Under clause 115, you have stated:

> "Registrar himself therefore cannot revise the decisions of his subordinates who have coextensive jurisdiction to decide the matters.".

You mean that no appellate powers should be given to the Registrar?

Shri Shah: If the powers are given as appellate powers, we have no objection. But, at present, the Deputy and Assistant Registrars act in the name of the Registrar.

Shri Khobaragade: Even though the powers are delegated, they are acting independently.

Shri Shah: Not independently; they are acting for the Registrar or on behalf of the Registrar. Their decisions are given in the name of the Registrar, and everything is done in the name of the Registrar. Since they are under his superintendence and guidance, they are not done independently.

Shri Prasad Rao: Your objection is that because the Deputy and Assistant Registrars carry on work in the name of the Registrar, the Registrar himself cannot sit as an appellate tribunal over the actions of his deputies or assistants. Is that your contention?

Chairman: The position is that he can revise the orders of his assistants

or deputies. You are not for the retentions of this provision?

Shri Shah: We are not for it.

Mr. Chairman: You want that the appeal should go straight to the tribunal?

Shri Shah: Yes.

Shri Prasad Rao: You mean to say that an appeal on the actions of the deputy or assistant registrars could not lie to the registrar, but should be to some appellate tribunal as you have suggested or to the High Court, if that tribunal is not acceptable?

Shri Shah: Yes. Or, the Registrar should be a separate appellate authority.

Shri Prasad Rao: What is your contention about the cost?

Shri Shah: At present, the provision as it stands gives an appellate power to the Registrar without giving him an appellate jurisdiction.

Shri Prasad Rao: So, if the Deputy Registrar or the Assistant Registrar is made to act statutorily on his own, then you have no objection to the Registrar being the appellate authority?

Shri Shah: When there is something wrong, an appeal is filed.

Shri Prasad Rao: Actually, what is the practice obtaining so far? Supposing something is done by some Assistant Registrar, what is the remedy for appeal? Is there no appeal lying to the Registrar?

Shri C. R. Pattabhi Raman: Take the case of the Sales Tax Act, the Income-tax Act, and the Madras General Sales Tax Act. Is there not an appeal lying to the Registrar?

Shri Shah: They are acting under the Act and they have the authority. in the case of income-tax, for instance, the offices are separate, and the income-tax officers are appointed under the Act. But in the case of the Deputy Registrar or Assistant Registrar, they are acting under the superintendence and guidance of the Registrar and not in a direct manner as the income-tax officers are.

Chairman: You mean that the orders of the Deputy and Assistant Registrars are the orders of the Registrar himself?

Shri Shah: Yes.

Shri Prasad Rao: This is only when he is acting in a judicial capacity. What about routine things?

Shri Shah: The public is not concerned very much with these routine things. It does not affect the public very much whether the orders for registration are passed by the Deputy Registrar or the Assistant Registrar, because they have always the chance of having a hearing if anything is prejudicial to them.

Shri Khobaragade: Supposing appellate powers are given to the Registrar in a judicial capacity, is there any harm?

Shri Shah: There is no harm. There is no power of review in the other case. But here is the power of review. So, if appellate powers are given, there is no harm.

Dr. Sushila Nayar: I think it would be better if instead of asking each Member to exhaust all his questions and then asking another Member to ask his questions, we take up one subject and ask Members to make any remarks they like to on that, for, that would give us a better picture of the whole trend of what everybody

thinks on that subject. I am making this suggestion for your consideration. For instance, we took up the question of appellate tribunal, and then we went to the question of zonal registration and so on. Instead of going back to each point every time, if we take up one particular subject and exhaust questions by all Members and then proceed to the next one, it would be better.

Chairman: I shall certainly do so.

Dr. Sushila Nayar: I do not quite grasp the importance or the significance or the advantages of having two kinds of registration, the zonal and the all-India ones. I would like the witnesses to explain why they want these two types.

Shri Shah: There are some traders who have local trade either in the particular city or district or the particular State or the particular State and the nearby States and not an all-India trade; they are interested in registering their trade marks for their own territory only and not outside. In order to facilitate such people, we want registration only for the particular zone. At present, even if a person is doing trade in a particular zone, it is all-India registration, and there is no provision for registration within his own district or State. If it is all-India registration, then if another person having the same trade mark or similar trade mark comes from another zone, there is difficulty for the registration of his mark later on.

Dr. Sushila Nayar: If it is all-India registration, he can send his products to any corner. So, why should he need registration only for a particular zone? Is it easier for him to get a zonal registration? Otherwise, what is the idea in asking for a separate registration for the zone only?

Shri Shah: One may be in the south and the other in the north. If a man in the south independently and honestly invents the same mark, even though later than the man in the north, and goes for registration, the case of the man in the north is cited against him. Then he has an uphill task before the Registrar.

Shri C. R. Pattabhi Raman: I find that the Act itself provides for (a) concurrent registration and (b) registration subject to territorial limits.

Shri Shah: Yes. The Registrar puts the limitation. Here the applicant himself has a choice to limit the area.

Shri C. R. Pattabhi Raman: I can register 'Sunlight chewing tobacco' say in Madras State alone. I have got better chance of my registration getting through if I restrict it to that area. So all these various types are envisaged in the Act. Now another category of registration is suggested.

Shri Shah: Suppose a particular mark is registered in 1945 by A in Delhi. He is not having trade in South India. B in South India invents the same mark in 1958 honestly and independently. But if B goes for registration, the case of A is cited against him.

Shri C. R. Pattabhi Raman: Rectification can be done.

Shri Shah: He will have to incur the expense of rectification causing him a lot hardship. The onus is on the applicant; he having adopted it later, cannot rectify the earlier mark.

Shri Khobaragade: Would not that result in imposing restrictions on free trade?

Shri Shah: If a person chooses it of his own accord, that will not be imposing restriction.

Shri Khobaragade: Because the same mark is registered somewhere else, he will not be able to apply.

Shri Shah: Then he should register for all-India.

Dr. Sushila Nayar: Does not what Shri C. R. Pattabhi Raman suggested suit your convenience because registration is limited to a particular area? Where is the necessity to have a new type of registration, the zonal type of registration? Your point is that in a limited area a man may get a registration and the same trade mark may be used by more than one person in different areas. If it is provided already under this Act that you can have your registration for a small area, why do you want a separate one?

Shri Shah: It is not provided under the present Act—unless it comes under section 10(2). For this, he has to use the mark for several years before he can get on the register.

Shri Mahesh Saran: In your memorandum, you have mentioned as examples of zonal trade soap trade, bidi trade, edible oil etc. Do you think that the soap trade and bidi trade can be confined to a zone?

Shri Shah: There are so many small manufacturers who confine themselves only to, say, cities like Bombay, Ahmedabad or even to a State, like Bombay. They do not sell beyond Bombay State.

Shri Mahesh Saran: Don't you see the difficulty created by another man selling it with the same trade mark just beyond Bombay?

Shri Shah: That will not create difficulties because the area will be divided.

Dr. Sushila Nayar: Is there such a great difficulty in inventing names? Why do you want to take the name of somebody else, a trade mark being used by somebody else? After all, they have earned a certain credit and goodwill. Now you want to use the same trade mark in a limited area. If the product is good enough, it will catch the attention of the people.

Shri Shah: That is true, but sometimes the other man's mark will not be so popular. Because the previous man has got registration, the new man cannot get registration.

Chairman: Under 18(4), the Registrar is left with discretion. He may always register it subject to necessary limitations.

Shri Shah: But suppose a person has an independent mark well known in Delhi for several years. That mark will not be known in South India. If a man in the south independently and honestly uses that mark and goes for registration, the Delhi Man's mark will be cited against him. That is the difficulty under the present scheme.

Shri C. R. Pattabhi Raman: Please read 12(3). It is a matter of form.

Shri Shah: That is only a few months.

Shri C. R. Pattabhi Raman: 12(3) is fairly wide—'concurrent use'.

Shri Shah: Concurrence in time and concurrence in area these two things are always taken into consideration. Suppose a man recently adopted it, say, six months ago, he won't get it on the register, even though he honestly adopted it.

Shri Mahesh Saran: Your point is that in the five zones five people can use the same trade mark. But it creates confusion for nothing. It does not help you in any way.

Shri Shah: In our submission, it won't cause confusion because the areas are divided.

Shri Mahesh Saran: Supposing one trade mark gets very well known in a zone, don't you think it will be unfair on the part of any other person to use the same mark in another zone?

Shri Shah: If that man wants it for all India, he should register it for all-India.

Chairman: In order to avoid all these complications, he should get it registered for the whole of India.

Shri Bishwanath Roy: His idea seems to be that in regard to local trades, there should be some limitation about the area. But is it not possible that the same trade and same business can be carried on in other parts of the country at the same time?

Shri Shah: It can be carried on.

Shri Bishwanath Roy: Then what is the advantage of having local registration in a particular area, if the same trade is carried on in other parts also?

Shri Shah: The area will be different. The advantage lies in the facility it gives to an applicant for registration of a trade mark which he honestly adopts without having knowledge of the other mark.

Shri Kane: We do see the difficulty about zonal registration. At the same time, the point is that small industries in India should have as much protection as possible. We do find that protection given under the present Act in respect of concurrent use. If possible, the emphasise that the Regitrar should give under the Act is in considering also the territorial limitations and protecting the marks which are used in a particular area. Of course, I do see that that is a matter of policy. But if in the Act itself, some provision is made to protect the local village or small scale industries, which adopt unknowingly the same marks, that will help them. Of course, they encourage such marks, but there is no clear provision in the Act itself. That was why we suggested it. We leave it to this Committee to consider this aspect. Then we would not insist on zonal registration because we see that there will be difficulties there.

Shri J. R. Mehta: What are the advantages and disadvantages of amalgamating the Trade Marks Office and the Patent Office?

Shri Shah: There won't be advantage in amalgamation. They have worked without amalgamation for the last 15 years. There is no necessity for amalgamation. If Government want to amalgamate for some reason or other, it is a different matter.

Chairman: The distinct advantage suggested is that there will be better co-ordination.

Shri Shah: That won't help.

Chairman: There will hereafter be branches. An applicant will not have to send it to Calcutta for registration.

Shri Shah: Even then, it is subject to transfer to Calcutta for examination. On the contrary, there will be consequent delay.

Shri M. B. Thakore: Do you think it will lead to economy?

Shri Shah: No.

Shri M. B. Thakore: Why?

Shri Shah: The Controller of Patents administers Patents and the Registrar of Trade Marks administers Trade marks. Now there will be three different officers administering two branches of law. At present, there are two, the Controller and Registrar.

Shri J. R. Mehta: Will it lead to better co-ordination?

Chairman: He says that he is not in favour of amalgamation; at least the Society which they represent.

Shri J. R. Mehta: What have you to say from the point of view of the convenience of the public?

Shri Shah: For the convenience of the public we can have branch offices as we have got the Trade Marks Office at Bangalore and Calcutta.

Chairman: But it will mean extra expenditure.

Shri Shah: Yes.

Shri J. R. Mehta: Can you cite instances of zonal registration as against countrywide registration in any other country?

Shri Shah: It is provided in the U.S.A. There is State registration and then central registration.

Shri J. R. Mehta: On what basis?

Shri Shah: It is statewise.

Shri C. R. Pattabhi Raman: The United States analogy will not apply here. There is no central Act there. Each State has got its own zonal enactment.

Shri Shah: Yes; that will not apply.

Shri J. R. Mehta: I would invite your attention to clause 99 which says that evidence will be by affidavits before the Registrar. What are your views—whether there will be cross-examination of the witnesses or not?

Chairman: Whether evidence would be let in or not—that is the question.

Shri J. R. Mehta: If there are affidavits, there will be no cross-examination.

Chairman: Will it not be governed by the Evidence Act?

Shri Kane: Normally, the evidence will be by affidavits. It is very difficult to cover all the points in affidavits. The other party will not have an opportunity to cross-examine and find out the real truth. And, in many cases about trade usages, trade customs and other conditions of a particular trade and all that there are certain more difficulties. We have to obtain affidavits from different presons; we have to request them.

Chairman: Even here there is the provision that the Registrar may, if he thinks fit, get oral evidence in lieu of or in addition to evidence by affidavits.

Shri Kane: But the wording is, 'if he thinks fit'. If the party so desires to have it at his own cost, the Registrar should allow it. In actual practice, perhaps, only in a very few cases has oral evidence been asked for or led. Of course, nobody would incur the expenditure of unnecessarily calling witnesses. But, if the parties feel that justice can be done by leading oral evidence also in particular cases, they should be allowed to lead oral evidence, at their own cost.

Shri Akhtar Husain: Is it not necessary that the parties swearing to affidavits should come in for oral evidence? Supposing a party makes a request to the Registrar or the court concerned that the parties swearing to an affidavit should be called and submit themselves to cross-examination, would that not always be done? That is the normal procedure in law courts.

Chairman: There will be affidavits and counter-affidavits.

Shri Akhtar Husain: But the party swearing to an affidavit is liable to be called in to substantiate it and submit himself to cross-examination in cases where the presiding officer or the Registrar or the court so desires. There is no harm done.

Shri Kane: But there is the additional difficulty. We have to go to the party and ask for affidavit. Whenever there are arguments etc. we have to produce witnesses. The witnesses would not come of their own accord. If summons are served, they will be compelled to appear. We should have the additional opportunity of putting all the facts before the Registrar. The affidavits, in many cases, do not cover all the facts and cannot possibly cover all the facts.

Shri Kanungo: In the present case, do you think that where the affidavits and counter-affidavits are not sufficient, instead of the Registrar using his discretion it should be obligatory for him to call in witnesses as desired by the parties?

Shri Kane: It should not be obligatory; but if the party so desires, he should be allowed to produce witnesses.

Shri C. R. Pattabhi Raman: Don't you think that it will lead to harassment if it is left to the parties? If the Registrar refuses to hear people, then there is some other authority to strike him on the knuckles for giving a decision which will not stand water. But that is hardly a case for making it obligatory for him to allow oral evidence simply because the party wants it.

Shri Kane: I would put it the other way. If a person so chooses to lead evidence to support his own case he should be allowed to do it. That is an additional facility.

Shri C. R. Pattabhi Raman: I understand you to say that it must not be left to the discretion of the Registrar. The party should have the right. We cannot mince matters. You want oral evidence at the option of the parties. You cannot get away from that.

Shri Kane: I do say that if the party so chooses, the Registrar should allow it.

Shri C. R. Pattabhi Raman: I can understand that. It means there is no discretion left to the Registrar. But, I say that if the Registrar does not in a fit case allow evidence, then, he will have to face some higher authority, the High Court or the Supreme Court, who will say that it is a very bad judgment. Once or twice it hapens, it will be a case of a cat approaching hot milk.

Shri Akhtar Husain: If the Registrar improperly disallows evidence from being produced, then, in the appellate court, that defect could be removed and additional evidence can be produced if the appellate court is satisfied that it was a case of wrongful rejection of evidence. That can always be done under Order XLI, Rule 27, of the Code of Civil Procedure. That provision exists in the Code of Civil Procedure.

Shri C. R. Pattabhi Raman: The Supreme Court has held that whenever an officer has to decide any matter in a judicial manner he has to satisfy certain well defined standards and if he does not the judiciary will come down on him like tons of coal.

Shri Akhtar Husain: Have you seen this clause 1 of this Bill? Has your attention been drawn to the definition of 'deceptively similar' in the Bill? Do you, as a practitioner, think that it would be helpful to include this definition in the Bill?

Shri Kane: Yes; I have seen it. I think it would be certainly helpful.

Shri Akhtar Husain: How do you think it would do if we substitute 'confusing' as it is in the Australian Act?

Shri Kane: This is well defined. Nearly resembles or is likely to confuse or cause confusion. By adding this one word 'deceptively similar' the whole point of confusion and deception is made perfectly clear.

Shri Akhtar Husain: Do you think it will be helpful to include this in the Bill?

Shri Kane: By one phrase it would cover the whole thing.

Shri C. R. Pattabhi Raman: You will find that we have taken care; throughout the whole Bill deceptive or similar is used. A complete scheme has been kept up.

Shri Akhtar Husain: Do you think that it is in the interests of the industry that there should be expeditious disposal of disputes on these matters?

Shri Kane: Yes.

Shri Akhtar Husain: Will the introduction of the Appellate Tribunal not delay matters?

Shri Kane: On the contrary, we believe that the appointment of an Appellate Tribunal will expedite the matters.

Shri Akhtar Husain: Why?

Shri Kane: Because it will be exclusively dealing with these.

Shri Akhtar Husain: From the Appellate Tribunal there will be an appeal to the High Court and from the High Court to the Supreme Court. So, in the long run, the period that will be taken will be very much longer by the introduction of the Appellate Tribunal than under the arrangement in the Bill, that there should be a direct appeal to the High Court. In the High Court, you will agree that both questions of fact and law can be realised.

Shri Kane: That can be raised.

Shri Akhtar Husain: What will be the practical advantage in introducing another Tribunal which will prolong matters?

Shri Kane: The main point is that the Appellate Tribunal will be able to deal exclusively with these trade mark matters. Then, there will be a definite practice and the decisions of these Tribunals all over India will be consistent and, perhaps, more considered than what we generally find in Chamber judgments in High Courts where they are disposed of along with so many matters in the chamber.

Shri C. R. Pattabhi Raman: It won't be a chamber matter.

Shri Kane: In Bombay it is so. Another submission we would make is that the appeal should lie on the appeal or appellate side of the High Court. That will also save expenses.

Shri C. R. Pattabhi Raman: In a connected suit, in an application from that suit, it must be the appellate court.

Shri Kane: The practice is that the appeal lies before the Chamber Judge in the first instance.

Shri Kanungo: It is a new suggestion for his having a Tribunal. . .

Shri Shah: I will explain. At present the appeals go to the Chamber Judge. The Chamber Judge disposes of the appeals and no proper weight is given to our grievances, to what we say. Instead of going to a Chamber Judge, it should go direct to the Appellate Bench.

Shri Akhtar Husain: That will be the case even from the decision of the Appellate Tribunal.

Shri Shah: Appeals can be preferred only on matters of law and not on matters of fact.

Shri Akhtar Husain: That would curtail the right of the party to argue his appeal in the hon. High Court. Instead of getting the decision of the High Court on questions of fact—he will be debarred from getting the decision of the High Court on questions of fact—the Appellate Tribunal will be final on all questions of fact. Therefore, from that point of view, you will agree, it would be a disadvantage to the trade.

Shri Shah: The Tribunal will decide on facts going through all the evidence and it will state the case to the High Court.

Shri Akhtar Husain: Do you think that it will be more advantageous to the interests of trade to have decisions on questions of fact by the Appellate Tribunal rather than by an hon. Judge of the High Court?

Shri Shah: In that way, it will curtail a lot of costs and inconvenience to the parties.

Shri C. R. Pattabhi Raman: I think you are having in mind section 66 of the Income Tax Act. I think you

really say that the Tribunal should hear the facts and then just like cases under the Income Tax Act should refer the cases to the High Court. Is it so? And you would prefer the judgment of the Tribunal on facts to that of the High Court Judge.

Shri Shah: That is our feeling in several cases.

Shri Radhelal Vyas: I would like to know whether, in Australia or Canada, it has been provided that there will be two appeals, an appeal against the Court of Exchequer to the High Court and an appeal against the High Court judgment to a Full Bench of the High Court?

Shri C. R. Pattabhi Raman: There is no other country in the world where a tribunal has been interposed. There are two appeals.

Dr. Sushila Nayar: About appeals, why should not the Controller General in Bombay be the appellate authority also? For instance, there are so many other institutions where the chief man of the department has judicial powers to act as the appellate authority. In Delhi, the Chief Commissioner in whose name the whole administration runs, is the appellate authority in so many things. Actions of his own officers come before him as appellate authority. Why can't our friends here think in terms of making the Controller General the appellate authority? I can understand their desire to have an expert in the first place to deal with their appeals and if they have the Controller General, that would be one way of having an expert to deal with the appeal in the first instance.

The second proposal is that the High Court should be eliminated and the appeal should go to the Supreme Court. Would that not be more expensive to go from place to place? In view of these, would they insist on having a special tribunal of the type that they were talking about?

Shri Shah: The position is, the tribunal must be independent of the Registrar. If he has to hear an appeal against his own advice, it will not be fair and proper.

Dr. Sushila Nayar: That is being done in so many cases and it is functioning well.

Shri C. R. Pattabhi Raman: Even here, the Registrar has got powers of Revision, but not appeal.

Dr. Sushila Nayar: Appellate authority has been given to the Head of the department in so many cases.

Shri Shah: There will be difficulty when a person decides things in his executive capacity and again if he has to hear an appeal against his decision.

Dr. Sushila Nayar: When executive decisions are taken, every decision does not go to the top man. For instance, all actions are taken in the name of the Minister. An average case does not go to the Minister. The Minister does not know all these cases. Similarly, whether it is the Income-tax department or the Chief Commissioner in Delhi, there are these judicial powers. He gives the judgment in appeal. If you are not satisfied with that judgment, you have the freedom to go to the court.

Shri Shah: The officers under the Registrar must be independent of the Registrar.

Shri C. R. Pattabhi Raman: The basic thing is, they want one more tribunal between the Registrar and the High Court.

Chairman: When there is an appeal from the orders of the Registrar to the High Court, the Registrar has got to appear there as a party. What do you think of this provision?

Shri Shah: The Registrar can appear to explain the practice.

Chairman: As an Adviser or should he be impleaded as a party?

Shri Shah: Only to help the court. Here again, the parties are asked to bear the costs. That should be taken away.

Shri Khobaragade: I would like to have a clarification, regarding the

suggestion about power of attorney agents in clause 124(c). You have suggested that it should be amended as "a person in the sole and regular employment who is a constituted attorney holding General Power of Attorney of the principal". I think that is not necessary. When a person is in the sole and regular employment of one person, he cannot be fully employed by any other person. These words are superfluous. The clause as it reads is quite sufficient.

Shri Prasad Rao: What they mean is that only the registered agents should represent their case.

Shri Shah: Some may say, today I am in his employ. The next day, some other person can do that.

Shri Prasad Rao: Our friends need not apprehend. The law is getting more and more complicated. No ordinary person can do all this.

Shri Shah: Some unscrupulous persons may do.

Shri C. R. Pattabhi Raman: Have you got instances where a firm later on said that somebody did not represent them and repudiated them?

Shri Shah: That might happen. That might happen with a lawyer also.

Shri C. R. Pattabhi Raman:. That cannot happen with a lawyer because he has the vakalat. Have you had cases of repudiation?

Shri Shah: No.

Shri Khobaragade:. It is said that the applicants should have the option to file the applications at the Central office. Can they have the option to ask that the application should be heard at a particular place?

Shri Shah: Yes. He can have the option of filing at the Central office. He has also the option of having the hearing either at the Central office or some other place. That is discretionary.

Chairman: There is another clause here that whenever there is an action for infringement before the Registrar, if the party files an application for rectification before the High Court, automatically, he has to stay further proceedings until the rectification case is disposed of and the magistrate cannot proceed further. Have you any observation?

Shri Shah: That will delay matters. We have suggested that rectification action should be filed in the same High Court within whose jurisdiction the magistrate or district judge is working. If the magistrate is in Bombay or the district court is under the Bombay High court, rectification action should be filed in the Bombay High Court. That High Court can give directions to the district court. If it is to be filed in the High Court within whose jurisdiction the place of business is situate, it may be that the Bombay magistrate will be given orders by the Madras High Court and it might create inconvenience to the parties. There may be contradictions also. There may be delay in the proceedings. The district court may be given powers to rectify.

Chairman: You want the district court to be given the power. You have not mentioned it.

Shri Shah: That is an alternative suggestion. We thought of it afterwards. It may be provided that the district court may be given the power to rectify.

Chairman: The principle is that rectification proceedings should be instituted before the Registrar or High Court.

Shri Shah: If it is a different High Court which has no jurisdiction over the district court trying the suit, that anomaly would be created.

Shri Akhtar Husain: What will be the special advantage of adopting this course? Why not in the High Court of the place where the business is situate?

Shri Shah: That would delay matters. In the first instance, he has to move the other High Court. The other High Court may not be able to give directions every now and then to a district court which is under the jurisdiction of a different High Court.

Shri Kane: The trade mark is infringed within the jurisdiction of the Bombay High Court and the registered proprietor of that trade mark comes from Punjab. In order to apply for rectification, we have to go to Punjab, while he files a suit against us in Bombay. The decision of the Punjab High Court as regards rectification and the decision on the infringement appeal of the Bombay High Court may conflict with each other and the matter will be delayed till the rectification matter is over. Instead of that, whenever there is a suit in infringement, if a party chooses to apply for rectification, he should do that in the High Court having jurisdiction in that case, instead of giving jurisdiction to two different High Courts.

Shri Kanungo: In any case, the proceedings will have to wait till the rectification matter is over.

Chairman: When the proceedings have to wait, where is the appeal decision?

Shri Prasad Rao: Clause 129 restricts the right of registration of declaration of ownership only to registered trade marks. You want these words "other than registered mark" to be deleted from the clause. Why?

Shri Shah: That does not give any title to the property.

Shri Prasad Rao: You do not want any declaration of ownership to be registered?

Shri Shah: No declaration should be registered as such. That is our intention.

Shri Prasad Rao: If you delete these words it means that any declaration of ownership could be registered: not only registered trade marks, but any declaration.

Shri Shah: It is provided that any declaration of ownership of a registered trade mark will not be registered by the registering authority.

Shri C. R. Pattabhi Raman: Un-registered trade mark cannot be registered; registered trade marks can be registered.

Shri Prasad Rao: So, the purpose will not be served if you delete these words.

Shri Shah: There should be no registration of any declaration of ownership.

Shri Prasad Rao: This may give rise to a situation where ownership of an unregistered trade mark could be registered.

Shri Shah: It does not give rise.

Shri Prasad Rao: Is there any harm if it is there?

Shri Shah: It does not give any benefit. Why keep in doubt? No trade mark will be registered by declaration.

Shri Kanungo: There are historical facts. This device of declaration of ownership has been used.

Shri Prasad Rao: Suppose there is a private limited company or a partnership concern and they divide. The property passes to some person.

Shri Shah: Unless it is registered under the Act, he cannot get the declaration registered.

Shri Prasad Rao: It has been put in the Bill specifically that wherever there is a partnership, ownership could be registered.

Shri Shah: Why not allow un-registered trade marks to be registered?

Shri Prasad Rao: Some future unregistered trade marks will get registration.

Shri Shah: That is prohibited. We submit that this cannot be registered. Nobody should be allowed registration at all.

Shri Prasad Rao: It may be done under the common law.

Shri Shah: There is no common law. The Trade Marks Act gives more rights. Once he gets registration under the Trade Marks Act, he gets statutory rights.

Shri Kanungo: That statutory right is in addition to the common law rights.

Shri Shah: It is inherent there.

Shri C. R. Pattabhi Raman: I am sure you admit there is no harm in it.

Shri Shah: There is no harm in it, but why permit double registration?

Shri Khobaragade: Supposing it is an unregistered trade mark, and is registered under this, it will deprive others of its use.

Shri Shah: It will not deprive. This kind of registration should not be encouraged at all for both registered and unregistered trade marks.

Shri Kane: In clause 12(3) we have suggested that the word "tribunal" should be inserted in place of the word "Registrar". That is, it should also include the court. That is also the definition in the U.K. Act. This is because many times when the appeal lies to the High Court, they can also go into the question.

Shri C. R. Pattabhi Raman: In page 5, the definition is:

> "(x) 'tribunal' means the Registrar or, as the case may be, the High Court before which the proceeding concerned is pending."

It is all-embracing.

You will admit every application has to be made to the Registrar. You do not apply to the High Court. Nobody else can come in. Every application shall be to the Registrar. That is understood. Clause 12(3) has to refer to the opinion of the Registrar because he is the person giving the opinion. Then, look at the definition clause which I have mentioned earlier. In dealing with an application, a decision is given. An appeal to the High Court is there. Therefore, tribunal is defined to mean Registrar as well as the High Court. So, it is all-embracing. You will find in all modern enactments, the definitions are wide so that there could be no doubt at all.

Shri Kane: If it covers it, it is all right.

Chairman: In clause 109(5) it is said:

> "The High Court in disposing of an appeal under this section shall have the power to make any order which the Registrar could make under this Act."

Shri Kane: That also I think would be covered, but we were rather doubtful.

Shri C. R. Pattabhi Raman: Instead of sending it back to the Registrar, the High Court can always step into the shoes of the Registrar and pass suitable orders as are necessary in the case. This is in order to prevent delay and harassment.

Shri Kane: In clause 14, the word "name", we submit, should be removed. Representation is all right. If there is a representation of Subhash, nobody can just adopt that trade mark without the permission of the heirs or successors.

Chairman: You mean there are names and names.

Shri Kane: Supposing the Registrar raises an objection that it is the name of some other individual and therefore he must go and obtain the permission of that individual, there may be a number of individuals having that name. Of course, the Registrar would also find the same difficulty. We would find the same difficulty.

Shri Kanungo: Is it not good for everybody to avoid proper names?

Shri Kane: But proper names are very commonly used. The practice is established in India.

Shri C. R. Pattabhi Raman: You have Nehru Cafes everywhere, but Gopal Varnish is very interesting. Nobody with that name can say it is his name and therefore it cannot be used. We are not concerned with it.

Shri Shah: If it is a representation, a particular man having the representation could be approached, and consent for the whole representation might be obtained, but not for a name, because many people may have the same name.

Shri C. R. Pattabhi Raman: We have the case in England where they named a chocolate after Golfer. There were also the cases of the Gladys Cooper Chocolate, bitter sweet marmalade etc. There are many cases like this. I want to say something later on about this.

Shri Shah: We can understand representation and name combined together—a particular man with a particular representation. If we take the name of Jawaharlal, there are so many persons with that name. To whom should we apply for consent?

Shri C. R. Pattabhi Raman: That is why discretion is given to the Registrar.

Shri Shah: Name will create a lot of difficulties. Therefore, we say "name" may be dropped and representation retained. That is our submission.

Shri C. R. Pattabhi Raman: Suppose you say "Tagore Bidi". The Tagore family may object to this, though they may not object to "Tagore Scent". It all depends on the article to which you are giving the name.

Shri Kanungo: Apart from the family, anybody bearing that name will object.

Shri Shah: Some names are prohibited from registration under clause 11.

Shri C. R. Pattabhi Raman: There are a number of decisions in England and here with regard to these things. People have won big actions because their names were dragged in without taking their permission before hand.

Shri Shah: So far as personal names are concerned, I have stated the difficulty. The same name many people can have.

Shri C. R. Pattabhi Raman: But the Registrar has got the discretion. If you use the name "Padma", thousands of ladies may have that name, and the Registrar may not object to your using it, but if you say something also with it, it may become the name of an identifiable person. For instance, take the name 'Sushila'. It is a Sanskrit name and it has a good meaning. And I do not think that my hon. friend Dr. Sushila Nayar would raise any objection to it.

Shri Kanungo: In this particular case, there will be no objection.

Shri Kane: The language of the clause is such that if I use a name, and if the Registrar thinks that that name is used by some other person, then I shall have to obtain the permission of the successors of that person. There will be hundreds of persons with the name Ganesh or Gopal, for instance.

Shri Kanungo: The name is not itself the criterion. The criterion is the juxtaposition in which the name appears.

Shri C. R. Pattabhi Raman: Now, you can appreciate why I took Dr. Sushila Nayar's permission to refer to the word 'Sushila'.

Shri Kane: If the Registrar thinks that it is the name of some person, then I shall have to take his permis-

sion, or the permission of his representative.

Dr. Sushila Nayar: We have to start discouraging the use of proper names. It is a disease which we have got now that we are using so many proper names. As you yourself have indicated, we have Mahatma Gandhi cigarettes and all that kind of nonsense. So, even if we have been using these proper names for various articles, still, I feel that the time has come when we must use our brains and find some other names, instead of using these individuals' names. We can use the names of trees and flowers instead of the names of individuals. If we use our brains, we can do it. We have to start discouraging the use of proper names.

Shri C. R. Pattabhi Raman: A person may use an innocent word like 'Padma', but there may be several persons with that name.

Shri Kane: And I shall have to get the permission of all of them.

Shri C. R. Pattabhi Raman: But the Registrar has got the discretion. If he does not use it properly there is the higher court to which an appeal can be made.

Shri Kane: If permission will have to be obtained, then several innocent persons will suffer. Of course, we do appreciate the object, but while achieving that object, I feel that these innocent persons may suffer. Therefore, the proper wording would be 'and the representation and the name'.

Shri C. R. Pattabhi Raman: In fairness to the Members of the Committee, you must tell them that in England and Australia, this is the position. You must know that our Bill is now in conformity with the established practice in England and Australia.

Shri Kane: The difficulty would be that thousands and lakhs of people may be using personal names as trade marks; and that has been the established practice in India, and that has been an easy method for the marketing of the goods in India. So, we have to give protection to them. So far as the new marks are concerned, we can understand this provision. If a person innocently adopts a particular name, being a personal name, then he will have to go to X, Y or Z in order to obtain permission because that is the name of his father or grand-father. That is something which looks strange.

Shri C. R. Pattabhi Raman: That will be a misuse of the powers by the Registrar.

Shri Kanungo: Tomorrow, I can change my name to Maulana Azad, and say that that is a name which I am using.

Dr. Sushila Nayar: We have to lay down certain forms in regard to registration of personal names.

Shri C. R. Pattabhi Raman: The Minister would agree that while there cannot be much objection to the use of the word 'Gandhi' as it is, yet if any identification is sought to be made then there would be objection. In fact, the famous conveyer belt is called 'Gandhi belt'—I think it is named after a Parsi gentleman—and nobody has got any objection to it, even if it is spelt wrongly. But if there is identification, then the objection comes.

Shri Shah: The Registrar is given powers to call for the consent of all the persons concerned.

Shri Kanungo: Somebody has got to use his discretion and judgment.

Shri Kane: Then, the provision should be amended in such a manner as to achieve the object which the Committee has in view. So far as the object is concerned, we all agree. But while achieving that object, the common man should not suffer. Instead of leaving the matter open for interpretation, the position should be made very clear here itself.

In clause 32, our submission is that sub-clause (c) should be deleted. In order that the original registration may be valid after seven years, it has to be proved that at the commencement of the proceedings, the trade mark was distinctive of the goods of the registered proprietor.

Now, it may be that after the marks are registered, the person may be using the marks on a very small scale, because he may be a small man. Now, he will have to prove that his mark has acquired distinctiveness. We do not know whether he has to prove only use or also distinctiveness.

Chairman: I know that this is a new clause which has been introduced that after seven years, in order that the mark may remain valid, it should be proved that it was distinctive. Now, after seven years, when it has to be renewed, if it is found that it is not distinctive, then what is the remedy?

Shri Kane: In legal proceedings, the defendant can take this defence that at the time of the commencement of the proceedings, the mark was not distinctive.

Shri C. R. Pattabhi Raman: I have got an example now. The word 'Nylon' has been registered. If the period is below seven years, the scope for removal is there. Beyond seven years, it is a different matter. You certainly will admit that the word 'Nylon' cannot be registered.

Shri Kane: We do see that, but the Registrar should rectify the Register in that case.

Shri C. R. Pattabhi Raman: Once it has got into the register, it has been registered.

Shri Kane: The Registrar has the power to rectify that.

Shri C. R. Pattabhi Raman: I am deliberately saying this at this stage, because here is a good case, namely that of 'Nylon'. The Registrar can remove it if the period is below seven years, but after seven years, he cannot do so.

Shri Shah: There was a similar case in England in regard to Woodward's Gripewater several years ago. It was registered as only 'Gripewater' to indicate a particular medicine; and after fifteen or twenty years, rectification proceedings started to have that mark removed. But the Registrar did not remove that mark.

Shri C. R. Pattabhi Raman: Correct me if I am wrong. Is not this clause to the effect that after seven years it cannot be corrected? The clause is very clear.

Shri Kane: The registrar can *suo motu* rectify the register at any time. In such cases, he ought to reduce the difficulty himself.

Shri C. R. Pattabhi Raman: I am sorry you have not pointed out the provision which reads:

> "the original registration of the trade mark shall, after the expiration of seven years from the dates of such registration, be taken to be valid in all respects...",

The words are 'valid in all respects'.

Shri Kane: Here, our difficulty is this. Let me explain the other side. In a legal proceedings, the defendant will immediately say that the plaintiff's trade mark has not acquired distinctiveness. 'Distinctiveness' would mean, according to me, that the sales are not very extensive and that the product is not having a very popular market. Now, it may be that the person may have got the mark registered, but he might be using it on a small scale, and it may not be distinctive, but it might be in use. In such a case, the defendant will succeed against the plaintiff if he could prove that the sales were only 50,000, say, instead of 5 lakhs per annum. That is our difficulty. We can understand the word 'use' remaining there, instead of the word 'distinctive'.

Shri Kanungo: These points have got to be balanced and considered by a presiding officer, and you must credit him with some commonsense.

Shri C. R. Pattabhi Raman: Actually, if I may say so, you know what the position is in the drug trade, with which you must be familiar. It is really terrific. There may be a small company producing pencillin, but somebody else may say, 'Mine is better; it does not produce any toxic effects; use Streptomycin or some other 'mycin' and so on'.

Shri Kane: The difficulty is that in the High Court, the section will be interpreted as it stands, and the object of the legislature in passing that section may not be taken into account. So, instead of leaving the interpretation to the court, it would be better if we clarify it here itself. Otherwise, when any action is taken for infringement, poor people may suffer all the more.

Shri Kanungo: There are decided cases in other countries on these things. Can you point out any of the decisions which are likely to create hardship or confusion? Can you cite any?

Shri C. R. Pattabhi Raman: Australia and Canada.

Shri Kane: I am not aware.

Shri C. R. Pattabhi Raman: If I may say so, you are really fighting a ghost in the air. After all, the discretion is there, and the Registrar has to exercise his discretion.

Shri Kane: We leave it to him to do things with discretion, but if the discretion is well-defined and matters are made clearer, that would certainly help all persons.

Shri C. R. Pattabhi Raman: In that case, there would be no elasticity at all. You cannot have discretion and rigidity at the same time. Discretion would mean that there should be some elasticity. If the discretion is misused, then there is always the remedy.

Shri Kane: On that, there cannot be two opinions. If it could be possibly made clearer, then it is worth the while.

Shri Kanungo: Discretion means room for various shades of opinions.

Shri Kane: The Registrar can *suo motu* rectify when the mark is defective. Then under clause 33(b) we want the date of registration to be inserted.

Then under clause 105(c), we would like the words 'alleged to be' inserted before 'identical with or deceptively similar'. This relates only to jurisdiction. The district court will have jurisdiction if the plaintiff alleges the defendant's trade mark to be identical or deceptively similar. It would make things more clear if the words 'alleged to the appointment of a registered is this. We file a suit in a district court. In order to decide the question of jurisdiction, the judge will have first to go into the question of identity or similarity. That is going into the merits of the case. If there is no similarity, there will be no jurisdiction. So it would make things clearer if these words are put in there.

Shri C. R. Pattabhi Raman: Then you will have to start from the very beginning. You will have to say 'alleged infringement..' It must be put everywhere. If any poor trade mark owner is not properly represented, if he has not got efficient lawyers, the whole thing will be struck off. The other counsel will say that there is no allegation of infringement. Therefore, the suit will be dismissed. Actually, I have dealt with a case concerning a medicinal oil, prepared from herbs, in Dindigul. The suit will be dismissed because the other side will say that there is no allegation. Once the Registrar is told, 'here is a situation, here is the party selling goods like this' he must do justice. The onus of proof is shifted. On the

other side, the man who alleges has to prove.

Shri Kane: We thought it would be more clear by the addition of those words. Lawyers interpret it in various ways. What we mean is that when we go before a court, it is just likely that it will be interpreted in that way. First of all, it must be proved that the mark is similar. Then the question of jurisdiction will be decided.

Shri Kanungo: Anyway, we have covered this point.

Shri Kane: If you are satisfied with it, it is left to you.

Our last submission is this. In Bombay and Calcutta particularly, appeal lies to the original side of the High Court, which becomes more costly. Therefore, if the other submissions are not accepted, we submit that appeals should lie to the appellate side of the High Court.

Shri C. R. Pattabhi Raman: There again, if I may say so, all those distinctions are going or are gone.

Shri Kane: The High Court can frame their own rules.

Shri C. R. Pattabhi Raman: The tendency nowadays is to wipe off all the difference between one group of lawyers and another.

Shri Shah: But still it is there in Bombay.

Shri C. R. Pattabhi Raman: That distinction is going.

(Witnesses then withdrew.)

(The Committee then adjourned.)

THE JOINT COMMITTEE ON THE TRADE AND MERCHANDISE MARKS BILL, 1958

Minutes of Evidence taken before the Joint Committee on the Trade and Merchandise Marks Bill, 1958.

Tuesday, the 8th July, 1958 at 10·00 hours

PRESENT

Shri J. M. Mohamed Imam—*Chairman*

MEMBERS

Lok Sabha

Shri C. R. Pattabhi Raman
Shri Radhelal Vyas
Pandit Dwarka Nath Tiwary
Shri Kailash Pati Sinha
Shri C. Bali Reddy
Shri Akbarbhai Chavda
Shri Shiva Dutt Upadhayaya
Shri Jaswantraj Mehta
Shri Ram Krishan
Shri Bishwa Nath Roy
Dr. Sushila Nayar
Shri M. Muthukrishnan
Shri Chintamani Panigrahi
Chaudhary Pratap Singh Daulta
Shri Laisram Achaw Singh
Shri Balasaheb Patil
Shri Ram Chandra Majhi
Shri Badakumar Pratap Ganga Deb Bamra
Shri Motisinh Bahadursinh Thakore
Shri Nityanand Kanungo

Rajya Sabha

Shri K. P. Madhavan Nair
Shri Mahesh Saran
Shri Adityendra
Maulana M. Faruqi
Shri Akhtar Husain
Shrimati Chandravati Lakhanpal
Shri P. T. Leuva
Shri Swapnand Panigrahi
Shri V. C. Kesava Rao
Shri Devendra Prasad Singh
Shri V. Prasad Rao
Shri B. D. Khobaragade
Shri B. V. (Mama) Warerkar

DRAFTSMEN

Shri G. R. Rajagopaul, *Additional Secretary and Chief Draftsman, Ministry of Law.*

Shri G. R. Bal, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRY AND OTHER OFFICERS

Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Commerce and Industry.*

Dr. S. Venkateswaran, O.S.D., *Ministry of Commerce and Industry.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

WITNESSES EXAMINED

I. TRADE MARKS OWNERS ASSOCIATION OF INDIA, LTD., BOMBAY

Spokesmen:

Shri K. T. Chandy—*Chairman*

Shri A. C. Manchanda—*Vice Chairman*

Shri K. S. Medhora—*Member of the Council*

Shri B. C. Ojha—*Secretary*

Shri S. H. Gursahani

(*Witnesses were called in and they took their seats.*)

Chairman: First, I want to bring this to your notice.

"Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament."

Have you any objection to this?

Shri Chandy: We have no objection.

Chairman: You have sent a detailed memo. We will go chapter by chapter. Your memo is fairly exhaustive. I think it gives a lucid picture of your views. However, we have no objection to your making some brief observations to supplement. You have commented on the definition of 'tribunal'. You want the existing definition to be retained.

Shri Chandy: We have no objection to the retention of this definition. It is a question of law. We have placed our view for your consideration. We have no particular suggestion to make.

Chairman: You have said at the end of your note. The later definition practically means the High Court.

Shri Chandy: You will realise that after all the matter can go from the High Court to the Supreme Court. When the matter reaches the Supreme Court, surely, their jurisdiction should be the same as that of the High Court in all matters that go up before them.

Chairman: The High Court has original jurisdiction. The Supreme Court has not.

Shri Chandy: Quite true. However, that is a very small matter. I do not think we want to press it.

Shri C. R. Pattabhi Raman: The Supreme Court has inherent powers in any event.

Chairman: Shall we go to the Second Chapter?

Shri Chandy: The first clause to which we want to draw your attention is clause 3. In line 2, it is stated, "the High Court within the limits of whose appellate jurisdiction the Trade Marks Registry....." We would like to see the wording to be ".....the office of the Trade Marks Registry.....". Our reason is this. Trade Marks Registry has been defined later as a Registry for the whole of India. What is really intended is the particular Branch office

of Trade Marks Registry—so that the High Court is the one within the limits of whose appellate jurisdiction the particular Branch is situate.

May I draw your attention to clause 5 (1)? It says, "For the purposes of this Act, there shall be established a Registry which shall be known as the Trade Marks Registry." Coming back to clause 3, you read:

> "The High Court having jurisdiction under this Act shall be the High Court within the limits of whose appellate jurisdiction the Trade Marks Registry referred to...."

Shri C. R. Pattabhi Raman: You say it should be "Office of Trade Marks Registry"?

Shri Kanungo: We will listen to their submissions. Government proposes to submit some amendments this afternoon.

Chairman: I invite your attention to clause 2(2) (e) where it is said that any reference to the Trade Marks Registry "shall be construed as including a reference to any branch office of the Trade Marks Registry."

Shri Chandy: But in our view, the meaning would be clear if the words are "office of the Trade Marks Registry". It would avoid having all kinds of arguments. That will come again in (a), (b) and (c) and wherever there is necessity.

Chairman: If your suggestion is accepted, consequential changes will have to be made.

Shri Prasad Rao: It has been contemplated under this Bill that the jurisdiction of the High Court should extend to the region where the registration takes place. Why do you want this jurisdiction to be extended to other regions?

Shri C. R. Pattabhi Raman: Do I understand you to say that there is only one Registry so far as the whole of India is concerned. You can register in various branches. So you want clause 3 to be in consonance with clause 5 in Chapter II, by having the words "office of the Registry".

Shri Chandy: Quite right.

Shri C. R. Pattabhi Raman: So that for jurisdiction purposes, the relevant jurisdiction will be that of the High Court where the branch is situated.

Shri Chandy: Our submission is in no way inconsistent with the scheme of the Bill. This submission is only made to avoid any argument.

Shri Prasad Rao: Clause 3 deals with the jurisdiction of High Courts. Of course, the registered trade mark owner can apply for or seek relief only from that High Court where his main or principal business is located. But you want this jurisdiction to be extended to other High Courts in India as well. That is the suggestion which you have made here regarding clause 3.

Shri Chandy: I think we have probably not been correctly understood. As I understand it, the scheme of the Bill is this. At the moment appeals from the decisions of the Registrar, Deputy Registrar and Assistant Registrars located in various places in India can go to any competent High Court, and there is considerable doubt as to what would be the competent High Court in a given situation. Therefore, the Bill sets out to remove that difficulty or anomaly by specifying the particular High Court to which, and to which alone, appeals will lie from the decisions of the Registrar and Deputy Registrar.

Shri P. T. Leuva: The word "Registry" might mean the main Registry and only the Bombay High Court may have jurisdiction. In order to avoid that difficulty, you want to specify the High Court in respect of the territorial Registry and you want, for that purpose, to have the words "office of the Registry". It is only a question of interpretation.

Shri Chandy: That is right.

It is difficult to confine myself exclusively to Chapter I because the subjects are inter-related. The next submission I would like to make is in regard to clauses 3 and 122.

Having decided that appeals from the decisions of the Registry shall lie only to specified High Courts whose jurisdiction is established by the territorial extent and jurisdiction of the Branch office, the next problem is to see that an application is attached to a Trade Mark Office so that all decisions relating to that application will be in that branch, and all appeals will lie to the relevant High Court and so on. Therefore, the scheme of the Bill, as I understand it, is that an applicant should be compelled to make his application in one branch office and in one branch office only. To that we have no objection. In fact, we accept it. That was one of our submissions earlier. But the problem is: how do we get that permanent attachment of an applicant or application to a given Registry or branch office?

The scheme of the Bill is that he shall apply in that place where the place of his principal business is situated, but what happens when he changes his principal place of business? There ought to be some provision whereby, when a man changes the place of his business, it should be possible for his applications to be transferred to the other branch office within whose territory his principal place of business may then come to be situated. We recognise there ought to be some safeguards about this. Certainly, all matters which are pending, in the sense that there is a contest of some kind, should be finished in the branch office where the matter originated, and should be finished, therefore, in the High Court to which there was an appeal.

Chairman: According to your note, if the proceedings are already pending, then he cannot change.

Shri Chandy: With regard to those matters, but with regard to other matters which are non-controversial at that stage, it should be possible.

Chairman: If he changes his place of business in the course of the proceedings?

Shri Chandy: That should not affect the jurisdiction of that branch office with regard to those matters. Whichever way you look at it, the problem is this. Once you decide upon a certain criterion to attach an application or an applicant to a given branch office, when there is a change in the criterion, there should certainly be a provision for that change being recorded and therefore something should be done.

Shri P. T. Leuva: May I invite your attention to clause 6(4). In every branch office there would be a copy of the register. If there is a change in the address or anything, it would be recorded in every office.

Shri Chandy: That is certainly so. It is intended that the Registry is one. But the problem is this. Let us assume that my principal place of business is Bombay today. Six months later I am compelled to change my place of business to some other place. There are certain applications.

Chairman: Six months after the application?

Shri Chandy: Let us say I made an application six months ago, when my principal place of business was Bombay, and I made the application in the Bombay office. Now I am changing my place of business. My applications have not yet come up for consideration. The Registrar has not even considered them, has not accepted them. So, I can say to the Registrar: "My principal place of business is being shifted. It would no longer be convenient for me to have these matters heard in Bombay. I would have them heard in Calcutta where my principal business is going to be. So, would you be good enough now to transfer all these applications

to Calcutta?" That is the question at issue.

Shri Prasad Rao: You want a proviso to be added there, that there should be a provision for the Registrar to record the change of the principal place of business.

Shri Chandy: Quite correct.

Shri Prasad Rao: You are only talking of the change of place of business?

Shri Chandy: Yes.

Shri Prasad Rao: The jurisdiction of the High Court will also be changed?

Shri Chandy: Yes.

Shri C. R. Pattabhi Raman: He does not refer to any action at all, but long before any action is contemplated or is possible or becomes probable.

Shri P. T. Leuva: He can change the jurisdiction at any time he likes.

Chairman: He files an application or prefers an appeal. Before the proceedings commence, it is the view of Mr. Chandy that if he has changed his principal place of business, he should be allowed to change the High Court also.

Shri C. R. Pattabhi Raman: By that time the High Court is seized of the matter.

Shri Chandy: When there is a change in the principal place of business, what do we do? There is no provision relating to that here. There ought to be some provision, and my submission is that the provision may be somewhat on these lines. All matters of a contested nature which are at that moment pending in that Registry or in that High Court must continue to be dealt with there and there alone. Otherwise it creates trouble because matters have proceeded half way. Subject to that, all other matters which are not the subject matter of contest could be transferred to the other branch office of the Trade Marks Registry to be dealt with thereafter according to the law. That is all.

Shri Prasad Rao: Can you give us some factual material as to how many firms or registered trade mark owners usually change their principal place of business in a year?

Shri Chandy: I am afraid I cannot give any factual statistics.

Shri Prasad Rao: Then we would be able to understand whether it is necessary to incorporate this provision statutorily.

Shri Chandy: Even if there is one, you must provide for that one. As a matter of fact, if we were to refer to the company law administration, I am sure they would be able to give adequate information as to the number of cases of companies changing their principal place of business.

Shri Prasad Rao: What is the safeguard that this provision will not be misused by some of the registered trade mark owners against their opponents?

Shri Chandy: I do not think anybody would change his place of business merely to have a vendetta against somebody else who is infringing his rights. A man changes his place of business after taking into account a whole lot of factors in the light of which he thinks he should move.

Shri Akhtar Husain: Suppose the place of business is changed after an application is made for registration.

Shri Chandy: I know of cases where it does happen.

Shri Akhtar Husain: Does it happen frequently?

Shri Chandy: It will not happen frequently.

Shri Akhtar Husain: Before a person makes an application for registration, he should make up his mind where he is going to carry on his

business, and it would be in very rare cases that the owner would be so fickle-minded that he makes an application for registration one day and after the application has been filed in the office of the Registry, changes his mind and transfers his business to some other place.

Shri Chandy: As far as I know, with due respect I may say that I have heard about Richardson & Cruddas originally being registered in Bombay. For some reason or another, they changed their registered office to Calcutta. I do not know why they did it, but it is a fact they did it.

Chairman: I think we have sufficiently grasped your view.

Shri C. R. Pattabhi Raman: In income-tax, you can transfer from Madras to Delhi office, but I think you are not thinking of the litigation stage but long before that.

Shri Chandy: Yes.

Shri Prasad Rao: Supposing a Deputy Registrar or Assistant Registrar is likely to refuse an application, you want that case also to be transferred to some other Registry?

Shri Chandy: No. Once a matter has been taken up by the Deputy Registrar in a given branch, notwithstanding the applicants change of address, that matter must be finished by that Deputy Registrar, and any appeal must still lie to that High Court.

Shri Khobaragade: But the number of such cases would be negligible.

Chairman: We shall come to our own conclusions later.

We now proceed to Chapter II. You have no objection to the amalgamation of the Patent Office?

Shri Chandy: On the contrary, it is one of our major principles. We are very happy that Government have accepted it.

Chairman: Have you any other observations to make regarding the appointment of deputy and assistant registrars? You are agreeable to the appointment of assistant and deputy registrars?

Shri Chandy: That is a matter of convenience. But there are certain inter-related issues which I would like to place before you. If I may seek your permission to go away from Chapter II, the broad question that I would like to place before you is to consider the rights and powers of the registrar. If you would permit, I would like to place before you some facts.

Chairman: I shall come to that later on, at the appropriate stage. Here, I want to know whether you have any objection to the appointment of deputy and assistant registrars.

Shri Chandy: We have no objection to clause 4 (2). But we are thinking why we should mention only deputy and assistant registrars. We may say that the Central Government may appoint as many officers with such designations as they think fit.

Chairman: Regarding clause 5(2), there was a suggestion that the word 'Bombay' should be deleted, and it may be stated that Government may establish the Trade Marks Registry at such place as they deem convenient.

Shri Chandy: That is a matter for the Government to make up their minds upon. If I may say so, this has a history too. It is unfortunate that I have been obliged to enter into this controversy, because I did not want to enter into it. Let it not be said that we have no members from Calcutta. We have many members from Calcutta. But where the integrated office should be has been the subject-matter of some consideration, and I take it that Bombay has been put not inadvertently. We support this.

Pandit D. N. Tiwary: We are told that in U.K. and other places, it is not necessary that the head office

should be kept at those places where the number of applications is greater; it can be located at any convenient place. Similarly, here, if it is not kept at Bombay, it can be located at Delhi or somewhere else. What are your views on this?

Shri Chandy: There is no question of any law here. This is a question of what is most convenient to all parties concerned, the parties being the trade marks owners, the patent owners, the public at large, and finally the State itself which is concerned with the administration.

If I understand correctly, it is one of the policies laid down by the Central Government that as many offices as possible should be taken out of Delhi. So, I would rule out Delhi on that ground. On the other hand, I would say that Bombay is still one, and will continue to be one, of the leading industrial places in India. So, the choice as far as I could see is between Bombay and Calcutta. Some ten years ago, the choice was made, and as far as the Trade Marks Registry was concerned, Bombay was chosen.

Now, whether the integration of the office should necessarily mean that the Calcutta Patent Office should also change its principal place is not strictly necessary. That is a matter of administrative convenience. The Controller-General of Patents and Trade Marks would be located in Bombay, and he naturally must maintain in every branch office all the records, excepting the original records, so that anybody can have access to them.

Chairman: Your views are that Bombay should be retained.

Shri Chandy: We support the policy decision of Government.

Pandit D. N. Tiwary: Is it necessary that the word 'Bombay' should be put in the Bill, or can it be left to Government to decide it?

Shri Chandy: Government have decided, and we welcome that decision.

Pandit D. N. Tiwary: The point is whether it is necessary to decide it through legislation.

Shri Chandy: With due respect to the Minister, I would say that probably they want to keep this issue above their normal politics.

Shri C. R. Pattabhi Raman: Please refer to clause 5(3) under which Government can decide the jurisdiction of the branch office.

Shri Chandy: The wording of the clause is:

> "The Central Government may, by notification in the Official Gazette, define the territorial limits within which a Trade Marks Registry may exercise its functions."

I am not trying to raise a little red herring, but I want to make quite sure that this phraseology 'may exercise its functions' should not mean that the powers of registration are also limited. In other words, the deputy registrar in a particular branch territory may receive applications within his territorial limits, but his decisions should be applicable for the whole of India. There should be no ambiguity about it. If the draftsman thinks that there is any ambiguity, I would most earnestly request him to see that the ambiguity is removed, because the registration is for the whole of India.

Shri Kanungo: All you suggest is that this particular phraseology is susceptible to ambiguity.

Shri Chandy: I have a feeling that there may be some ambiguity.

Shri C. R. Pattabhi Raman: In that case, you will have to give a definition of the registrar also, and you will have to say that registrar means a person performing such and such functions.

Shri Chandy: I do not want to enter into a legal argument over this. I have made my submission already, namely that in order to bring out the real scheme of the Bill, the draft may

be made so clear that there would be no argument about it. The functions naturally are exercised in that zone, but the decisions are applicable for the whole of India.

Shri C. R. Pattabhi Raman: I take it that he will sign for the registrar.

Shri M. B. Thakore: Why do you want that the decisions should apply to the whole of India?

Shri Chandy: That is the scheme of the Bill.

Shri Prasad Rao: What is your opinion about the suggestion that there should be two kinds of registration, an all-India registration and a local registration confined to a particular State or a particular zone? The zonal or local registration is intended mainly for local products which are at no time contemplated to have an all-India distribution. For instance, a local brand of *biri* is circulated mostly in a district, or there may be some such local product. For such things, it is suggested that there should be a sort of local registration confined to a particular region or a particular zone. What is your opinion about such registration?

Shri Chandy: I do not find it possible to accept this suggestion. To my mind, India is one, and we must do everything possible to encourage a national market. And what is today a local product will be tomorrow a national product. As it is, the registrar has the power in fit and proper cases to impose territorial limits on registration. In fact, in the *biri* trade, because it is a decentralised operation happening all over India, it is customary for the registrar, when he finds that there are two similar marks, to impose such territorial limitations. In other words, the safeguards are all there. So, why cut up India into small blocks?

Chairman: The registration must be for the entire country.

Shri Prasad Rao: The idea behind it is this. Suppose a local brand of *biri* is consumed in a district; it can be more easily registered for lesser registration fees and with less litigation in that zone. Could not such a scheme be envisaged in this Bill?

Shri Chandy: I do not know if there is any scheme of trade marks in any country, which is based on some tabulated idea of turnover, wealth and so on; it is one standard one.

Chairman: A trade mark may be registered under certain limitations, under which you may limit its use to certain parts of the country.

Shri C. R. Pattabhi Raman: Clause 25(4) refers to the conditions and limitations.

I would like to understand one thing here. If a Deputy registrar of Madras passes an order on an application made in Madras, coming within the jurisdiction of the Madras branch office, would he not be signing for the registrar? Or, if he has not got that power, I take it that he will take the registrar's permission. Will he not?

Shri Chandy: If you look back at clause 4(2), you will find that the deputy registrar or assistant registrar or the other officer; gets his powers by delegation from the registrar, and what is more, having got his powers, he functions under the superintendence and direction of the registrar. Therefore, if I understand correctly, the present procedure is for the registrar to have an oversight over their judgments if he catches any particular point. And before the orders are issued, he has all the powers in the world, because he has got the power of superintendence and control.

Dr. Venkateswaran: But once the direction has been given, he cannot interfere.

Shri Chandy: I would not like to argue that point. I do realise that once the deputy registrar gives a decision publicly, it is not open to the registrar to do anything with that. But there is one point on which I would like to have clarification, because I do not know the inside practice of the Trade Marks Registry.

and that is whether before the deputy registrar gives his judgment, it is open to the registrar to ask him to show his judgment in draft.

Dr. Venkateswaran: No.

Shri Kanungo: Anyway, there are powers for the registrar to issue directions.

Dr. Venkateswaran: But once the direction is issued, thereafter the matter is left entirely to him.

Shri Chandy: We shall accept that on this basis we shall come to an arugment about the powers of the registrar later on.

Dr. Venkateswaran: There is a slight change here from the present section, where he will act independently. Here, he acts for the registrar, as in England. This provision is from the English Act.

Shri C. R. Pattabhi Raman: Your point is that there should be something in the definition of the term 'registrar' in clause 2, to include 'anyone acting for him'. Is that what you are saying?

Shri Chandy: I think that is a good point to be borne in mind in giving the definition of the term 'registrar' in clause 2.

Draftsman: In sub-clause (2) of clause 2 you will find that both the points that you have raised have been met. So far as the registrar is concerned, any reference to the registrar shall be construed as a reference to any officer discharging his functions, including the deputy and assistant registrars.

Dr. Venkateswaran: This follows the English Act. So, I think there is no difficulty about it.

Shri Chandy: Now, I come to clause 8(1). This clause is based evidently on Justice Rajagopala Ayyangar's report. His submission was that in the English Act, the word used is 'must' and not 'may'. He felt that the word in the Indian Act also should be 'must'.

Another point that he mentioned was that in India the fact that one application must be confined to goods in one class is to be found only in the rules. Therefore, he suggested that either that clause should be put in the Act itself and not in the rules, or the main provision in the Act itself should be changed. Therefore, our submission is that a trade mark may be registered in respect of any or all the goods comprised in a prescribed class or classes of goods.

Draftsman: That is governed by the General Clauses Act.

Shri Chandy: That is the way it appears in the present Act.

Now, please turn to clause 18(2).

> "An application shall not be made in respect of goods comprised in more than one prescribed class of goods."

That takes care of the fact that an application must be in one class. But it does not prevent the owner of a trade mark from making more applications in different classes if his mark happens to be so used.

Therefore, coming back to 8, let it not be said by any astute interpreter that a trade mark is only one. Let us take the word 'gillet'. It is applied to all kinds of accessories, gillet blade, gillet razor, gillet shaving stick and so on. They are in different classes.

Dr. Venkateswaran: This provision is taken from the Australian Act. A trade mark used for soap is not to be considered to be the same trade mark used for, say, oil.

Shri Chandy: I know. The question is whether all these concepts are easily understood—that a trade mark has as many lives as there are articles in relation to which it is applied.

Let us have as simple a proposition as possible so that the least amount of argument is possible. If you have no fundamental objection, may we suggest only the words 'class or classes of goods'?

Shri Rajagopalan: That comes automatically under the General Clauses Act.

Shri Chandy: Coming to clause 9(3), there is the definition of the term 'distinctive', but for some reason, it is said: 'For the purposes of this section'. You will find that there are so many places where the word 'distinctive' is used in relation to marks which are registered in Part A. May I, therefore, suggest that this aspect of the problem be carefully considered and the word distinctive' be defined in the definition clause? Or you may say 'For the purposes of this Act'. Otherwise, later on one begins to wonder what 'distinctive' means.

Chairman: 'Distinctive' means adapted to distinguish.

Shri Chandy: That is a subtle distinction which lawyers find it happy to deal with.

Dr. Venkateswaran: This is the present section.

Shri Chandy: It is not only defined for the purpose of this section; it is defined for the purposes of this Act.

Dr. Venkateswaran: This is the present position in the Indian Act as well as U.K. Act.

Shri Chandy: But since we are trying to be a little more precise, we may do it.

Coming to 9(4)—9(6), here again I know Dr. Venkateswaran would say that this is very much the same as in the English Act. But I have a little doubt which perhaps he or any of the Members might clarify. It occurs to me that what is registered in Part A, being a higher class registration, is not expected to be simultaneously in Part B. What is registered in B is not to be registered in A obviously. It is only the mark which is registered in the higher class that can at all be registered also in the lower class, not *vice versa*. It is true that at some point of time a mark which is registered in the higher class A may lose its inherent distinctiveness when the Registrar may say, 'You have allowed the mark to lose some of its inherent distinctiveness. I must push it down to 'B'. So it is possible to have a transfer of the mark from A to B, in certain circumstances. Similarly, it is also possible that a mark originally registered in part B, over a long period of use, acquires a higher degree of distinctiveness which would entitle it to be moved to Part A, subject to fresh application being made etc. So it is true that marks can go from one part to the other, but is it contemplated that they should be simultaneously invoked?

Dr. Venkateswaran: A mark which is distinctive may be registered either in Part A or Part B. But there is no objection to a distinctive mark being registered under Part B if the proprietor of the mark so desires. For some reasons he may think that if a mark is registered in A, there may be rectification proceedings and he may not be able to sustain the distinctiveness of the mark as required under clause 9(1). In any case, there can be no objection to the proprietor of a mark choosing either A or B as he likes. This section follows the provisions of the Australian Act. It is also true that the distinctiveness required for Part B is a little less stringent than that required for registration in Part A. We have said here 'unless the trade mark....is distinctive or is not distinctive but is capable of distinguishing....' just to make out the distinction between the expressions 'adapted to distinguish' and 'capable of distinguishing'. A mark may not be adapted to distinguish but may be capable of distinguishing. In such a case, it may be registered under B.

Shri Chandy: I do accept that it is after all for the owner to decide. But is it contemplated that at the same time he should be in both?

Dr. Venkateswaran: It is left to the discretion of the proprietor of the mark.

Shri Chandy: It should be either the one or the other.

Dr. Venkateswaran: He can have both if he wants. It is within the choice of the applicant. If he is not strong enough for Part A register, he can have B.

Shri Chandy: Suppose I have a mark registered simultaneously in A and B. When I take action for infringement against somebody else whose mark appears to be similar to mine, he would ask: 'Are you coming here under Part A or Part B' because my rights to enforce a restriction on the other man are not equal, depending upon my type of registration.

Dr. Venkateswaran: It is left to the proprietor of the mark to choose.

Shri Chandy: When I file this action for infringement, I find myself in a difficulty. I have to plead that I have registered under A. Then that man would say, you have also registered under B.

Dr. Venkateswaran: He proceeds under Part A.

Shri C. R. Pattabhi Raman: By way of abundant caution, he also registers in B. But at some given time, he has to choose. He cannot have both.

Dr. Venkateswaran: He can have both.

Shri Chandy: If that is the view of Government, it is something which they give to us as owners. We are quite happy to have it.

Shri Khobaragade: I think the mark is to be registered in either of the two. Difficulties are experienced in registering certain trade marks in register A. Therefore, the owners of the trade mark who are exporting their goods find it difficult to register their marks in other countries because they cannot satisfy certain conditions laid down in clause 8. So they suffer a setback in foreign countries. Hence they should be given certain facilities. If they cannot satisfy the stringent conditions of registration in A, they should be given facilities for registering such marks in B.

Shri Chandy: That is the purpose.

Shri Khobaragade: Not that the mark should be registered in both; it will be either A or B. I think that is the scheme.

Shri Kanungo: The intention is that it is at the option of the owner to choose either or both.

Shri P. T. Leuva: The point raised by Shri Chandy is substantial for the simple reason that the rights enjoyed by a person under registration of a mark in A are not enjoyed by a person who has registered under B. When somebody has registered under A and B, and a question comes of infringement, he has to answer the question: 'Under which category you are coming, whether you are suing us under A or B'? Under B, certain remedies are not open to the trade mark owner.

Shri Kanungo: The very fact that the owner has chosen to register in both registers shows that he will get the advantage and liabilities of the higher registration.

Shri P. T. Leuva: It must be specified for all time to come as to what rights a person who has registered in both categories will have in case of infringement. It should not be left to the sweet will of any person.

Chairman: Mr. Chandy's view is that there must be a clear-cut demarcation between the two.

Dr. Sushila Nayar: I would like to be clear on the point being discussed. Is not the position this way? If someone has registered under A and infringement takes place by someone else registering the same thing under B, then the first person may not be in a position to take action against the man who infringes. If on the other hand he has registered in both A and B, he can proceed either under A or B. I would like this to be clarified. It was my understanding that if he registered only under A, he would not be protected against those infringing who have registered under B.

Dr. Venkateswaran: Only distinctive marks can be registered in Part A register. A mark which is adapted

to distinguish is termed to be a distinctive mark. A mark which is capable of distinguishing is put on the B register. Rights conferred by registration in A are greater than those under B. So naturally if the proprietor of a trade mark feels that his mark can be put on the A register, he will apply for A alone. But in some cases, he may take a chance. He may fear that the mark is not sufficiently distinctive but he wants to ensure for himself that the mark is capable of distinguishing. So he goes in for the B registration as a matter of abundant caution. If there is a suit for infringement of the trade mark, if he relies upon A registration, he has only to show that the mark of the defendant is similar to the mark of the plaintiff. That is enough. If, on the other hand, he relies on registration in Part B alone, the defendant is entitled to plead that notwithstanding similarity between the two marks, there is no likelihood of deception or confusion, in which case the defendant may succeed. As a matter of abundant caution, the proprietor of the trade mark may register in Part A as well as in Part B. But, he is not compelled to register only in Part A or Part B.

Shri Chandy: There is one other point by way of clarification. Dr. Venkateswaran said that Parts A and B form one Register and therefore, no mark will go into Part A which is in conflict with a mark already registered in Part B and *vice versa* and it is not necessary to register a mark in both the Parts. But, later on, you may find that registration in a higher class may be challenged successfully in which case you take the precaution of having the lesser of the two also done simultaneously. That, I understand.

Chairman: If any doubt is entertained regarding distinctiveness, you take the precaution of registering in Part B.

Shri Leuva: May I take it that in all cases, there is an application for registration in both Parts A and B? If the application in respect of Part A succeeds, does it necessarily follow that there would be no registration in Part B?

Shri Kanungo: No. If a particular application is successful in being granted registration in Part A and the applicant is satisfied with that, he can register in A alone. But, if he feels that he should take the precaution of getting himself registered in Part B also in anticipation of some proceedings in infringement, he is not prevented.

Shri Leuva: What I ask is, there are two simultaneous applications. As a measure of abundant caution, there is an application for registration in Part A and there is an application for registration in Part B by the same person. In case the application for registration in Part A succeeds, does it necessarily follow that there would be no registration in Part B?

Shri Kanungo: It is left to the applicant to proceed either for registration in Part A or for registration in Part B. It is a case of distinctiveness being less in the case of registration in Part B.

Shri Leuva: If an application for registration in Part A succeeds, that application is bound to succeed for registration in Part B. There is no dispute about that. In view of the fact that there is one Register which is an All India one in two parts, from the fact that an application has been successful for registration in Part A, does it follow that the application for registration in Part B would not be granted or would not be necessary?

Shri C. R. Pattabhi Raman: The whole includes the smaller; it is a bigger right in Part A.

Dr. Sushila Nayar: I want to understand one thing. Somebody has a trade mark registered in Part A. Some one else has a product which is somewhat similar, may not be so capable of being distinguished as to be registered in Part A, but is capable of being registered in Part B. Cannot that happen?

Chairman: The trade mark may not be registered in Part A.

Shri Kanungo: It is not a product; it is a mark.

Dr. Sushila Nayar: The mark is for a product.

Shri Kanungo: As far as this law is concerned, it is concerned with the mark.

Dr. Sushila Nayar: So far as marks are concerned, some mark is registered in Part A. Another mark is registered by somebody else in Part B.

Shri C. R. Pattabhi Raman: Is it the question, what are the consequences of his getting into Part A or Part B? Rectification is easier in Part B than in Part A.

Dr. Sushila Nayar: It is more difficult. You have put in more distinctive, etc. to get into Part A. Somebody has got into Part B. This person who has got into Part A has certain protection from infringement. In the case of Part B, it is easier to get registered. Is not that right?

Mr. Chairman: Less stringent conditions are imposed.

Dr. Sushila Nayar: Therefore, if a person is registered in Part A, will it not be possible for some one else to commit infringement by getting registration in Part B?

Shri Chandy: He cannot. That is the point. He won't be allowed. There is comparing of all incoming applications with pending applications and registered trade marks. There is no distinction between Parts A and B at that stage. The Register is one. The Registrar compares the incoming marks with the marks already with him. Whether it is Part A or Part B, it does not matter. No mark can be registered in Part B which is in conflict with the mark in Part A. No mark can be registered in Part A which is in conflict with a mark in Part B. Parts A and B form one Register.

Chairman: In that way there are four parts, four categories.

Shri Chandy: We do not call them A. B. C and D.

Then, I come to clause 12(2). The corresponding section in the existing Act is section 10-3. Where more than one person has made application for marks which are substantially similar in relation to the same goods or goods of the same description, obviously somebody has to decide who has the better right to be registered. It may be that two people will have right for concurrent registration, among a group of 6 or 7 competing parties. Somebody has to decide who has the better right or who have better rights to be registered. Under the existing Act, the Registrar may choose to decide the matter himself. In other words, he may adjudicate upon the rights of the competing parties or if he feels it so advisable, he may refer the matter to a competent court, namely the High Court. The parties may be referred to fight out the matter there and get a decision. That is how the matter stands today. The scheme of the Bill is, this discretion which is now vested in the Registrar to refer the parties to the High Court, if he so chooses, is taken away and it is said that he alone shall decide the matter. This Bill goes further to say in what order he shall take up the various applications which are in conflict with one another.

Our submission is this. We feel that we must retain the discretion of the Registrar in fit and proper cases to refer the competing parties to the High Court. Our reason is this. Most of the evidence in the initial stage comes before the Registrar in the form of affidavits. There are certain matters where it would be desirable to have evidence in some other form, examination, cross-examination and so on. I think it is in such cases that the Registrar says, "I do not want to handle these matters, there are six people, let all the parties go to the competent court and settle the matter once for all and

come back". If that discretion is vested in the Registrar, no harm can come. It is for him to decide whether he feels happy or not. If he wants to decide for himself, let him decide. Even if he were to decide, my second submission would be this. All these competing applications should be heard and finished of as one.

Shri Khobaragade: Simultaneously.

Shri Chandy: Otherwise, different applications mean agitation of the same issue in different courts. From what we know, I may take this illustration. Application A is in the Bombay Branch and Application B is in the Calcutta Branch and Application C in the Bangalore Branch. They are all similiar. If they are all dealt with simultaneously by the Registrar transferring them to his own jurisdiction which is an All-India jurisdiction exercised in Bombay, at least one anomaly is saved. All these parties can go to one High Court. Suppose he takes them up independently one after another, his decision in Application will be appealable in the Bombay High Court and his decision in Application B . . . .

Shri C. R. Pattabhi Raman: Does section 10-3 give that power?

Shri Chandy: My submission is, leave that discretion with the Registrar; let him exercise it.

Shri Kanungo: It is still there.

Dr. Venkateswaran: The present position is this. Where there is honest concurrent use by two different persons of the same trade mark or similar trade marks, and the Registrar is convinced that there is honesty of usel he may register both the marks. That provision is contained in clause,12(3) which reproduces section 10(2) of the existing Act. There are cases where the Registrar is in doubt, where the applications do not have clear evidence of usel. In this case alone, the present section 10(3) says, where separate applications are made for registration of the same trade mark by more then two or more persons, the Registrar may refuse all of them. What the present clause 12(2) says is, instead of refusing all of them, he may proceed with the first application and let the other parties fight out the claims of the first applicant. The provision is taken from the Australian Act. It has been highly commended by Mr. Why-man who has stated that the present section 10(3) follows the English section 12(3) which has given rise to considerable difficulty in England. He has suggested that we should adopt the provision in the Australian Act which is much simpler. Accordingly this provision has been put in. If you want, I shall read exracts from Mr. Whyman's letter.

Shri Leuva: According to me, sub-clauses (2) and (3) refer to different matters. Sub-clause (3) refers to concurrent use. Sub-clause(2) has no reference to use. The question raised by Shri Chandy would not be answered by referring to sub-clause (3). That is a case of concurrent use. Suppose there are two trade marks in existence.

Dr. Venkateswaran: He is talking of sub-clause (2) which follows section 10(3).

Shri Leuva: So far as sub-clause (2) is concerned, it refers to a different subject matter. In Sub-clause (2), there may be applications; but there may not be simultaneous applications. There can be one application after another.

Dr. Venkateswaran: Both are pending.

Shri Leuva: There cannot be any simultaneous applications. There will be one application after another. The Registrar has been given power to decide. the first and defer decision of the subsequent applications.

Dr. Venkateswaran: Not refuse.

Shri Leuva: He is only deferring.

Shri C. R. Pattabhi Raman: He makes a decision. He prevents delay. He asks the other people to fight it out. They can get a stay and fight it out.

Shri Prasad Rao: Mr. Chandy's point is that the application might have been made later, but he might have been using it even earlier than the first application.

Chairman: The principle of first come first served should not be applied here; because a person has applied first, undue preference should not be shown. He says all the applications should be taken together and considered on merits.

Shri Prasad Rao: Supposing a person has been using the particular trade mark even earlier than the first application. It must also be considered. There must be a provision here to cover any person who has been using the trade mark since earlier; it should not only be a question of first come first served.

Dr. Venkateswaran: The Act already contains a provision that the mere fact that a mark was registered does not prevent a prior user from opposing the registered trade mark. If a man is the prior user, he is always entitled to the mark. It is only in cases of doubt where simultaneous applications have been made, and the Registrar is not prepared to accept the evidence of use by any of them, that this clause applies. There he says the first application is accepted; the other applicants, if they have got the right of prior use, may oppose it. If they succeed in their opposition, then the other one goes.

Under the Act as it stands, the Registrar can refuse all applications. But under clause 12(2) the Registrar does not refuse all, he accepts the earliest and let the others fight out before him. This is an improvement. In fact, it gives more right to the applicants for trade marks. It avoids delay. In any case, this has been specifically recommended by Mr. Whyman who was Adviser to Trade Marks Enquiry Committee, and who has been Assistant-Controller of Trade Marks, in London for the last several years, a person with considerable experience and expert knowledge.

Shri Chandy: The only point I want to make on clause 12(2) is this. With due respect to Mr. Whyman, I have no doubt it is an improvement, but it can be still further improved. In my view, the way it can be improved is: let not the Registrar, if he himself must decide these matters, take them one after the other, because the same issues are going to be argued on every action. Why can't he consolidate the whole lot of them and deal with them simultaneously?

Shri P. T. Leuva: Would not those applications be treated as objections? All those applicants will file their applications in similar terms.

Shri Chandy: True. Therefore, in relation to the first application, the others raise their objections. That does not establish the right of another person. Again, the second person comes up with his application, and all others begin to oppose. I say the subject matter is the same. Can we not avoid this?

Shri P. T. Leuva: According to you, all the applications should be consolidated and the rights of all the persons should be decided together in one proceeding. There would be only one appeal.

Shri Akhtar Husain: There is nothing in the Bill to prevent all these applications being consolidated and heard at one and the same time. If there is conflict of jurisdiction, application could be made either to the Controller-General or the Central Government, and they will instruct that all these applications be disposed of by one and the same officer, and it will be one after notice to the appropriate parties. Then they will have a chance of putting forward their respective points of view, and the Registrar will then be in a position to decide after hearing all parties.

Shri P. T. Leuva: That is being prevented under clause 12. The

Registrar will defer other applications.

Shri Prasad Rao: Under clause 12(2) he can also consider all the applications simultaneously, because the Registrar "may defer the consideration or acceptance of the application or applications bearing a later date until after the determination of proceedings in respect of the earlier application". He may defer or take them up concurrently. Mr. Chandy's view is accommodated here.

Chairman: We have the views of Mr. Chandy and the Trade Marks Owners' Association before us. We shall consider them.

Dr. Sushila Nayar: After all, this idea of collecting all the applications does not seem to me to be very practical, because then you will have to set a time-limit. Applications received within, say, three months can be consolidated. After all, how does any one know. The Registrar may consolidate three applications that he has received in one month, and a week after that there may be the fourth and fifth applications. So, from the practical point of view, it does not seem feasible.

Chairman: We will take all these things into consideration when we actually discuss the clause. Have you got anything to say on clause 14?

Shri Chandy: This is the current practice which is being put in the form of a clause in the Bill. Our difficulty is with regard to the word "name". In the case of "Gopal varnish" for instance, we have hundreds of Gopals in India. Which Gopal is intended?

Shri C. R. Pattabhi Raman: We discussed that yesterday.

Shri Kanungo: It is not a peculiar feature of India. Jones there are any number in England.

Chairman: We have got your views. We will take them into consideration.

Shri C. R. Pattabhi Raman: You refer to the Christian name, not the surname?

Shri Chandy: It must be a name which should identify a particular person, and not anybody else.

Dr. Venkateswaran: That is why it is left to the discretion of the Registrar.

Chairman: Chapter III.

Shri Chandy: There should be a consequential change abouts the office of the Registry in the place of Trade Marks Registry in clause 18(3). That is a small point.

Chairman: Clause 21(1) and (2) to extend time. You want some discretion to be given to the Registrar to extend the time?

Shri Chandy: On clause 21(1), our point is this. This may be read along with clause 101. In clause 101 it is stated that the Registrar will have the power to grant extension of time in proper cases in such matters only where the Act itself does not prescribe the time-limit. Since three months would be prescribed in the Act itself, under clause 101 the Registrar will have no powers to grant extension. Our submission is that it is worthwhile giving the Registrar discretionary power. If the legislature feels that the discretion should not be wide as in clause 101, you may say that he may grant extension not exceeding a further period of three months.

Dr. Venkateswaran: It comes to the same thing. Again you are putting a limit. You have to put a limit somewhere. It is one month in England. In other countries it is two or three months. In no country is it more than three months. You have to put some arbitrary limit.

Shri C. R. Pattabhi Raman: I believe cases are pending from 1947 onwards.

Shri Kanungo: It is arithmetical calculation. You can reduce it to two

months and leave one month to the Registrar. He wants three months to be left to the Registrar.

Shri Chandy: Some discretion must be left to the Registrar.

Shri Kanungo: As the clause stands, it does not leave any discretion to the Registrar.

Shri Chandy: If marks are accumulating in the Registry, I do not say because the Registrar has been lenient, that would be very wrong. Perhaps he should have more staff.

Shri Prasad Rao: You mean foreign applications or local?

Shri Chandy: I am told there are marks pending. I am not aware what happens in the Registry. It cannot be because he is granting extensions. It is up to him to grant extensions or not.

Dr. Venkateswaran: We get about 4,000 requests for extension every year, most of them for filing notices of opposition, and most of them are granted automatically. The Registrar has been using the discretion very leniently.

Shri Prasad Rao: But there is a complaint also that there is lot of delay.

Shri Chandy: We cannot proceed on the assumption that he will exercise his discretion wrongly.

Dr. Venkateswaran: Even if the mark is not opposed, any aggrieved party has the right to go for rectification of the register. It is not as though an aggrieved party is without any remedy. We only want to expedite opposition proceedings and assure the applicant for registration that his mark would be put in the register as soon as possible.

Shri Chandy: With all that there is a case for giving discretion to the Registrar. If you want, limit it to further three months.

Shri Kanungo: His point is that the period in this clause should not be rigid. Whatever the period, there must be a period of extension.

Shri Prasad Rao: Statutorily two months, and then give discretion of one month to the Registrar.

Shri Kanungo: A specified period and a period of grace.

Shri Khobaragade: Under clause 18(3) what will be the advantage to an applicant if he is allowed to file his application anywhere in any office, and what would be the hardship if he is not allowed to do so but asked to file his application only in such registry office within whose jurisdiction his main office is situated?

Shri Chandy: An application should be permanently attached to a particular office. Today the option is given to the applicant to choose the Branch registry where he would apply. Under the scheme of the Bill no such option is to be given. He must apply in that Branch registry within whose jurisdiction his main place of business is situated.

Shri Khobaragade: What will be the hardship suffered by him?

Shri Chandy: Personally, speaking for most of the big companies, they suffer no hardships because their principal places of business are in Bombay, Calcutta and so on where there are Branch registries, and what is more, they have very good professional service. So, it does not affect most of us. However, I voice the view of others who may be in Kanpur, Delhi and in other places who today receive their professional advice not necessarily in those places, but from well known trade mark agents, solicitors etc., in Bombay, Calcutta etc. It is that class of people who might feel a little aggrieved if they are compelled until such time as professional service of a good quality comes to their places.

Shri Kanungo: This will be just torpedoing the territorial idea.

Dr. Venkateswaran: Supposing a person has been using a trade mark in

Travancore. Another man applies for registration of that trade mark wrongfully in Delhi. The proprietor of the Travancore trade mark has to oppose the rights of the Delhi applicant. The Delhi applicant, purposely to harass the user in Travancore, files his application for registration deliberately in a place far from Travancore, in order to drag him to Delhi for filing opposition proceedings. Will it not be a hardship to him?

Shri Chandy: That is why we have not brushed this point aside. We have explained to you our view.

Shri Kanungo: I can realise the difficulty of a particular party choosing his own advisers, and the advisers being located in some place where the jurisdiction of the registrar does not come in. But in course of time we may envisage that professional advice of the best order will be available in the branches. That is the only way of stimulating professional advisers coming in.

Shri Chandy: We on our part, that is, members of our association, who are all fairly big corporations and fairly big traders, have fairly good professional advice. However, it has been impressed upon us by the Patent Attorneys' Association as well as by a few people that their trade and their profession would be affected. So, we must place it before you for what it is worth.

Shri Khobaragade: Supposing option is given to the applicant that he may file his application either at the head office or at the sub-office within whose jurisdiction the user is situated, then what would be the effect of such a provision?

Shri Chandy: I do not think anything will be done in a sub-office. These trade marks, let us understand this, are considered by all corporations as of such importance as to come within the control of the top board of directors themselves. They are hardly ever dealt with by the branch offices, because, again, this is a matter that is valid for the whole of India.

Shri Khobaragade: But I suppose jurisdiction is there for the appropriate High Courts to hear the appeals. Is that not so?

Shri Chandy: We do not want many High Courts to bother us. We would in all honesty have the fewest of High Courts.

Chairman: They want only one High Court to bother them.

Shri Prasad Rao: Your objection will be met under clause 98. where the registrar has to give notice to the parties and hear them. If sub-clause (4) of clause 23 is taken along with clause 98, then your objection would be met.

Shri Chandy: If the mistakes are of a clerical nature, if they are obvious mistakes, they will be corrected. But there is no question of imposing terms here. As for terms, the registrar has powers to impose terms under rectification proceedings; the registrar has powers to review his own decisions, and the registrar has powers, if clause 112 is accepted, to revise. So, he has review powers, revisional powers, and rectification powers. So, we would submit that the use of the phrase 'on such terms as he thinks just' for correcting clerical errors and obvious mistakes is somewhat out of place.

Shri C. R. Pattabhi Raman: You think that it is too wide?

Dr. Venkateswaran: What happens is that when a mark is registered, a certificate of registration is issued to the parties. If there is some mistake, the certification is called back and is corrected. There is no provision in the existing Act for this purpose. This clause occurs in the Australian Act, in section 127 (b). It is to enable the parties to take a corrected copy of the certificate of registration. It does not affect the parties much.

Shri P. T. Leuva: The difficulty has arisen because of the phrase 'on such terms as he thinks just'. There is no question of any terms here.

Dr. Venkateswaran: There may be a fee, or there may be anything else like notice etc.

Shri P. T. Leuva: If it is a clerical error, there is no necessity for such terms. That is not the mistake of the parties.

Shri Prasad Rao: Clause 98 would meet this objection. Simply because there is a clerical error, he cannot change any major thing.

Shri Chandy: Clause 98 says that he shall not exercise his discretion against a person who has asked for the exercise of that discretion without hearing him, whereas in clause 23, nobody has asked anybody to do anything. There is a clerical error obvious to the registrar. Nobody has asked him to exercise any discretion. Therefore, there is no obligation on his part to hear the person before he makes an order.

Shri Khobaragade: Even in that respect, the registrar will be agreeable to hear the parties.

Shri C. R. Pattabhi Raman: The registrar may say, you advertise it properly now, I am now issuing the correction and amending the register, and you pay such and such a fee, because I am going to gazette it. What he says will not affect the registration.

Shri Chandy: If it is such a clerical error as to necessitate fresh advertisement again, it means that the error must be a fundamental one. If it is something fundamental, the registrar has the power of rectification under clause 56.

Shri Kanungo: What are your apprehensions?

Shri Chandy: My apprehensions are these. The purpose of clause 23 (4) is only to correct a clerical error or an obvious mistake.

Shri C. R. Pattabhi Raman: The word 'terms' should be read with the other part of the clause.

Shri Chandy: Here, a mistake has been committed by the registrar.

An Hon. Member: Not mistake, but clerical error.

Shri P. T. Leuva: But whose clerical error?

Shri C. R. Pattabhi Raman: The applicant may have put in a clerical error.

Shri P. T. Leuva: Then it becomes a fraudulent application.

Shri Kanungo: What are the apprehensions in regard to the misuse of powers under this clause?

Shri Chandy: In the guise of changing the obvious mistake, he has discretionary power over which we have no control, unless we go in appeal.

Shri Kanungo: What are your apprehensions?

Shri Chandy: Now, what are the powers of the registrar for the exercise of his functions? He has rectification powers; then, he has revisional powers; then he has review powers; then he has powers to correct clerical mistakes and obvious mistakes. When it comes to correction of clerical errors and obvious mistakes, he is not bound to act according to the procedure, prescribed for rectification.

Shri Kanungo: But, as the clause stands, do you apprehend that he will take action for purposes of rectification under this clause or use whatever other powers he has;—he cannot use them here?

Shri Chandy: If it is a clerical error, we cannot see the need for a term being imposed. But if the registrar feels that some term should be imposed, then we would say that that goes to the root of the registration, and he should proceed under the rectification powers where there is a separate procedure prescribed, where I must be heard, and I must be given an oppor-

tunity to be heard. But here there is no provision that I must be heard.

Shri Kanungo: This refers only to clerical errors. If it is a clerical error, he cannot ask you for any showing-cause or anything like that.

Shri Chandy: What are the terms that he is thinking of?

Dr. Venkateswaran: The terms might be that within such and such period, the certificate has to be returned the registered user has to be informed, and so on.

Chairman: This will not in any way prejudice anybody.

Shri Chandy: The phrase 'such term as he thinks just' is so wide, that he can impose any terms he likes.

Shri Kanungo: Under this clause, can he ask you to deposit Rs. 1000?

Shri Chandy: Yes, he can.

Shri Khobaragade: But all those powers have to be exercised judiciously.

Shri Prasad Rao: The apprehension is that mistakes which are supposed to be only clerical might not be so really.

Chairman: Mr. Chandy has expressed his apprehensions.

Shri Chandy: It is not merely that. The registrar has all the powers under other clauses to do what he wants.

Chairman: When he has powers under other clauses, we can rest assured that he will not use the powers under this clause.

Shri Kanungo: Apart from some procedure and other things. Mr. Chandy has not been able to give me any frightening apprehensions.

Shri C. R. Pattabhi Raman: Or, we may say 'in such manner' instead of 'on such terms'.

Shri Chandy: I would accept Shri C. R. Pattabhi Raman's suggestion.

Shri Prasad Rao: What are your objections to reducing the period from 15 to 7 years? When things are changing so fast, perhaps Government wanted to make things current, and, therefore, they have prescribed smaller intervals. What possible objection could there be for reducing the period to only seven years?

Shri Chandy: If you are thinking of the large corporations, nothing bothers them. If you are thinking of increasing the fee, that does not bother them, for, to them, trade mark is the one and the principal means by which they carry on their trade. Therefore, even if you reduce it to seven years, they will not grumble about it, and they will pay the fee.

But there are very many small people in this country who have a large number of trade marks. And the problem will be theirs and not so much a problem of the big men. That is one thing.

Then, we are told that the main purpose behind it is that there are so many trade marks which remain on the register, which are not in fact used. Therefore, if once in seven years, the owners are compelled to review their trade marks, they would probably not go through with the renewal of registration of a number of marks. In other words, it is one way of having an occasion at which you will prune the register and reduce the number of registrations to those marks which are actually being used or are about to be used. Am I right? Is that one of the views?

Dr. Venkateswaran: Yes.

Shri Chandy: Suppose even at the time of renewal, I have a trade mark which I have not been able to use for the last two or three years, but still I feel that that is a valuable mark, which has a little goodwill, say, in Mangalore and other places, then, I may still like to keep it alive, and I shall go on with it. Therefore, the real remedy against the retention on the register of a large number of marks which are not actually used is when somebody wants to make use of the mark and challenges it and moves

for rectification which is provided for in clauses 46 and 54.

We have no objection to this. All that we are saying is that it is not going to serve the purpose you have in mind. On the contrary, instead of doing the thing once in fifteen years, you will be doing it twice, and your administrative staff will be called upon to do two operations instead of one, and, therefore, there will be additional cost.

Shri C. R. Pattabhi Raman: Rectification is also costly.

Shri Chandy: Costly to us; we are paying for it.

Dr. Venkateswaran: If he can use some other mark, he need not pay.

Shri Chandy: You are talking of marks which have gone out of use, and which are still lying on the register, and which will be detected when there is an application for registration. But the applicant for registration need not necessarily pitch upon that particular mark which has gone out of use. If he has to go in for rectification proceedings, the only point that I would like to submit is that still that mark will continue to block the register. To force a man to move for rectification is very difficult.

Shri Kanungo: It is somethink like holding a lease and not using it.

Shri Chandy: The scheme is that if somebody's mark remains on the register unused, the right to get that removed is conferred upon an aggrieved person.

Dr. Venkateswaran: That is a costly proceeding.

Shri Chandy: May be. Is there anything to prevent me at the time of the renewal after seven years from saying: 'I am going to keep that mark?' I believe the fee of Rs. 60 that we have is the highest in the world. But in the case of a big trade mark owner that will not matter. You may make it Rs. 100. But why should he be prevented from keeping it alive he wants?

Chairman: If you keep it for 15 years, anything may happen. The mark may cease to be distinctive or it may be out of use.

Shri Chandy: Any aggrieved person has always a remedy. We are not so much concerned about the period of seven years as the other more important problem. It relates to sub-clause (4) of clause 25. It says 'subject to such conditions or limitations as he thinks fit to impose'. You are restoring it to what it was before. Where is the occasion at that time to say that the restoration is subject to limitations. If the Registrar wants to impose any limitations, he has powers of rectification under 56. If the owner pays the fees in time, you renew the registration without question. If for some reason he fails to pay his money in time or you are agreeable to keep that matter alive for one year, within that year he makes the application. But because he has failed to make application in time, is it suggested that you should impose a limitation on him?

Dr. Venkateswaran: Supposing till that period someone has been using the mark.

Shri Chandy: Kindly look at clause 26.

Shri Prasad Rao: This mostly affects small traders and small trade mark owners, not the big monopolists.

Shri Chandy: Clause 26 provides that nothing shall be done for one year.

Dr. Venkateswaran: Only for registration, not for use.

Shri Chandy: Somebody else starts using a mark. It is for him to protect his mark. Why should the Registrar impose conditions? If somebody has come into the market and is actually using the mark in that one year and, therefore, he feels entitled to get concurrent registration or he feels that this man should not be allowed resto-

ration, let him proceed in the usual way. Why should the Registrar *suo motu* take it upon himself to impose conditions and limitations?

Dr. Venkateswaran: This is a copy of the Australian provision.

Shri Chandy: With all due respect to Australia, we need not follow them here.

Dr. Venkateswaran: . My point is that we are not doing anything new.

Shri Chandy: The Australians are doing something new. Why not follow the English pattern? Is there any occasion for the Registrar to impose limitations?

Shri C. R. Pattabhi Raman: Are you objecting to "limitations" much more than 'conditions'.

Chairman: Both.

Shri Chandy: Yes.

Shri Akhtar Hussain: Is not the period of one year within which the money has to be paid too long?

Shri Chandy: I do not know what Dr. Venkateswaran would say about this. My view is that every mark has a residual glory; although it may not be in the market, still people talk about it. During that period, it is not right in the interest of the public as well as in the interest of the proprietor to do anything against it.

Shri Akhtar Hussain: You agree to the period of one year.

Shri Chandy: Yes.

The other point relates to 25(3). You will find in the first line on page 17 'and otherwise'. The word 'otherwish' is already in the current Act. But then sub-clause (4) does not appear in the current Act. Therefore (3) and (4) read together would mean that (4) contemplates one case, namely where a man has failed to pay the money in time. Now (3) refers to 'payment of fees and otherwise'.

Dr. Venkateswaran: 'Otherwise' means only the question of filling the appropriate form. This expression occurs in the English Act, the Australian Act and also Indian Act.

Shri Chandy: I only wanted it to be clarified.

Shri Kanungo: Otherwise, you will be governed by decisions.

Shri Chandy: There are no decisions on the subject—I refer to Dr. Venkateswaran's book. What happens if we remove the word 'otherwise'?

Dr. Venkateswaran: Then we have to say 'in the prescribed form' and so on.

Shri Chandy: That is much better.

Shri P. T. Leuva: It would be better to retain the provision which has received some judicial interpretation; introduction of a new term may create further complications.

Chairman: .We will consider it

Chapter IV

Shri Chandy: Another point is about 27(1) and (2). This is the same as in the current Act. We were only wondering whether the provisions of section 3 of the existing Act may not be repeated in the new Act, which is an elaboration of the normal principle of law.

Section 3 of the Act says:

> "The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force".

By express provision in this Bill, certain enactments are being repealed. What harm is there in having a general provision?

Shri Kanungo: Let us visualise the possible point that might arise.

Shri Chandy: If you ask me to enumerate all those other enactments which may have a bearing on this subject. I am afraid I cannot do it.

But I do find that this provision is put in the existing Act as a safeguard.

Dr. Venkateswaran: The Act has been in existence for 20 years. This provision does not occur in the U.K. Act or any other Act of the world. This was put in 1940 because at that time we had the Specific Relief Act which dealt with trade marks. Now we are repealing the provision in the Specific Relief Act regarding trade marks. This is a consolidated Bill which not only seeks to repeal the provision in the Specific Relief Act but also provisions in the Indian Penal Code and the Merchandise Marks Act dealing with trade marks. Therefore, section 3 is not considered necessary. If you can cite any other statute or law which relates to trade marks, it can be considered.

Shri Chandy: In the existing Act, there is section 3 and there is section 20 sub-section (2) of which repeats clause 27. I have no quarrel at all with 27(1) and (2). Only in this context, I am drawing the attention of hon. Members to the fact that in the existing Act over and above that, there is an omnibus section, namely section 3. I refer to that only to say that if the draftsmen do feel that it is worthwhile retaining it, you may do so.

Shri Rajagopalan: You will find in Acts like the Banking Companies Act that it deals only with one type of companies. But there is in addition the company law. Therefore, we put in a provision saying that this shall be in addition and not in derogation of any other law for the time being in force, knowing full well that they are groverned not only by the Banking Companies Act but by two or three other Acts. So far as this is concerned, as Dr. Venkateswaran has pointed out, this is a consolidated law. We have dealt with the provisions of the Specific Relief Act, the IPC, Merchandise Marks Act and various other enactments. Therefore, there is nothing else in any other law which has got to be saved. In fact, the suggestion might cause a little difficulty. If we put in a provision like that, people may start looking into whether there is any other law which is not being protected.

Shri Akhtar Hussain: Is there a similar provision in any other Act.

Shri Rajagopalan: Section 3 does not find a place in any other Act.

Shri Akhtar Hussain: Do we find 27 in any other Act?

Shri C. R. Pattabhi Raman: No other Act. This is codification, the final word. If it is left open, a writ may be available. Other countries have got common law. Here we are attempting to have a codified law, a consolidated law, which deals with it.

Shri Akhtar Hussain: The general law of torts is there and damages for infrigement of unregistered copyrights can be claimed under the law of torts.

Shri C. R. Pattabhi Raman: There is clause 27(2).

Chairman: Now, we will go to clause 28. Interpretation of the words 'if valid' is more important.

Shri Chandy: Let me say that the words 'if valid' do not appear in our existing Act, but appear in the U.K. Act. I do not know about Australian legislation. If the purpose is to see that the defendant should have the right to challenge the validity of the registration as a valid defence, we say that is provided in clause 107.

> "Where in a suit for infringement of a registered trade mark, the validity of the registration of the plaintiff's trade mark is questioned by the defendant.....

Shri C. R. Pattabhi Raman: I now find that it was in the Act of 1940. Then, you had the Indian State Courts and there was clash. It was removed only in 1946.

Shri Chandy: The absence of that wording has not made any difference. What is the purpose of saying 'if valid'?

Shri Kanungo: If the wording was there in 1946 and 1947, the result would have been, any court in Bharatpur and Alwar would decide on that. Therefore, the words were removed. Now, we have one judiciary. Therefore, the words should be there.

Shri Chandy: Our submission is this. Surely, the defendant should have the right to challenge the validity of your registration and he should have that as a valid defence. Conceded. That, we say is provided for specifically in clause 107 where you deal with a civil action. There is provision for criminal action in clause 77 or 78.

Dr. Venkateswaran: Only if the words 'if valid' are allowed to be present, this clause comes into force. Clause 107 says:

> "Where in a suit for infringement of a registered trade mark the validity of the registration of the plaintiff's trade mark is questioned by the defendant....."

That can be done only if the words 'if valid' are allowed to be present in this clause.

Shri Chandy: No. Why should they be there?

Dr. Venkateswaran: How can the plaintiff's trade mark be questioned in infringement action?

Shri Chandy: In clause 56, you have the right of rectification.

Dr. Venkateswaran: That is not what clause 107 says. Clause 107 says:

> "Where in a suit for infringement of a registered trade mark, the validity of the registration of the plaintiff's trade mark is questioned.....

That can be questioned only if you say that the right of action arises only if the registration is valid.

Shri Chandy: That is precisely my point. My point is, in order to confer upon the defendant the right to challenge validity, is it necessary to have the words 'if valid' in clause 28.

Dr. Venkateswaran: Yes.

Shri Chandy: I would say, even if they are not there, the right of the defendant to challenge validity is there all along.

Dr. Venkateswaran: How? Unless he moves for rectification, he cannot get that right. The only remedy now is, the defendant will have to move for rectification and then only he can challenge.

Shri Chandy: Even under the scheme of this Bill, it must be so.

Dr. Venkateswaran: As soon as the infringement action is filed, the defendant can question the validity of the registration of the plaintiff's mark. Then, the proceedings are stayed. The defendant is allowed to file rectification proceedings. If he succeeds in the rectification proceedings, on that issue the decision of the High Court is binding. Proceedings will go on with regard to the other issues.

Shri Chandy: There is no fundamental difference between the two situations. The defendant challenges the validity of the registration. The mere fact that he raises that as a defence in the trial court does not mean very much unless he proceeds to take action. That is so even today. If he were to take action and then go to the trial court and say, this mark ought to be expunged from the Register, I have taken appropriate steps to have it expunged, I want a stay of the proceedings in the district court, I want to know which district court will refuse that. There is no change at all.

If I may take this opportunity to discuss another point which, to our mind is substantially important, I refer to clause 107. The problem is this. It is suggested that when the defendant takes up the defence of invalidity, he has got to establish *prima facie* a case before the district court in favour of invalidity before the district court will exercise its discretion and stay the proceedings. He

then goes to the appropriate tribunal, whether it is the Registrar or the High Court to move for rectification.

Dr. Venkateswaran: Not the Registrar, but the High Court.

Shri Chandy: Our problem is this. The decision of the district court is on the question whether or not there is a *prima facie* case, in favour of invalidity. We are saying that the High Courts alone are competent to consider the question of rectification. If that is so, it is too much to say that the district court should be called upon to decide on the *prima facie* question. There is an anomaly there. One might very well ask, why not confer on the district court this power of rectification. If they are competent enough to decide on the question of *prima facie* invalidity, they might as well decide the other one. That is not the scheme of the Bill. We support the scheme of the Bill. We do not want such an important question to be considered at a lower level, because it means (a) probably a too much erudite judgment and (b) multiplication of applications.

There is another point. Let us assume that the district court has come to the conclusion that there is *prima facie* invalidity or there is no *prima facie* invalidity. It is an order of an interlocutory nature from which an appeal would lie to High Court. Rectification proceedings go before one High Court and an appeal from the interlocutory order goes to another High Court. The whole thing becomes infructuous. Therefore, or submission with regard to clause 107 is, the defendant should have the right to raise invalidity as a defence. But, the proceedings should be stayed only when the defendant has in fact taken steps before the appropriate tribunal to rectify the register.

Dr. Venkateswaran: You must give time, say three months.

Shri Chandy: Give time for the mere asking. We are agreeable to the District court granting two months time. But, to have evidence taken at this stage whether it is *prima facie* invalid or not.....

Dr. Venkateswaran: Only an issue is raised. We do not take evidence.

Shri Chandy: How does he decide *prima facie*?

Dr. Venkateswaran: On the complaint, the court is expected to decide whether a *prima facie* case has been made out or not. It does not decide on the facts at all. If it is frivolous, the court will not allow the issue to be raised, but proceed with the case.

Shri Chandy: What will happen is, the decision of the district court is an interlocutory matter and it would be appealable. Two High Courts will deal with the matter.

Dr. Venkateswaran: Only one High Court deals with rectification.

Shri Chandy: Somebody says there is a *prima facie* case of invalidity.

Shri C. R. Pattabhi Raman: *'Prima facie'* is well understood. It means, on the record; not going beyond the record. It is like a discharge case. A complaint is brought by B. The accused is discharged by the magistrate, because on the complaint itself, he finds no case made out. *'Prima facie'* has got a technical import in all these matters.

Shri Chandy: You are the plaintiff and I am the defendant. I plead that your registration is not valid.

Dr. Venkateswaran: That is not enough. You must have a *prima facie* case.

Shri Akhtar Hussain: Can we restrict the discretion of the tribunal by laying down all these details? It has to be left to the discretion of the tribunal to do the right thing. If there is any injustice, that can be left to be rectified in appeal. This is a procedural detail which would unnecessarily hamper the tribunal.

Shri Chandy: .We want to see that the tribunals are vested with all the powers. Unfortunately, in our coun-

try, because of vastness, we have not got one High Court. We have got several High Courts. We have to see that more than one High Court is not simultaneously seized of the same issue as they might come to different conclusions which only upset the poor litigant if rectification proceedings have to be taken before a High Court and infringement has to be taken before a district court whose High Court is different. Let there be no occasion for the same matter coming up before two High Courts. The litigants should not face two different conclusions. Let the scheme of the Bill be such that there is no occasion for such multiplicity.

Chairman: The High Court will be the same for both the appeal and rectification.

Shri Chandy: Not necessarily. I have laid the point before you. We are not in a position to come to a conclusion. With due respect, I am sure....

Shri C. R. Pattabhi Raman: I was worried over the last 4 lines in page 53:

> "....and the plaintiff questions the validity of the registration of the defendants trade mark, the issue as to the validity of the registration of the trade mark concerned shall be determined only on an application. I have understood.

Shri Chandy: Coming back to clause 28(1), our feeling is, the words 'if valid' are not strictly necessary to confer the right on the defendant. However, if it is felt that the words 'if valid' must be there, as they are in the English Act and as they were in the old Indian Act, let us understand this that it is not necessary for the plaintiff to plead validity.

Dr. Venkateswaran: No. The onus is still on the defendant. The section says that.

Shri Chandy: There are clauses 32 and 31. Knowing as we do how things are, the first thing that a defendant has to do is to deny *in toto* whatever the plaintiff has said. So many things are done.

Chairman: There is, then, interposition of the words "in the course of trade".

Shri Chandy: That is a minor point. We say that it is better.

Chairman: You want the old provision to be revived.

Shri Chandy: The other think about clause 29 is a controversial issue. Take the Bismag case. Different opinions have been expressed. We would make our submission. May I once again go through this case a little? I am sure hon. Members have read the report on it. Still we do feel that the habit of selling one's products by comparing them with other peoples product is not a healthy one.

We are told this happens particularly in the drugs trade. In confidential circulars it is not unusual for druggist to say that his brand of an antibiotic, for instance, is slightly better than the other brand in this point or that, for instance with regard to toxic effect. But, of course, that happens only privately with learned people, but suppose a circular were to be issued to the general public, that in our opinion would be unhealthy. And that was the Bismag case. So, while we do recognise that the drugs profession is in the habit of informing doctors and others confidentially how their products compare with other people's products, I do not think that is a thing that would be allowed generally to the lay public.

Chairman: It is to be considered as an infringement?

Shri C. R. Pattabhi Raman: You may explain the Bismag case. It is just possible other Members may not know it.

Dr. Sushila Nayar: This idea that the druggists send private letters to doctors saying that their brand is better is, I think, a little bit ill-founded. What does happen is all the drug companies send you their circulars from

time to time; they even have their own magazines, and they will give you case reports to show how the product has worked and so on and so forth. That kind of advertisement and salesmanship nobody can be prevented from doing, whether it is medicines or anything else. I have been in the medical profession for a number of years and I have not come across this type of instance where a private kind of canvassing goes on that a particular product is better than another. Of course, if you say that the same products under different trade marks should not be permissible, that is a viewpoint of some of the Scandinavian countries. and I would be very much in favour of it, because the layman does not know that it is the same kind of thing and they are only different names and just because of the different names, he wastes his money going from one product to another. That is a different matter.

Chairman: I as a patient seek your opinion which of the two medicines I should select —— Microbin or B-12. Naturally, you will say one or the other.

Dr. Sushila Nayar: True, but what I am saying is that it is a difference between six of the one and half a dozen of the other. There is not much difference between the two, they are just different names. The products are the same. Whether there should be different names and different trade marks for the products of the same type will be the question.

Chairman: Will you kindly briefly explain the Bismag case?

Shri Chandy: Briefly, the facts are like this. There was a certain agent who was selling drugs. Some of them were products of other people for whom he was an agent; some of them were of his own manufacture. In order to sell his own products, he prepared a trade circular. In one half of the folder he gave the names of other people's products for which he was agent; in the other half, he gave the names of his own products which were considered to be equivalent. The question at issue was whether that way of selling by comparison is something that should be encouraged or discouraged; if it is something that should be discouraged, whether it should be classified as infringement so that the person to discourage is the person who feels that by comparing his products, his sale is affected. That is the sum and substance of the problem. And the view taken by the English court was: under the law as it stands, no doubt such a comparison should be discouraged and such a comparison should be classified as infringement of the registered trade mark of the proprietor whose products appear on the left-hand column. That is the law in India too.

Chairman: The House of Lords came to a different decision.

Shri C. R. Pattabhi Raman: He refers to the earlier case.

Shri Chandy: Our submission is this. The existing provisions of the Act should be retained; if necessary, improved upon for clarity. The words of the Act are not very clear, but we think the principle should be kept as part of the law and be incorporated in the current legislation in the Bill. Australia does not take that view. Dean reported against it. Justice Rajagopala Ayyangar has followed Australia. We would like to follow England.

Dr. Venkateswaran: Even in England, the House of Lord in the Aristoc case preferred the minority view, and in the Bismag case itself, two Judges, Simonds, J. and Mackinnon, L.J., were against the majority view. So, in England even today the position is not clear. The matter was not taken to the House of Lords in the Bismag case, but the decision in the Bismag case has been doubted in the Aristoc case in the House of Lords.

Shri Chandy: The judgment that Dr. Venkateswaran has quoted does not enunciate a preference by the Court for a principle. The House of Lords was there concerned with the true meaning of the words of the Act, and they were not exercising

their will; they were not stating what they preferred. My submission to you is that it is wrong in principle to permit the sale of these things by comparison. If you accept that as a principle which is laudable, your section will be so worded.

Dr. Sushila Nayar: What is wrong in comparison?

Shri Chandy: In other words, if somebody says that his product is as good as Ciplas, that kind of sale should not be allowed. He can say: here is a product which is good, but let it not be said: here is my product as good as Ciplas. That we think is not right. You may say privately to a doctor who is interested in knowing various things, but as a trade circular we think that is wrong.

Chairman: Would you consider it an infringement?

Shri Chandy: Whether it should be classified as infringement is dependant on a further question. If it is considered that such a thing is not desirable, who should be asked to prevent such a thing happening? You can either ask the person whose mark is compared with to take the action, or you can say this is a kind of thing in which the State should take action. You can do it whichever way you want. Our view is, if the existing provisions of the Act are retained, the person to restrain would be the person whose mark is compared with. Therefore, it should be classified as infringement. If you think it should be discouraged by the State itself, your definition of false trade marks etc., will be made accordingly.

Chairman: It can be prevented by the State only by means of a penalty.

Shri Chandy: The question at issue is a question of policy, and our feeling is that while in privileged circulars to professional people comparisons are necessary, in public circulars it is somewhat bad.

Dr. Venkateswaran: Supposing such descriptions are given to the doctors, would it be questionable.

Shri Chandy: No. We would not want it that way.

Dr. Venkateswaran: But as the law stands at present, it would be questionable, I suppose.

Shri Chandy: I am not suggesting the existing provisions should be retained in their present form. I am only thinking about the principle. If the principle is accepted, then let us have appropriate wording which would permit confidential privileged documents to be placed before people who are competent to look into them.

Shri Kanungo: You are suggesting the enlargement of clauses 29 and 30?

Shri Chandy: Yes.

Dr. Sushila Nayar: Supposing a document is made public saying: here are six cases that we treated with product so-and-so, these are the results of blood counts and various things, whatever it may be; here are another six cases treated with another product. Would you call that comparison? That is a scientific analysis of the facts.

Shri Chandy: Quite true. The purpose of a learned disquisition on the clinical results of different products may be indirectly to say that one is better than the other, but its ostensible purpose is not to say: prefer mine to the other man's.

Dr. Sushila Nayar: If the results are clearly good in one case and not so good in the other, the effect will be that, though it may not be said in so many words.

Shri Chandy: There are always borderline cases. If we say legally that doctors and lawyers should not put up their boards in such a way as to advertise, it is a matter of argument as to whether the board is big enough to make it an advertisement, or small enough not to make it. These are all questions on which it is very difficult to say anything definite. Therefore, one can only enunciate a principle and leave it to the goodwill

of the people. I would say the appropriate person to restrain that kind of comparison may very well be the State. You need not confer the right on the other side to do it. All we are saying is that in principle it is not right that the public should be canvassed in this way.

Shri Akhtar Hussain: Instead of the parties whose rights have been infringed making a complaint and asking for action to be taken, it should be the responsibility of the State to launch a prosecution or to protect these rights.

Shri Chandy: Very often there is no need to launch a prosecution. A mere letter to that party saying that this is not the right thing to do will be enough. The Ministry of Broadcasting was at one time very anxious to have a code of ethics for advertisements, and I happened to serve on a committee that was set up by Mr. Laud who was then alive and Secretary of the Ministry. They have elaborated a code of ethics for advertisements, and one of the principles which they have adopted is: one should not adept what they call "knocking advertisement"; in other words, it is not good to know at another man to sell your product. I think it is even more justifiable in matters of this kind because it is not merely knocking. Very often this kind of thing happens in the drugs trade, and I think it is wrong to tell the lay man: buy mine which is as good or better than another man's product. The last thing we want in regard to this is this kind of competitive canvassing.

Shri Kanungo: It is a huge problem which you want to plug in this small way.

Dr. Sushila Nayar: Suppose a drug is useless or spurious or fake. I think it is the duty of everybody to expose that drug. Leave aside the question that anybody could be prosecuted for that, or that it will be called 'knocking' and so on. I think it will be a dereliction of duty not to have the moral courage to say that this is a bad drug, and that it is a useless drug.

Shri C. R. Pattabhi Raman: I want to assure Dr. Sushila Nayar, that as far as drugs are concerned, we have got the Drugs Act.

Dr. Sushila Nayar: I know, but the witness gave the illustration of drugs. So, I have expressed my view.

Shri C. R. Pattabhi Raman: Especially in the case of sulpha drugs such as sulphathiazole, sulphanamide and so on, we have advertisements to the effect that they have no toxic effects, this drug is better and so on. But, for these things, we have the Drugs Act.

Dr. Sushila Nayar: In general principle that is a good way of advertisement, for he says, my product is good, instead of saying that somebody else's product is bad. Nobody says 'No' to that. That is a good way of propaganda, whether it be political or business or any other type of propaganda, and that is better than pointing out the defects of the other.

But the witness has given the specific illustration of drugs. And drugs are a matter of life and death sometimes. Therefore, if a drug is known to be bad, I think we should spare no efforts to point out that, that drug is bad and that should not be used; and we should not hesitate to expose that drug.

Shri C. R. Pattabhi Raman: Not by a rival businessman, but by doctors and expert bodies.

Dr. Sushila Nayar: Rival businessmen have that much of intelligence for taking the opinions of doctors. I have not seen any other way of exposing these things.

Shri C. R. Pattabhi Raman: The proper remedy in such cases is provided in the Drugs Act.

Shri Akhtar Hussain: In regard to the cognisability of the offences, if there has been any infringement, the view seems to have been put forward that the State should undertake the responsibility of launching prosecu-

tions and enforcing the rights. Is it the law in other countries that these offences are cognizable and the State undertakes the responsibility?

Shri Chandy: In England, as I said, the law today is that the responsibility of restraining this sort of thing is with the owner of the other trade mark.

Shri Akhtar Hussain: He makes a complaint.

Shri Chandy: He makes a complaint and proceeds.

Shri Akhtar Hussain: What is wrong with the present procedure under the existing law?

Shri Chandy: Mr. Justice Rajagopala Ayyangar, following the views of the Dean Committee in Australia has stated that the Bismag principle, namely that selling by comparison is bad, need not be adopted in India; and his suggestion is that the corresponding provision of the existing Act be deleted, in preparing the draft of clause 29 of the Bill.

So, our submission is that clause 29 of the Bill should be enlarged to include one more sub-clause so as to provide for making such activities impermissible, with due safeguards. The existing Act may be badly phrased, but let us improve the phraseology,and let the principle be adopted and kept as a part of the Act.

Chairman: We have now discussed this important point. Now, we may go on to the other clauses.

Shri C. R. Pattabhi Raman: In clause 31, you want only a drafting change namely 'date of registration'.

Shri Chandy: In regard to clause 32, our difficulty is with regard to sub-clause (c) which is a new provision.

Chairman: We shall take due note of your suggestion. In clause 33, you want that the word 'date' should be introduced in sub-clause (b)?

Shri Chandy: That is so.

Shri Prasad Rao: In regard to clause 32 (c), if they feel that it is redundant and unnecessary, they need not protest against it.

Shri Chandy: It leads to confusion. In our view, a mark which was considered to be distinctive at the time of registration may cease to be distinctive subsequently. It may cease to be distinctive under clause 35, because it has become common to the trade or it may not be distinctive of the goods because the mark has gone out of use. So, we say that clauses 35 and 46 look after that well.

If you say that the trade mark was not at the commencement of the proceedings distinctive of the goods it would mean that in fact the marks were used in relation to the goods but they were not distinctive; how can you say that the marks were not distinctive unless they were in use at that time? So, we would suggest that if at all you want to retain it, you may say at the opening of clause 32 that 'Subject to the provisions of sections 35 and 46...' In fact, it would be better to delete it, because that will be looked after by clauses 35 and 46. If you look at clause 46 (3), you will find:

> "An applicant shall not be entitled to rely for the purpose ....on any non-use of a trade mark....".

So, non-use for a short time is no ground. So, either we may say 'Subject to the provisions of sections 35 and 46' or it would be much better to delete it.

Chairman: Now, we come to clause 37 in chapter V.

Shri Chandy: We must confess that we do not quite understand clause 37 (2). The way we understand this clause is this.

A has assigned his marks to B by a valid deed of assignment. B goes to the registrar to ask for the registration of the deed of assignment.

Shri C. R. Pattabhi Raman: Mutation.

Shri Chandy: The registrar would say, if this Bill becomes law, that the assignor is still making use of the mark after the assignment and, therefore, he will not allow the assignee's registration to go through, and he would declare the assignment invalid. Now, what may happen is this. A dishonest assignor, after making the assignment, and after receiving the consideration for it, can very well nullify the whole assignment by continuing to use the mark, and the assignee's filing a suit does not help him. The point is that the assignee would like to come on the register and then file action against assignor.

Dr. Venkateswaran: The public has to be protected.

Shri Chandy: The public has to be protected. So have I to be protected.

Shri C. R. Pattabhi Raman: I am sure you are going to insert a clause in the assignment deed that the assignee shall be entitled to take suitable steps to get the mutations made in the trade marks register.

Shri Chandy: But the registrar is not bound by that. The registrar says that the mere fact that the assignor violates his own contract under the deed of assignment is good enough for him to nullify the assignment, and the result is that the assignee will suffer.

Shri C. R. Pattabhi Raman: What is the evidence on which he says that?

Shri Chandy: He can have independent evidence. Anybody can lay evidence before him.

Shri Kanungo: The normal civil law provides a remedy in the case of vendor and vendee. So, why drag in that remedy into this?

Shri P. T. Leuva: There can be a penalty clause in the assignment deed itself.

Shri C. R. Pattabhi Raman: Even if it is a pucca assignment, if the registrar *suo motu*, on some evidence before him, and for some reason best known to him, says that 'I find that the assignor is still using it, and, therefore, I am refusing to have the mutations made', then you go and fight it out.

Shri Chandy: May I also draw your attention to two other allied clauses, namely clauses 39 and 40 ? The effect of these clauses is this. If, as a result of assignment, somebody reserves to himself a right to use the same trade mark in relation to the same goods in a competitive way, that assignment will not be registered. In other words, the scheme of the Bill is that the same mark by devolution or assignment should not simultaneously be in the hands of two people, because the public will be confused. If there is something in that very deed of assignment which creates such a situation, the registrar is empowered to take suitable action. And that is the position in clause 40 also. Now, that should take care of a situation the defect is inherent in the deed of assignment or in the terms.

Shri Kanungo: Explicit terms of the assignment?

Shri Chandy: Or implied terms of the assignment.

Shri Kanungo: In the deed itself?

Shri Chandy: Yes, in the deed itself. The deed is an honest one. There are no defects in it. The assignee comes to the registrar to have the assignment recorded. In the meantime, there is some clandestine activity by the assignor . . .

Shri Kanungo: It is not clandestine any more, because the assignor has reserved his rights.

Shri Chandy: If it is a question of having reserved rights, that will be hit by clauses 39 and 40. Another case is where he has completely and irrevocably transferred all his rights, for valuable consideration. The deed of assignment has been registered in the ordinary course of registration. Then, they come up to the registrar—because very often these deeds of

assignment involve many other things; but sometimes they do not—and say 'I want my deed of assignment to be recorded', and it would be recorded, but for the fact that some evidence turns up that the assignor is still making use of the same trade mark. What is to be done in that case? My submission would be, by all means tell the assignee 'I shall not register your mark, unless you immediately take action against the assignor to restrain him from violating your rights', but to say that the assignment will not be registered at all would be not the right thing to do. The registrar may say 'I find that your assignor is violating your own rights. Are you aware of it? If you are aware of it, you are guilty of lapse, if you do not take any action. If you take action, I shall protect you, but if you do not take action, I must assume that it is collusive'. My submission to you is that let sub-clause (2) of clause 32 be carefully considered so that the assignee would not be left at sea, but his rights will be protected.

Shri Kanungo: The primary right is that of the assignor. So, why should he bother about the assignee?

Shri Chandy: Let us look at the provision once again. Let us read sub-clause (2). Then if you look at sub-clause (4):

> "An assignment of a trade mark shall not be held to be invalid except in proceedings instituted within three years after the registration of the assignment".

It is open to the Registrar to challenge it within those three years. The assignor is using it.

Shri C. R. Pattabhi Raman: This is a new section put in. What is the meaning of 'shall be invalid'?

Shri Chandy: It means it shall be invalid. I have no right to go and register. If I am there, I should be taken off.

Shri C. R. Pattabhi Raman: He has to go to court.

Shri Chandy: I will go to court. But in the meantime, I have no remedies. I cannot file an infringement action against somebody.

Chairman: So you must be careful in selecting the assignor.

Shri C. R. Pattabhi Raman: If the assignor is doing me in the eye, what happens?

Chairman: The remedy is through ordinary law. He can revoke.

Shri C. R. Pattabhi Raman: He cannot revoke when he has paid the money.

Shri Kanungo: As far as the public is concerned, the assignor continues to use his trade mark.

Shri Chandy: The Registrar is everyday adjudicating between the rights of competing parties. If the assignor continues to that, all that he has got to say is: 'I will look into who has got a better right'. Now if the assignment deed is clear and complete, the Registrar should have no hesitation in saying that what the assignor does is in violation of the rights of the other.

Chairman: Can he prevent the assignor from using it?

Shri Chandy: No. He can write to the assignee—'Much as I admit that your rights are sacred, I cannot bring it on the register unless you take action that what the assignor does is in violation of your rights'.

Shri Kanungo: The very fact that the assignor renewed the assignment is good enough for the Registrar.

Shri Chandy: He infringes my rights.

Shri Kanungo: There is a difference between assignment and competing trade mark. It is not a trade mark which you can own except under assignment. That assignment has been violated by the assignor.

Shri Chandy: This problem arises not only on the date of registration. It may arise any time within three

years. I have come on the register. My assignment has already been recorded. Within those three years it is open to this man to come and say, I am using it. He himself may say 'I am using it clandestinely. Take this man off the register' and there is no option but to take this man off.

I think the matter needs very careful consideration. In the Notes on clauses, it is said that this is for the advantage of the assignee, which is something we could not understand at all.

Then our suggestion regarding 38 is a point of drafting, and it is of some importance also from the point of view of meaning. If I may refer back to 37(1), third line from below, we find 'goodwill of the business concerned'. Again in 38(1), we find 'goodwill of the business concerned'. Then we go to 41, which is actually intended to deal with this kind of circumstance:

> "Where an assignment of a trade mark, whether registered or unregistered, is made otherwise than in connection with the goodwill of the business in which the mark is used..."

I think the word 'concerned' is really intended to mean 'in which the mark is used'. Let there be some common phraseology. In 37(1), we would say 'whether with or without the goodwill of the business in respect of either....'. That is how I find Mr. Justice Ayyangar had drafted it, but somehow or other in printing the words 'concerned and' have crept in. In 38, 'along with the goodwill of the business concerned', instead of 'concerned', we would suggest 'in which the mark is or has been used'. That also ties up with 41. In regard to 41, may I say this? 'In connection with the goodwill of the business in which the mark is used'. 'Is used' must mean currently used.

Dr. Venkateswaran: Look at clause 38—about unregistered trade mark.

Shri Chandy: It is assignable only with the goodwill of the business in which the mark is used.

Dr. Venkateswaran: Not necessarily the entire goodwill. A business might use a number of marks and deal in a number of goods.

Shri Chandy: After all, if an assignment takes place without the goodwill of the business, you have to follow a certain procedure before that assignment will be recorded, and if it is an unregistered trade mark, it must be assigned along with the registered trade mark and so on. There are certain conditions subject to which alone unregistered trade marks may be assigned without goodwill and then you have to follow a certain procedure, of advertisement etc. My submission is that the language used in all these should be the same, because if you give the Explanation in 41 as

> "For the purposes of this section, an assignment of a trade mark of the following description...."

the purpose is otherwise than in connection with the goodwill of the business concerned. That is why you want to advertise. So would you kindly consider tying up the language of 37, 38 and 41 so that all come to mean the same thing, subject to such special language as may be required to indicate an unregistered trade mark?

Shri P. T. Leuva: Clauses 37 and 38 are different. In 37, it is essential to mention that the trade mark is used in respect of those goods, because there a trade mark can be assigned without goodwill. So far as 38 is concerned, it being an unregistered trade mark, that can only be transferred if there is assignment of goodwill.

Shri Chandy: Then comes the question as to what is the goodwill involved. Suppose a company does the business of selling dyes, selling oils, making soaps etc.—it is a composite business—what goodwill are you thinking of? Therefore, the problem still arises of demarcating the goodwill which is to be considered as essential for assignment with goodwill.

Shri P. T. Leuva: If I sell an unregistered trade mark with respect to one particular item, do you think that I will sell away the entire goodwill unless and until there is a sale of the entire goodwill?

Shri Chandy: I am afraid I have not made myself clear. It is possible to assign a trade mark with the goodwill of the business. Now, if it is a statutory trade mark, registered under the statute, the assignment of the goodwill of the business of that trade mark, it is now understood, relates only to the goods in relation to which that mark is used and not necessarily the entire goodwill of the business; whereas in common law the position was that there could only be assignment of the totality of goodwill. There again some new ideas have been creeping as to whether that totality is in some way divisible, like export goodwill, internal goodwill and so on. As far as clauses 37, 38 and 41 are concerned, they are all related to this question of assignment with goodwill or without, and primarily it would appear that the purpose is to insist upon advertisement where it is without goodwill. We are only suggesting that the language of these may be brought in line, subject to the common law position being stated clearly in 38.

May I invite your attention back to 37(5)?

Chairman: You want the date to be changed. That is all right.

Shri Chandy: Thank you.

Chairman: We shall adjourn now and meet again at 9-30 hours tomorrow.

(*The witnesses then withdrew.*)

(*The Committee then adjourned.*)

THE JOINT COMMITTEE ON THE TRADE AND MERCHANDISE MARKS BILL, 1958

Minutes of the Evidence taken before the Joint Committee on the Trade and Merchandise Marks Bill, 1958

Wednesday, the 9th July, 1958 at 09:30 hours.

PRESENT

Shri J. M. Mohamed Imam—*Chairman*

MEMBERS

Lok Sabha

Shri C. R. Pattabhi Raman	Shri Bishwa Nath Roy
Shri Radhelal Vyas	Dr. Sushila Nayar
Pandit Dwarka Nath Tiwary	Shri M. Muthukrishnan
Shri Kailash Pati Sinha	Shri Chintamani Panigrahi
Shri C. Bali Reddy	Chaudhary Pratap Singh Daulta
Shri Tayappa Hari Sonavane	Shri Laisram Achaw Singh
Shri Akbarbhai Chavda	Shri Balasaheb Patil
Shri Shiva Dutt Upadhyaya	Shri Ram Chandra Majhi
Shri Ram Krishan	Shri Motisinh Bahadursinh Thakore
Shri Jaswantraj Mehta	Shri Nityanand Kanungo.

Rajya Sabha

Shri K. P. Madhavan Nair	Shri P. T. Leuva
Shri Mahesh Saran	Shri Swapanand Panigrahi
Shri Adityendra	Shri V. C. Keshava Rao
Moulana M. Faruqi	Shri Devendra Prasad Singh
Shri Akhtar Husain	Shri V. Prasad Rao
Shrimati Chandravati Lakhanpal	Shri B. D. Khobaragade.

DRAFTSMEN

Shri G. R. Rajagopaul, *Additional Secretary and Chief Draftsman, Ministry of Law.*

Shri G. R. Bal, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRY AND OTHER OFFICERS

Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Commerce and Industry.*

Dr. S. Venkateswaran. *O.S.D., Ministry of Commerce and Industry.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

WITNESSES EXAMINED

Trade Marks Owners Association of India Ltd., Bombay.

Spokesmen:

Shri K. T. Chandy—*Chairman.*

Shri K. S. Medhora—*Member of the Council.*

Shri A. C. Manchanda—*Vice Chairman.*

Shri S. H. Gursahani.

(*Witnesses were called in and they took their seats.*)

Chairman: I think we have finished the Chapter on assignments. Now, we may go to the Chapter on the Use of Trade Marks and Registered users. Clauses 45, etc.

Shri Chandy: May I crave your indulgence to make certain general submissions in the light of which my submissions on clause 45 could be more easily explained? The first clause to which I would like to draw the attention of the House is clause 49 which, to my mind, is an essential statement of policy on this question. Unless we agree on that proposition contained in clause 49, to comment on other clauses would be somewhat difficult.

Mr. Chairman: Yes.

Shri Chandy: Clause 49 sets out the policy decision of the Government, that all applications for appointment of registered users shall, as from the date this Bill becomes an Act, be subject to the approval of the Central Government. We understand the reason given. The reason given is that we are convinced that in a planned economy, trade marks are intimately associated with patterns, know-how and foreign capital. When somebody negotiates for participation of foreign capital in a new venture in this country, that negotiation invariably covers not only capital in the sense of money, but plant, machinery and the patterns that go with it, specification of the products and the well-known trade marks under which such products have gained reputation in foreign countries.

Under the Industries Development and Regulation Act, Government have the power to ensure that with regard to the scheduled industries, no proposal of this kind is implemented without their prior concurrence. I am aware that the Industries Development and Regulation Act is not made applicable to undertakings whose capital is less than a certain figure, or the number of persons employed in such undertakings or likely to be employed in such undertakings is less than a certain figure. The figure on the financial side is Rs. 5 lakhs and the figure on the employment side is 50 men. It has been suggested to us that in regard to undertakings with a capital of less than Rs. 5 lakhs or employing less than 50 people, Government would still like to keep the right which they have otherwise under the Industries Development and Regulation Act. They may not want to keep it in all respects; they may want to keep it only in regard to the appointment of registered users. That, we are told is the justification behind clause 49—I won't say we are told; we guess.

My submission is this. If it is felt that the appointment of registered users is in some way, as it is, closely associated with the economic policy of the country, and that the Government must reserve to themselves the right to decide the value and totality of the arrangements, is it not better to do that by extending the scope of the Industries Development and Regulation Act rather than looking at this piecemeal? However, if the Government feel that in every allied legislation, the principles of planning

must find a place, we would not say very much more on it.

But, we have one other point to make and it is this. When such powers are vested in the executive, powers no doubt invented for rapid industrialisation of the country, there can be questions on which a private citizen can feel aggrieved at the decision of the executive, which the executive rightly believes is in the national interest, we feel that there should be an Advisory Council. It is for this reason that under the Industries Development and Regulation Act, there is an Advisory Council which advises the Government on applications for substantial expansion, for starting new enterprises, for making new articles. Incidentally, making new articles under that Act includes application of a tarde mark not hitherto used. It is not as if today we can start using somebody else's trade mark under a registered user arrangement, without the consent of the Government. My submission is this. If the Government feel very strongly that in this legislation itself, there must be a clause tying up this Act with the general overall planned policy, then the safeguards which are there in regard to the exercise of Government's discretion must find a place in this also. Therefore, my second submission would be that there must be an Advisory body.

Chairman: What should be the composition of the Advisory body?

Shri Chandy: Either the Government might say that problems of this kind might go to the same Advisory body which advises the Government on question relating to the Industries Development and Regulation Act or there might be a small separate Advisory body. That is a matter for the Government to decide. The Industries Development and Regulation Act covers only about 52 industries—I speak subject to correction by the hon. Minister. It may be that in course of time, it may be extended to more. This Act is concerned not only with 52 industries, but many other industries.

Shri Kanungo: And also trade.

Shri Chandy: Therefore my submission would be that there should be a separate Advisory Body. We are not asking for a big one. We will ask for a small one sufficient to have representatives of all leading industries, again classified as big, small, factories, cottage industries, and so on. We want representation for all decisive groups in our national economy. This safeguard, we would suggest is necessary and our suggestion is in line with the overall policy of the Government.

Shri Panigrahi: May I enquire what will be the functions of this Advisory Body that the hon. witness suggests?

Chairman: To advise the Government.

Shri Chandy: We have one in relation to—we had; I am not sure about the present position—the press. After all, the Government exercises certain rights in the interests of the nation as a whole. But, in that exercise, there may be occasions where individual newspaper publishers may feel aggrieved. There is a Body which is asked to advise. It is not as if Government is bound to accept their advice. But, that process of exchange of opinion leads to an understanding on both sides. The same is the case in the Indian Companies Act. You will find that managing agencies have to come to an end on a certain date unless Government agrees to the renewal of those managing agencies. That discretionary power to be exercised by the Government, it is felt, should be exercised in association or in consultation with the representatives, a body of people. Again, therefore, you find built into the Companies Act the provision that there shall be an advisory body. All such advisory bodies are only bodies before whom Government place their point of view, their reasoning and the way their mind is working, and then they receive such advice as these people are capable of tender-

ing, and it is up to the Government then to accept their advice or not. At least it becomes a matter for public study.

Chairman: There is clause 49(5):

> "The Central Government and the Registrar shall, if so requested by the applicant, take steps for securing that information given for the purposes of an application under this section (other than matters entered in the register) is not dis closed to rivals in trade."

Do you think his interests will be ensured by the appointment of a committee?

Shri Chandy: No, Sir. Today I am under the Industries (Development and Regulation) Act. We have no more any secrets. In a planned economy of this type, talk about secrets can only mean secrets in regard to specifications. It is up to the Government to see that in placing a matter before an advisory body like this, they keep back all such things which are of that secret nature.

Chairman: You want that Government should consult this advisory body in every case where an application is made.

Shri Chandy: Yes, Sir.

Shri Kanungo: Then your analogy of the advisory body under the Industries (Development and Regulation) Act does not work because the functions of that advisory body under that Act are very wide, and it is only on matters of policy, not on individual applications.

Shri Chandy: My submission on that point would be this. If Government are in a position to elaborate what they consider are the criteria by which they will decide, then to that extent the issues can be cleared in that advisory body, but in so far as Government may find that they can go only from an *ad hoc* case to an *ad hoc* case, for some time until the principles are elaborated, in that process of examination of individual cases, in that phase of working out and elaborating the principles on which you will act, may I suggest that you might have to consult the advisory body? My submission is you should consult on how the principles are being worked out.

Shri Panigrahi: Under section 66 of the existing Act there is a provision for advisory committees. I think that is omitted in the present amending Bill. Is that what you are referring to?

Shri Chandy: That is a minor point, because section 66 is concerned with only one industry, *viz.*, the textile industry, and that industry used to have a special privilege, in view of its own peculiar problems, of having an advisory committee. That advisory body under this Bill has no place. I will come to that later on.

My submission is that where Government is going to exercise its discretion in what it conceives to be the national interests, it is desirable that Government should elaborate the principles as early as possible. I do concede it is not so easy to elaborate those principles in abstract. One can only go from case to case, and as the cases develop, you see the principles involved.

Shri Kanungo: Apart from the responsibility of the Government of the day to Parliament which is supreme, and also to the Supreme Court which is also supreme and has got over-riding jurisdiction, you suggest that we have an advisory committee for consultation in matters regarding trade marks and particularly registered users.

Shri Chandy: May I suggest that my suggestion is nothing revolutionary? The supremacy of Parliament is in no way affected.

Shri Kanungo: Apart from these safeguards for the citizen, you want this one also?

Shri Chandy: Yes, because Parliament as a whole is concerned with over-all policy. The Supreme Court is concerned with the question whether the Government has exercised its jurisdiction within the field assigned to it taking into account all evidence before it. They cannot interfere with your discretion.

Shri Kanungo: Certainly they can if the discretion is unjustified.

Shri Chandy: That is to say, if there is an invasion of what may be called fundamental rights. The fundamental rights are subject to due procedure of law, and once this procedure is laid down, unless my rights are expropriated without any compensation, I cannot go to the Supreme Court. Nor do we want to. What is even more important is to avoid litigation, so that whatever the Government does, to the extent it affects a given individual, let it be a matter of some sort of jury saying that they all concur with the Government.

Chairman: Even then there may be a possibility of somebody going to the Supreme Court.

Shri Chandy: We cannot prevent it if somebody feels so aggrieved and legitimately feels that the constitutional guarantees involved have been over-ridden. Then and then only he can go.

Chairman: So, we will take due note of it.

Shri Chandy: That is our general submission. In the light of that submission, may I invite your attention to clause 50(1)? This clause somehow or other limits the discretion of Government, because it is said that Government may not agree to the appointment of registered users in excess of three in relation to a given trade mark. Our submission is that there need not be any such limitation on Government's discretion as we may be able to convince the Government that there may be cases where none is right, two are right, or four are right, because, after all, if it is left to the discretion of the Government, let it be unfettered, and let it be exercised in consultation with a representative body of people who can tender advice, and if Government's exercise of discretion is a subject matter of controversy in Parliament, they are answerable to Parliament. Let not the Government impose a fetter on itself. It is no safeguard to me, because even though the limit of three may be put there, I am not going to assume that you will necessarily grant up to three, because ultimately the whole question is: what is the total bargain that somebody in this country has given to somebody else? I am advised that out of some 2,700 or 2,600 applications for registered user rights, 2,000-odd are in relation to foreign trade marks. In other words, the majority of them are related to the question of getting foreign capital, foreign know-how. There, the Government must go naturally according to the circumstances of the case, build up things from one bargain to another. What is true of the petroleum industry cannot be true of the drugs industry, and what is true of the drugs industry cannot be true of the surgical industry. So, we do not want to fetter the discretion of the Government, and our submission to you is: give us the freedom in a fit and proper case to argue with the Government that there are reasons for raising it to more than three, and in another case there are no reasons for even two.

Chairman: You do not want any number to be fixed. Let it be at the discretion of the Government.

Shri Chandy: Yes.

In clause 50(2) (b) there is a small point, regarding "common control". Actually what is intended is not merely common control, but rather control by somebody above, one controlled by the other. Common control or control of one by the other, I

think, is a proposition that our learned friend would easily accept as being easily within the scope of the scheme of the Bill.

My friends from the managing agency companies would like me to make a further submission on this question of common control. Does common control mean one managing agency controlling three or four companies?

Shri Kanungo: It depends upon the nature of the managing agency, it depends upon the contract of the managing agency with the concerned company.

Shri Chandy: I do not want to cite cases. Let us assume there is a certain managing agency house which we shall say has the right to manage, subject to the control of the board of directors and shareholders of the company, another company. The word used here is "control", but control to my mind means something more than the right to manage. I do not know in what way the word "control" is used. Let us say they manage in the way I have mentioned a jute mill, a colliery, a textile mill and so on. Are we to understand that the managing agency in itself is understood to be a control system for the purpose of this expression "common control". The draftsman may be good enough to clarify this point, unless it be an issue of policy.

Shri Kanungo: It is certainly a matter of policy, the policy being that there might be financial control, management control, various types of control. The word "control" will mean any form of control.

Shri Chandy: That satisfies us. The word "control" cannot have a very limited meaning. In the light of the clarification given by the hon. Minister, may we hope that the word "control" would be amplified to show that it means all kinds of control, financial or otherwise?

Shri Kanungo: Why?

Shri Chandy: Because people are apprehensive.

Shri Kanungo: What is the apprehension?

Shri Chandy: The apprehension is that this becomes the subject matter of judicial interpretation, and we are not such astute students of law as to know what interpretation might be finally given. The last thing we want to go to a court of law. If the Government would, even at the expense of two more words being added, make it clear as to what exactly they have in their mind, our minds are a little more at ease.

Shri Kanungo: What could be the possible apprehension?

Shri Chandy: In the Companies Act the question of control has a certain connotation. Am I right? I think so. Is that what is intended?

Shri Kanungo: Assuming that it has got, what could be the possible apprehension of any citizen?

Chairman: I will give you one or two instances. There is the Brush Electrical Co., which is controlled both from here and by the Brush Co., in U.K. They are going to start making pneumatic tools and utilise this company. I think practically two companies are there in the field to control the business. What kind of interpretation would you give?

Shri Chandy: On the clarification given by the hon. Minister that "common control" means control either by management or by finance and so on, all are implied in the word "control". That is the clarification that has been given.

Shri P. T. Leuva: As a matter of fact, sub-clause (2) really supports the viewpoint you have been propounding. So, there should not be any apprehension because sub-clause (1) would not apply.

Shri Chandy: I accept your assurance.

Shri P. T. Leuva: You have been saying there should not be any limitation on the Government so far as the user is concerned, it should not be limited to three persons. If sub-clause (2) applies, sub-clause (1) would not apply. So, Government can allow any number of legitimate users to be appointed. So, there should not be any apprehension.

Shri Chandy: With regard to sub-clause (1), my submission is this. The relationship between the foreign collaborator and the Indian entrepreneur—we are not here bothered about Government collaboration—cannot be pre-determined and put into a mould. What happens between Sarabhais and Squibbs is one thing; what happens in some other field is another. The bargain is as wide and as diverse as the circumstances which lead you to the bargain. So, let us not fetter anybody's hands. Let the totality of that bargain be placed before Government for their approval. If the Government are satisfied, the thing goes through, but if Government are not satisfied then that collaboration plan has to be abandoned. That is all that I am saying.

May I now go on to clause 45? Our submission on clause 45 flows from what I have tried to elaborate earlier as to the circumstances in which this kind of collaboration might take place between a foreign corporation or a foreign group and an Indian group. Clause 45 says that notwithstanding the fact that the person may not himself be proposing the use of the trade mark, the mark will be registered in his favour, if he assures the registrar that he is getting registration of that mark for the purposes of assigning that mark to a company of which he is going to be a promoter. I do not know whether this would take care of the circumstances in which we would get foreign collaboration. Government are better fitted to answer that question. But I have one or two cases in mind where I know.....

Shri Kanungo: Forget the collaboration part of it. The law is for current as well as foreseeable future policy. Collaboration need not be a permanent feature of our economy.

Shri Prasad Rao: But collaboration is very much a reality today.

Shri Kanungo: But it may change.

Shri Prasad Rao: Then, the law also might change.

Shri Chandy: Subject to Government's right to agree or not to agree to the appointment of a registered user, every case having to come to Government, is there any harm in the person being allowed to register on the specific declaration that he is going to licence it to a corporation, subject, of course, to Government's permission? Government may not give that permission, if it is between a promoter in India and a company to be promoted in India, if the purpose of the promoter reserving to himself that trade mark and only agreeing to licence is only to deprive that company of the goodwill that eventually grows around that trade mark; Government may refuse in that case. But there may be another case—I am again thinking of collaboration—where it is a part of the total bargain that they may not give their trade mark immediately.

I am suggesting this to you not because it affects anyone of us who are already in business but because of this. Subject to the Government's complete and unfettered right to decide whether or not registered user's right will be created, is there any harm in allowing a person to have his mark registered, on his declaring that subject to Government's control, he will license it to somebody? And it may help him. That is the position in England, where there is no control even exercised over the question of appointment of registered users. So, we are suggesting for your consideration.....

Shri Kanungo: What is the alteration that you are suggesting?

Shri Chandy: In clause 45 (1), may I suggest that in line 13 at page 26, after the words 'the applicant intends to assign the trade mark to that company' the words 'or to appoint that company as a registered user subject to clause 50' may be added.

Shri Kanungo: You think that sub-clause 3 of clause 45 is inadequate?

Shri Chandy: I am thinking of sub-clause 1, which says that notwithstanding all these things, he shall be registered provided he intends to assign the trade mark to that company. If at that point of time the intention is not to assign but to appoint a registered user, subject to clause 50, let him be permitted to be registered. Consequently, sub-clause 3 will also have to be amended. But if the principle is accepted, we can work out the draft.

Shri P. T. Leuva: According to you, clause 45 will have to be deleted?

Shri Chandy: No. The principle on which our Bill stands is somewhat different from the principle on which the UK Act is based. In UK, at the very moment of application for registration, the man who makes the application personally need not have the right or the intention of using the mark, whereas in India, under the existing Act and the proposed Bill, the person who applies must himself have the intention of using it and not through a registered user. Now, then you are trying to give certain exceptions to that rule in fit and proper cases. The first case is where the man says, 'This has to be assigned to a company of which I am the promoter'. My submission to you is that it may be worth your while to extend that reservation to a case where the man says, 'I am going to licence it'. But, of course, licence means permission of Government. Therefore, Government will not permit except in fit and proper cases.

Shri P. T. Leuva: That is what I say. In case you add 'subject to clause 50', then it means that clause 45 is unnecessary.

Shri Chandy: If clause 45 is not there, the mark will not be registered at all.

Shri P. T. Leuva: When you say that the proprietor can appoint any other person as the registered user, subject to clause 50, that means that clause 45 would be unnecessary, because that clause does not require Government's permission at all, because it will be given only when the registrar is satisfied that this application for registration is meant for the purpose of licensing it to some company which is about to be formed. But, if you give unfettered discretion to Government in all cases, there is no need to make any specific provision for companies about to be formed.

Shri Chandy: The point is this. Let us assume that I am going to make an application today.

Shri P. T. Leuva: I have followed your point. In England, when a person makes an appplication for registration, he specifically mentions that he wants to license his trade mark to somebody else.

Shri Chandy: He may say so.

Shri P. T. Leuva: Yes, he may say so. But we are limiting that right to certain cases only by saying that if there is a company about to be formed, and if the applicant mentions in the application that he is applying for registration for the purpose of licensing it out to a company which is to be formed, then clause 45 would come in. The discretion of Government would not come in at all.

Shri Chandy: Where the mark is going to be assigned, the discretion of Government does not come in.

Shri P. T. Leuva: If you add 'subject to section 50 of this Act', that means that Government can permit registered users to the extent of three

persons in all cases where they are satisfied; that means that clause 45 will not be necessary at all.

Shri Chandy: It is a question of interpretation of law. Anyway, the point that I want to make is that notwithstanding the fact that a person does not himself have the intention of using the mark, let him be allowed to come on the register, provided that the mark is going to be used by a company about to be formed.

Shri P. T. Leuva: This is a separate question.

Shri Chandy: Now, the question is what the relationship between him and that company would be. Is he going to assign that mark—or is he going to license it to the company? Clause 45 takes care only of assignment and not of licence. And I do say there may be a case where even licensing is required; and Government have the powers under clause 50 to see that no mischief is done.

Shri Prasad Rao: Do you not think that if your suggestion is accepted, it will lead to a position where the producer of a particular brand of goods may like to sit tight over his mark and not license it to any other person and see that that particular brand of goods is not produced in this country?

Shri Chandy: We can do nothing in the world to compel another person to produce it here. It is a question of economics.

Shri Prasad Rao: Let me illustrate my point. There is a particular type of machine with a particular manufacturer in another country, and he wants to keep it as a monopoly and does not want that to be produced at all in this country. Your suggestion is that he may be registered here also without assigning to any other person and without any likelihood of that item being produced here; if that is accepted, do you not think that it would enable him to keep up that monopoly and to see that that particular item would not indigenously be manufactured here? If he assigns it to some other person so that it may be produced here, that is well and good. But should we allow him freedom to sit tight on the locensee and see that indigenous manufacture is not launched upon?

Shri Chandy: Let us assume for the sake of argument that someone in a foreign country who claims to be the inventor of a certain patent.....

Shri Prasad Rao: Say, some drug or medicine.

Shri Chandy: The hon. Member is looking at the other side of the problem. If some person abroad claims to be the inventor of a patent and has registered it here and he is sitting tight on that patent without making use of it, Government today have the power to compel that person to license that to someone else on terms which Government consider right. Now, naturally, the question arises whether the use of that patent by the licensee should be coupled with the use of a well-known trade mark in relation to which that product comes to be known somewhere else. Maybe, Government would then want him to license it or maybe, they themselves may acquire it; they can do both. I do not want to appear to defend anybody. But let us understand this.

Chairman: We have sufficiently understood your views.

Shri Chandy: The only point that I want to make is this. There is probably a misunderstanding that patents can give you everything that you want to know. That is not so.

Shri Prasad Rao: That gives the basic thing.

Shri Chandy: There is very much more than patents. It is known as know-how or how to do a thing. We may have an excellent mill making newsprint, but its quality may not

be high, unless we know the know-how, or how to do it.

Shri P. T. Leuva: Would you permit licensing of a trade mark without prior use by the proprietor himself?

Shri Chandy: I think so. It is up to the Government to consider.

Shri P. T. Leuva: In spite of the fact that there may not be any prior use, a trade mark can be registered. There need not be any use for the purpose of registration. A trade mark can be given to somebody else for the purpose of being used by him as a trade mark. Under 45, whether there is prior use or not, the licence can be granted. But you are now suggesting that there may not be any use by the proprietor himself. He should have got it only registered as a trade mark. Instead of that, you want to give discretion to the Government.

Shri Chandy: Clause 49 gives Government all powers. Government would not exercise the powers in a way that would hamper the economy of the country. If the relationship between one and the other is of common control or one controlling the other, apparently Government's approach to the problem would be different from that when it is totally unconnected with the new company or corporation. He has a trade mark which he registered intending to use it. But his plans go astray. He had every intention to use it when he applied for registration. He may make efforts, but he may fail it is not intended that merely because he has not been able to make use of that mark, Government should refuse the licensing of that mark to somebody else. If on other grounds, Government are satisfied that it is a fit and proper case, discretion is always with Government. What principles they are going to elaborate is more than I can say. All I would say is, let these principles be elaborated with a certain amount of collaboration with the public so that everybody is happy that those principles are not unjustified.

Dr. Sushila Nayar: I would like the witness to elaborate a little more what he was saying about the difference between a patent and actual manufacture. He said there was something more called know-how. Is not patent a specific process of invention which a person patents? Does he mean by 'know-how', the organisation, working and so on?

Shri Chandy: Dr. Venkateswaran would be better qualified to answer that. Still I would say this. It is not that everything connected with manufacture is the subject of a patent. Even if something is the subject of a patent, we must know how to make use of that patent. Let us say, we have a cyclotron. Dr. Meghnad Saha, I am told, when he was alive, got a cyclotron down to Calcutta. But we did not know how to make use of it until several years passed by. These things are a daily occurrence. The mere fact that we have the patent, the blueprint, the plant and machinery does not mean that we are immediately in a position to make use of them.

There are many things which are not patented. They are not patented because people do not want them to know, because patenting means public declaration. I think in America the extent of patenting does not in the least cover the entire field of know-how that is required. Incidently, as Dr. Sushila Nayar would say, know-how also means something more than technical know-how. Very often, there are also other types of know-how. But we are not concerned with that kind of know-how here.

Dr. Sushila Nayar: It is understood that the patent or any new discovery must be capable of being worked out. But the registration of the patent is for the discovery, not for the other thing. What is the distinction between the two and why are you making it?

Shri Chandy: I am sorry if I have drawn a red herring across this discussion by bringing that. I only said that in our relationship with foreign collaborators, let us not assume that

all that we want is only their patent. We also want to have the know-how. That is why we invariably send people across to be trained and invite those people here during the period of installation and so on, because that is all part of learning how to do a thing, not only what to do.

Shri Prasad Rao: Know-how is neither patended nor registered; it is acquired!

Dr. Sushila Nayar: Was he trying to say that because they make an effort to learn to use the patent, therefore, they should get a special privilege or protection to use a trade mark which otherwise they are not supposed to use?

(No answer was given)

Chairman: Have you any suggestions to prevent trafficking in trade marks?

Shri Chandy: If somebody could explain to me what trafficking means, I might be able to say. It might be said that the very appointment of a registered user is trafficking, but that, of course, is not a true concept. Dr. Venkateswaran might say that at some point the number of registered users goes beyond a certain level; then we might call it trafficking. That is the only thing I have heard of. I do not know what trafficking could mean.

Shri P. T. Leuva: Prevention of unearned income.

Shri Chandy: In relation to trade marks? What is that? I know the public sentiments about it. I would not say very much on it. But if the concept of registration of trade marks is once accepted, one must consider whether logically the thing may not be extended, in fit and proper cases, to marks other than invented words. There are marks which are not words, which are designs which too may have substantial inventiveness about them.

The purpose behind defensive registration is that where there is a mark which is not a common word of the language and, therefore, not something which is open to everybody to use legitimately, where there is an inventiveness behind it; and if it is further conceded that this mark, which has this peculiar inventiveness about it has gained such notoriety that its use in relation to some other articles would confuse the ordinary public, then defensive registration is granted. In fact, the number of cases of defensive is limited, because the evidence required in support of defensive registration is so exacting that only very notorious marks—I am using the word in its legal sense—get defensive registration. The degree of evidence being so exacting, let defensive registration be extended beyond inventiveness to any design which anybody can prove has an inventiveness about it. It is up to me to show that there is inventiveness. If the Registrar is not satisfied, he would not accept it.

Chairman: You want trafficking to be defined.

Shri Chandy: We would like somebody to clarify it.

Chairman: Can it be defined accurately? It is left to discretion.

Shri Chandy: It is enough if Government would elaborate what they think are the principles by which they judge whether there is trafficking or not.

Shri Prasad Rao: Take Scissors cigarettes which are very popular. You want defensive registration of that mark so that even Scissors matches could not be manufactured?

Shri Chandy: No, 'Scissors' is a natural word. Let us assume that everybody has the right to use the word 'Scissors'.

Shri Prasad Rao: You want defensive registration not only for invented words but also for other things notorious or famous.

Shri Chandy: I am bound to say what the general run of my community, whom I represent today, feel about it. That is not to say that you should accept it. But the essence of the thing, to which I am limiting my submission, is that there is a case for enlarging defensive registration beyond inventive words to designs which the applicant can prove have an inventive character.

Shri Prasad Rao: It should be extended to designs also which may be characterised as inventive.

Shri Chandy: Yes.

Shri Prasad Rao: You say in your memorandum:

> "We are of the view that the proprietor of a trade mark which has become well known to the public as a result of long and widespread use and publicly coupled with the sale of high quality products bearing the trade mark and which has become so notorious as to produce an association in the purchasers' mind beyond the field in which it is registered, should be able to protect his mark against infringers even outside his immediate trade".

That was why I asked that question because matches are also somehow associated with cigarettes.

Shri Chandy: The very purpose of defensive registration is to enable someone to prevent somebody else using it. That prevention must be justified on social grounds. The social ground is that there is likelihood of confusion. Now it is conceded that where there is an inventive word which has assumed a great notoriety in relation to a certain article, the possibility of the public being confused is high if that mark is used in relation to some other thing. I shall not mention any such trade mark in this country. Dr. Venkateswaran would be in a better position to give you exact illustrations. Take, for example, Caltex in America. It is an invented word. Although it may be derived from California and Texas or something like that, as a combination, it has an inventive character. May I crave your indulgence that this particular submission of mine may not be considered as part of the proceedings because I should feel highly embarrassed to have to refer to such matters.

Chairman: I have read to you the relevant rule. Whatever you say is likely to be published.

Shri C. R. Pattabhi Raman: Why are you fighting shy?

Shri Chandy: We are living in a community where we . . . .

Shri C. R. Pattabhi Raman: Whether you say Caltex or Socony, it is well known that they are all invented words.

Shri Chandy: If the word Caltex is used except in the case of petrol, there is a likelihood of the people abusing it. That is what is meant by defensive registration. I think I have presented our view.

Take, for example, the name of Tatas. Since Tatas are represented, I feel bold to speak on their behalf. They are in very many industries. Today, if somebody says it is a Tata product, I have no doubt that such a phraseology would immediately connect that product with the only well known House of Tatas. The problem is whether that word Tatas would come within defensive registration.

Shri C. R. Pattabhi Raman: You will have passing off action.

Shri Chandy: They have, no doubt. But, the problem is, in a passing off action, you have to prove your title by elaborate evidence. Before the Registrar, once that evidence is led, he gives title. Instead of having to prove title every time in every court, once for all, that question of title is decided by going before the Registrar. That is the purpose; nothing more is achieved by registration. The Tatas are in so many industries; that is a

household name in this country. They feel some protection should be granted. However, that is a matter for the legislature to decide. I have made my submission on that.

Connected with clause 47 is clause 29. I would like to make a general statement and explain my proposition. Let us assume there is no defensive registration for a mark. Let us assume it is a natural word like Scissors. Clauses 29 and 12 would be inter-related. Clause 12 is one that says what may be considered as conflicting applications and therefore what may be registered and what may not be registered. In other words, if there is already on the Register a mark in relation to certain articles, an application for a new mark which is similar in relation to the same goods or description of goods will not be accepted by the Registrar. Prohibition of registration is not only for articles in relation to which the first mark is registered, but : so for articles of the same description which may not be necessarily in the same class. Therefore, prohibition of registration is wide, namely, whether a mark which wants to come in against a mark which is already in, can be used in relation to the same goods or same description of goods. In either case, the new mark will not find its way into the register.

We come to clause 29, namely, the rights that flow out of registration. You can prevent the other person from coming in on the register. Supposing the other person uses the mark notwithstanding that he has not come on the register, can you prevent him from doing so? The answer under clause 29 is, No. If you want to restrain him from actually using the mark, you can only restrain him if he used it in relation to the same goods which he has registered and not necessarily to the goods of the same description. In relation to goods of the same description, you still have the passing off action, the common law right. The question at issue is, whether by statute itself, what is now a common law right may not be enlarged merely?

Therefore, shall we say this? Will the Government consider this proposition that the right in an infringement action to restrain somebody should be as wide as the right to prevent somebody from coming on the register? Will clauses 12 and 29 be brought in line? If that is done, some of the difficulties we now have about defensive registration will be avoided, with regard to marks which are not invented either as words or, according to my submission, designs. These are all major questions of policy and I have tried to place before you the feeling of Trade mark owners on the subject. However, these are matters on which there can be difference of opinion. I may point out this that I do feel sincerely that there is a case for enlarging clause 29 to bring it in line with clause 12. I say, if that is done, much of the desire to get defensive registration will be avoided and defensive registration could then be confined to words which are invented and perhaps marks and designs which are invented. That is the sum total of my submission on that.

Shri C. R. Pattabhi Raman: I agree Shri Chandy that we can strike a new line. But, in fairness to the Judge who has written the report, the situation seems to be this. In England, similar representations have been made. Of course, there again, I do not wish to limp behind England. But, I feel bound to point out that similar representations have been made in England and they have not thought fit to change the law. That does not mean, as he correctly puts it, that we cannot take a new line and provide for this sort of restraint. We will consider it.

Shri Prasad Rao: Our approach is different from that of the British.

Shri C. R. Pattabhi Raman: That is why I have made these prefatory remarks. I do not feel that we should be mortgaged to one position or the other. I am only trying to draw your attention to the report. We may or may not agree with Shri Chandy. But, I am sure you will agree there are no precedents.

Shri Chandy: No. Neither industry nor trade waits for a precedent. They grow. The law has to grow. That is my submission.

Chairman: While on clause 47, have you your own definition of trafficking?

Shri Chandy: We can try to find out what people mean by trafficking. It means something that is dishonest, something which is a colourable transaction. What economic and social circumstances would make a particular transaction a colourable transaction is more than what I can say. That is one important reason why I say that if the Government feel that a particular transaction has this social characteristic of trafficking, let us know so that we can commonly work out.

Dr. Sushila Nayar: I would like to give an illustration. In Transport, people have permits for running buses on certain routes or for running taxis. There are several other instances in which people take permits and sell them to somebody. He does not run the bus. He has got that money for doing nothing at all, except that for some reason or other, he was able to get the permit. Similarly a person takes a trade mark, but does not make use of it, does not do anything to earn money through that trade mark and sells it to somebody and gets money for doing no work. Won't that be trafficking?

Shri Chandy: I do not think so because, first of all, the word trafficking was for the first time used in the English Act at time when, according to the English Act—that is the position even today—use by the permitted user or intention to allow the permitted user to use was sufficient for the purpose of getting registration. The word trafficking as used in the English Act was not intended to cover the appointment of registered users. The word trafficking must be considered, I suppose, in relation to some economic realities. I am not sure as to what is going to be the economic reality. I am quite prepared to admit that there may be dishonest transmission, dishonest devolution, dishonest users. But, unless one seizes a few concrete cases, I am not able to give any criteria. My only submission is, let the Government give a straight case, rather than elaborate any *ad hoc* principles of basic ideology.

Chairman: We cannot define that word.

Shri Chandy: Unless the Government have something in mind.

Chairman: Each case has to be decided on its merits.

Shri Chandy: Let them be decided in association. Let us also understand.

Shri C. R. Pattabhi Raman: Was not there something like Eveready?

Shri Chandy: I do not know the case.

Shri C. R. Pattabhi Raman: I am not sure of the facts.

Chairman: Now, we can go to Certification of Trade Marks.

Shri Chandy: If the hon. Minister would bear with me for one minute more, on behalf of the house of Tatas, I would like once again to urge—there are very many managing agencies in the same position—can we have clause 50 (2) like this?

"that there is common management or control..."

The word management is to be put in.

Chairman: We will take this into consideration.

Shri Kanungo: You have mentioned it.

Shri Prasad Rao: Under clause 50 (1) you said that it would not be proper to limit the assignment to three users of the particular registered trade mark. Take for instance 'Sanforised'. 'Sanforised' is a trade mark and many people are using it. Can you let us know how many such things

are there? Is it for the particular commodity or the particular process?

Shri Chandy: I wish there was a report from the Trade Marks Registry just as there are reports from all other departments as to what is happening. I am not in a position to say what the Trade Marks Registry's experience is. I have heard about Sanforised. How many other cases there are, will be known more to the Minister who has got the information at his disposal than myself. How many cases there can be, I do not know. It depends on the trade. The situation would be this with regard to Sanforised. If pre-shrunk fabrics did not find favour with the consuming public, the mills would not have been interested in carrying on that process of pre-shrinking. But once the consumer thinks that pre-shrinking is desirable, every mill naturally adopts the process for that. "Sanforised" is the name given to pre-shrunk fabrics.

Shri C. R. Pattabhi Raman: It is a name or trade mark?

Shri Prasad Rao: It is a process. It is a trade mark also.

Shri C. R. Pattabhi Raman: Is it a patented process?

Shri Prasad Rao: The process may be patented, but it is a trade mark also.

Shri Chandy: I am not in the textile trade. I can only say what I have heard. As a layman who reads the newspapers at least morning and evening, I find "Mafatlal Sanforised", "Arvind Sanforised", "Binnys Sanforised" etc. To my mind it means it is cloth pre-shrunk, the shrinkage being certified by somebody. In other words, it is not every type of pre-shrinking that will be called "sanforised". That is my understanding of the situation.

Now, let us assume it is a trade mark, because it has been registered as such in the wisdom of the Trade Marks Registry, and it is so registered even abroad. The question at issue is: how can you restrict the use of that mark by more than a certain number? There are 600 mills. If the public have become conscious of pre-shrunk cloth as better cloth, *inter se* competition must drive them all to adopt that process, and having adopted a process of pre-shrinking, to give some name to it. So, if "sanforised" has more fancy with the public, people will want it. If "sanforised" or "sunferised" or something else has more fancy, they will want that. But if the Government so wishes, it is for the Government to step in and say that they will have the Ahmedabad Textile Research Institution or the Kanpur Textile Research Institution or any other body appointed to do the certification of pre-shrinkage. That is their policy, but that is an over-all policy which they must adopt for all the 600 mills, so that *inter se* their competition does not suffer. But if the Government does not choose to come in, surely you must allow the mills who have the problem to carry on their competition in such manner as will make them solvent. Even otherwise, some of them are not. Let us not add to their difficulties.

Shri Prasad Rao: So, you think some of the users will definitely be put to disadvantage if this is confined to only three people.

Shri Chandy: I think so. If you are going to confine to three, which three? I am told there are 26 people using it. The other 23 will say you are taking away their bread, and what right have you got to do it? I do not think it is fair, unless Government are going to step in and say for everybody that they are going to do the certification of pre-shrinkage. If anybody wants to do it, and nobody else will do it, that is a proposition which we can understand, which has to be argued by the Government with the people who have vested interests.

Shri Khobaragade: Under clause 49 the powers to decide the application for registration as registered user are given to Government. In your memorandum you have submitted

that this power should also be delegated or given to the Registrar. I want to know what harm there will be if these powers are given to the Government because in deciding the applications there are certain principles laid down by which the Government ought to do the certification. In clause 49(1) the essential things to be complied with are given, and in clause 49(3) certain principles have been laid down, *viz.*, firstly it should be in the interests of the general public, development of any particular industry, trade or commerce in India etc. So, is there any harm if we give that power to the Government instead of the Registrar?

Shri Chandy: In my opening submission, I have already conceded that.

Chairman: You are not against powers vested with the Government but you want an advisory committee to be appointed.

Shri Chandy: We are, shall we say, like most other people in the country, anxious to see that our State does not become a laboratory, but we do realise that in the present situation, if we have to march, vast powers have to be conferred on the executive. But we should also caution that the exercise must be with the consent of the people who are immediately affected subject to the overall supremacy of Parliament. I think Government accepts that principle.

Shri Akhtar Husain: Up till now there has been no advisory body. Will you be able to cite any specific instances in which the interests of the trade or industry have actually suffered by the absence of such an advisory body?

Shri Chandy: Up till now there is no provision in the current Act similar to the registered users clause now. So, we have had no trouble.

Shri Akhtar Husain: Suppose there is an advisory body and the advisory body's opinion is accepted by the Registrar, but eventually when the matter goes up to the appellate court, the court gives a different finding. Then what will be the utility of such an advisory body because the opinion of that body can be over-ruled by a judicial tribunal.

Shri Chandy: Even under any other Act, let us say under the Industries (Development and Regulation) Act, Government do not grant a licence to somebody to make a substantial expansion, and let us say that decision of the Government is in conformity with the views of the advisory body. Still, it is open to the individual who feels aggrieved, if he can substantiate a case, to take up the matter on writ to show that the Government have exceeded their powers in some manner, or that in the exercise of their powers they have accepted evidence which they ought not to have taken into account, or that they have not taken into account evidence which they should have accepted, or on the ground that some constitutional guarantee has been upset. That is an over-all right which the Constitution confers on the individual, but our desire is to see that we do not have unnecessary litigation, acrimonious litigation, litigation that leads to social disruption, because, although we might win, all that happens is disruption. What we are more interested in is to see that seven other people belonging to the same trade say that what the Government says is right, in which case he would be a very bold man who says that he would still go to the Supreme Court or some other court, unless of course he feels very keenly about it.

Shri Akhtar Husain: But the constitute on of an advisory body will create hopes that its opinions and advice will be acted upon, but if that advice will have no binding force on the judicial tribunal which will eventually decide the matter, what will be the practical advantage of that body?

Shri Chandy: It is this. After all, the court, in considering the reasonableness of the Government's exercise of its discretionary powers, must take into account the views of reasonable people, and if reasonable people have all agreed that what the Government has done in a given situation is reasonable, it would be a bold court to say that it thinks that all these people are unreasonable, because these are spheres of economics in which the court has to take into account the views of many people before it can propound with any clarity what is reasonable.

Chairman: It is a wholly advisory body. Government may accept or reject its advice.

Shri Akhtar Husain: The same work can be done by representation to the appropriate authorities by the interests, affected or likely to be affected. In the event of any adverse effect being apprehended by any trade interests, a representation can be made to the appropriate authorities of the Government, and the same function will be performed by the representation, and the result will be the same if that representation is considered by the Government.

Shri Chandy: But we do hope that the executive would admit as a matter of current convention that in the exercise of discretion in matters which are changing fast, they have consultations as a matter of course. That is a principle.

Chairman: I think we have discussed this clause threadbare.

Shri Chandy: We have one or two small observations on clause 52. While the consent to appoint a registered user must come from the Government, variations....

Chairman: ....may be done by the Registrar?

Shri Chandy: We are quite happy.

Chairman: Even then perhaps he has to seek guidance from the Government.

Shri Chandy: We have nothing to say.

Chairman: "Sanforised" is a certification trade mark. It certifies that it is pre-shrunk.

Shri Chandy: The history of "sanforised" is beyond me. Our submission on certification trade marks is this. In the definition of the term "trade mark" in clause 2 it is said that for purposes of Chapter X, "trade mark" means only a trade mark in simplicity, but for other purposes "trade mark" includes certification trade marks, but when you come to them in the Chapter on certification trade marks, clauses after clauses are declared to be non-applicable. What is the net result? If Dr. Venkateswaran who has had a large hand in drafting this would clarify this for us, we would be obliged.

Our point is this. We feel that an infringement action should lie by the owner of a trade mark in the narrow sense against a person who uses a similar mark whether as a trade mark or as a certification trade mark, and *vice versa*.

In other words, let us say the mark "Agmark" is registered as a certification trade mark. It should not be open to another person to use the word "Agmark" as a trade mark. That is our submission.

We will come to the earlier question of registration. There, of course, the Act takes care of the thing. No mark will be registered as a trade mark if there is a certification trade mark similar to it, and no mark will be registered as a certification trade mark if there is a trade mark similar on the Register. That is as far as the Register is concerned, but as far as the infringement action is concerned, clauses 28, 29 etc., all of which deal with infringement actions are declared to be non-applicable to certification trade marks and not necessarily as non-applicable to registra-

tion. Clause 60 says all these are non-applicable. Then we come to the one and only clause that applies, i.e., clause 66. It is not only one clause; actually, there is clause 67 also. Kindly look at clause 67.

Our view is that by virtue of clause 60 you have said that clauses 28, 29 etc. would not apply. Now, the clause reads:

> "The right conferred by section 66 is infringed by any person.... and in such manner as to render the use of the mark likely to be taken as being used as a certification trade mark".

In other words, you can have an infringement of a trade mark by a trade mark,, and an infringement of a certification mark by a certification mark, but you cannot have an infringement of a trade mark by a certification mark or of a certification mark by a trade mark. That, in our view, is not a correct thing. It is not enough if you prevent from coming on the register marks which are similar, notwithstanding the fact that they are in different classes, but it is also necessary that in actual use, there should be no conflict allowed.

Shri C. R. Pattabhi Raman: In other words, you are objecting to the word 'certification' in the last line of the clause.

Shri P. T. Leuva: You want to delete the word 'certification'?

Shri Kanungo: He wants to add 'trade mark'.

Shri C. R. Pattabhi Raman: If the word 'certification' is omitted, I think your purpose will be met.

Shri Chandy: My purpose is not merely that. I do not want to be very subtle. If the words 'certification mark' are removed, then the owner of the certification mark has the right to proceed against the owner of the trade mark. But to come back to the poor man who registered earlier under clause 28 and so on, has he got the right?

Shri C. R. Pattabhi Raman: You can say 'trade mark or certification mark'.

Shri Chandy: If Government would accept the principle that not only should there should be no conflicting registration, but there should not be conflicting use also, the thing can be worked out quickly. Our submission is that the register will be prevented from having conflicting registrations. But that should also be true with regard to infringement actions. So, our submission would be this. Subject to such views as our Draftsmen have, in clause 60, sub-clause (c), do not say 'sections 28, 29....', but merely say 'sections 30, 39, 40....' shall not be applicable. That will take care of the trade mark man always having the right to proceed against the certification mark. Then, amend clause 67, by removing the words 'as being used as' and inserting 'as a certification or trade mark'.

Shri P. T. Leuva: That is what we are saying. You delete the word 'certification' from clause 67.

Shri Chandy: And the words '28' and '29' from clause 60.

Shri C. R. Pattabhi Raman: At page 36, at the top, in sub-clause (c), he wants to delete the words '28' and '29'.

Shri Prasad Rao: You do not want the limitation of three to apply to certification marks? If you do not want it to apply to registered marks, certainly for certification marks, you do not want it to apply?

Shri Chandy: In future, as far as I can see, certification trade mark would more or less be by quasi-Government bodies (in our planned economy). I do not know how many private certification groups there are. But with the growth of export promotion councils, textile research institutes, sugar technological institutes

and so on, I do not know which private body is going to set itself up as a certification group, because it is a costly business. We are quite prepared to leave all that to Government. It does not affect us.

With regard to clause 66, I would only try to say that we had made certain observations yesterday with regard to the necessity or otherwise of the word 'of the use of' being valid. That would also apply here. I do not want to go into that all over again.

Chairman: Then, you want special provisions for textile goods.

Shri Panigrahi: May I seek a clarification with regard to the proviso to clause 59 (1)? Is Mr. Chandy prepared to give this right to the registrar?

Shri Chandy: I must confess that we have concentrated our mind on the problems which struck us when we read the Bill. If the hon. Member wants me to apply my mind, may I come back to it at the end of my submission? I did apply my mind when I read the Bill first, but nothing occurred to me then.

Chairman: We shall take it up at the end. I think it is not a new power, but it is a power which is there already.

Shri Chandy: I am grateful to the hon. Member for drawing my attention to it, but sometimes, even we may not know what powers we are conferring on the registrar.

Chairman: You want special provisions in regard to textile goods?

Shri Chandy: We discussed this matter with our friends in the textile industry.

Chairman: You want a consultative committee?

Shri Chandy: I do not know what their representation is, but they told us that although the advisory body may have met only infrequently, yet they feel that they are very honoured by having an opportunity of meeting the registrar periodically. Now that the registrar will become the Controller-General of Patents and Trade Marks, it is still more a matter of honour to meet the Controller-General frequently.

And May I say this also? Why confine it only to the textile trade? I think the time has come now for a small body of people to be associated with the registrar, so that he could discuss whatever problems he thinks are of general importance, and so can they. And what is more, the registrar can make available to us some of this information which we have only by hearsay; I think we all like to have this information as to how many applications there are, how many registered users there are and so on and so forth.

Shri Prasad Rao: The register can always have a small consultative committee. But do you think that it should be a statutorily recognised?

Shri Chandy: Otherwise, the poor registrar would not be in a position to spend any money to meet us.

Shri Kanungo: That part can be taken care of by executive action. Your point is that the provision must be there in the statute.

Shri P. T. Leuva: That can be done under the rule-making powers.

Shri Kanungo: He wants that the advisory committee should be provided for in the Act.

Shri Panigrahi: There will be a separate advisory committee for textiles also?

Shri Kanungo: His point is that there should be an advisory body provided for in the statute itself. It is for us to judge.

Shri Panigrahi: Exclusively for textiles?

Shri Chandy: My submission is that there is no further point in having one only for the textile industry.

Shri Kanungo: It will cover all things.

Shri P. T. Leuva: The general policy of the Act.

Shri C. R. Pattabhi Raman: You want to have an idea of the number of mal-users of these marks.

Shri Chandy: The developing pattern of trade and industry, as they affect patents and trade marks would be the subject-matter of periodical discussions with the registrar.

Shri C. R. Pattabhi Raman: It will be a consultative committee?

Shri Chandy: Yes.

Shri Prasad Rao: In your memorandum, you do not specifically state that you want a general consultative committee, but you have limited your remarks particularly to the textile consultative committee and said that it should be continued. But, now, you want a general consultative committee.

Shri P. T. Leuva: He wanted it for the registered users as well.

Shri Chandy: Registered users as well as the owners of the trade marks also.

Shri Sonavane: This suggestion has been put forward in the memorandum submitted by some other association also.

Shri Prasad Rao: The textile interests are the affected parties, because they have the textile trade marks.

Shri Sonavane: I do not say that we should have it. But the suggestion has come. It is for us to consider it.

Chairman: Now, we come to Chapter X dealing with penalties.

Shri Chandy: This is an attempt, as hon. Members would have understood on reading the explanatory notes, to do away with the corresponding provision of the existing Act.

Shri Prasad Rao: You want more teeth in this?

Shri Chandy: No. I would only make certain broad submissions. The first submission I want to make is that in a way these clauses are a little broad. If you read clause 77 or 78, which is the penal provision, there is no indication that as an ingredient of the offence, the application or the falsification etc. must be in relation to goods of the same class or description. That is understood probably, but that is not there in the provision.

Shri P. T. Leuva: The definition clause will apply.

Shri Chandy: The definition of trade mark is just trade mark.

Surely, the application or the falsification must be in relation to goods of the same class or description of goods.

Chairman: What exactly is your point? All these are descriptions of how the offence is constituted.

Shri Chandy: Clause 84 is the overriding clause, which lays down the limitations to which clauses 77 etc. are subjected. But I am not sure whether clause 84 is clear enough.

Chairman: You want that punishment should be awarded in all those cases?

Shri Chandy: The punishment is provided for. I shall come to that later. The first thing is to define the offence clearly. We are not at all anxious to have an offence if somebody uses the word 'Scissors' in relation to caps, merely because somebody has a common law right or a statutory right in relation to tobacco. That common law position must be clearly understood and embodied in clause 84, namely that it is an essential ingredient of the offence that the action of falsification or the application must be in relation to goods of the same class or description.

Chairman: You can give instances, and point out whether any improvement is needed.

Shri Chandy: Our submission is this. I take it that clause 84 is an overriding clause.

Shri Kanungo: Clause 84 is an indemnifying clause.

Shri P. T. Leuva: Please see the definition clause. The definition there would be read in every clause.

Shri Chandy: There a trade mark means anything that indicates connection in the course of etc. etc.

Shri P. T. Leuva: On page 5, it has been defined. Everything is given there. You do not go on defining every word in every section.

Shri Chandy: It is all right as far as the owner is concerned. But if hon. Members are satisfied that the defendant is adequately protected, we do not have much to say. We are anxious to see that the defendant is also protected. It is often we who are always accused of somehow or other being anxious to take criminal action. There has been a certain amount of political controversy in this country to say that we who are not arguing this case somehow or other are particularly anxious to take criminal action. We are not in the least anxious to do that. I want to make it quite clear that we want to see as much as anybody else that adequate safeguards are there for the defendant to be defended and to have adequate grounds for defence. We on our part are anxious to see that if the existing provisions are not clear enough, clause 84 may be enlarged to make it absolutely clear that the offences are in relation to goods of the same description or class.

Shri Panigrahi: May I seek a clarification? In clause 84, it is said: 'no act or omission shall be deemed to be an offence under those sections (clauses 77—79) if the same were lawful or permitted under this Act.' What are these omissions? What is the utility of that clause?

Chairman: We will discuss it later among ourselves.

Shri Chandy: We are only concerned with enunciating general safeguards we want to see embodied in the Act so that the defendant does not feel that he is being hauled up for doing something which is not really an offence.

Shri P. T. Leuva: What is lacking there in clause 77?

Shri Chandy: "A person shall be deemed to falsify a trade mark who, either,—without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark....". There the process is one of actually making whether he is a printer, or design maker and so on. Then he falsifies a genuine trade

mark In other words, he takes hold of an existing container on which a trade mark is already applied and reconditions it. That is, as we understand it, the purport of 77. Now 77(2) says:

> "A person shall be deemed to falsely apply to goods a trade mark who, without the assent of the proprietor of the trade mark, applies such trade mark or a deceptively similar mark, to goods....".

What goods? To goods of the same clause or description.

Shri Prasad Rao: Please refer to 78(c). Will not that meet your point? You wanted these people to be brought under the section of falsification itself. But here the same amount of penalty is prescribed.

Shri Chandy: 78 is concerned with penal provision and there the classes of people who are connected with this process of infringement, counterfeiting are defined, namely, the man who falsifies a trade mark, a printer or design maker who falsely applies it, who makes the machinery, who applies any false trade description etc. In other words, the man who makes it, the man who—all that category of people are brought within the purview of 78. All that we are saying is that the provisions from 77 onwards would not normally be understood as creating an offence only where the offence is in relation to articles of the same class or description.

Shri P. T. Leuva: Your point would be met if we say that it must apply to the trade mark to which it relates. The trade mark when it is falsely applied to any goods must apply to the same trade mark which is registered.

Shri Chandy: Of the same class or description.

Shri P. T. Leuva: It would be specified in the Trade Marks Registry itself.

Dr. Sushila Nayar: Does this man that this trade mark can be used in respect of some other goods? You say that infringement should be defined as application of this trade mark to the same kind of goods or goods of the same description. If this trade mark is used for goods which are slightly different, will that be permissible?

Shri Chandy: We have Scissors cigarettes. If somebody were to use 'Scissors' in relation to say, dhoties, there cannot be any infringemen'; there cannot be any criminal action either.

Chairman: Goods covered by the particular mark.

Shri C. R. Pattabhi Raman: Once you come to Chapter X, most of these clauses are taken from the well-trodden IPC. The new provision is 84 where lawful things are exempted.

Shri Chandy: If you refer to the notes on clauses at page 78, you find:

> "This is a new provision designed to protect the acts by the accused which are lawfully permitted under this Act, as, for intance, where there is concurrent registration or where having regard to the conditions and limitations...."

Shri C. R. Pattabhi Raman: It is only an illustration given.

Shri Chandy: We are pointing it out to make it quite clear. If you are satisfied that this is adequate protection, that is all right.

Shri P. T. Leuva: The point is clear. If you apply a trade mark to any other goods, *prima facie* under 77, there would be an offence, but 84 makes it quite clear that if that use is permitted by the Act, it would not be an offence.

Shri Chandy: All that we are asking is that you consider clause 84 carefully and be satisfied that it is adequate for the purpose.

Shri P. T. Leuva: Your point is quite correct that it is likely to be misinterpreted. But under 84, if it is not permitted, it would be an offence.

Dr. Sushila Nayar: He gave the illustration of 'Scissors' mark being applied dhoties. On the other hand, I am thinking of certain medicines. Take, for instance, Tom's mixture. That can be taken internally. Suppose there is some different type of medicine which may even prove dangerous. Millions of people have become familiar with one name. Suppose the same name is used for something else with a different composition. It can prove dangerous.

Chairman: Enhanced punishment is prescribed for that.

Dr. Sushila Nayar: He has been emphasising that it should be for the same type of goods. That can prove dangerous, as in the case mentioned by me.

Shri Chandy: I think the hon. Member does not realise that almost all drugs are of the same class. It is not as of liver extract is one and gripewater is another. They are all goods of the same kind and description.

Dr. Sushila Nayar: I think you are completely mistaken. Liver extract and gripewater are two completely different things.

Shri Chandy: But for the purpose of trade marks, they are classified as articles of the same description.

Our broad submission is that we are certainly happy that the Government have gone somewhat forward from the position they once took up, and are prepared to admit that at least where there is use of false trade marks in relation to food—because we are all very sensitive about it—and drugs—about which also we are very sensitive—Government are prepared to intervene through the police machinery to trace the people who are doing it and prosecute them, because that is what we understand to be the significance of the enhancement of the punishment in relation to offences pertaining to drugs and food; you have made the punishment three years, which should automatically make the case cognisable. Now, there seems to be a certain misunderstanding in certain quarters about the advisability of making offences cognisable. As far as I know, the mere fact that an offence is made cognisable does not mean that the police would necessarily take up the matter. It is always open to them to say, notwithstanding the fact that it is cognisable, the parties are referred to court, they can do what they like. In fact, making an cognisable only means that it enables the police in cases where they think fit and proper to intervene.

While we welcome the enhancement of the punishment in relation to food and drug trade marks, which makes the case cognisable by the police, we are wondering where there is not a case for extending that principle all round, subject to this understanding that the mere fact that offences are made cognisable does not mean that the police are going to intervene.

Chairman: Your idea is that all offences under trade marks should be cognisable.

Shri Chandy: That has been the view of trade marks owners all along. The reasons are these. First of all, trade marks owners are reluctant to go to a criminal court, because no criminal court can give us an injunction which is a final and complete remedy that a man will have—to restrain the other person from using it. Criminal courts are not empowered to

do so. Why do people go to the criminal courts? There are certain people on whom an injunction is no remedy. They are quite prepared to commit contempts of court. They will migrate from place to place. Such persons can only be restrained if they are really physically put into the prison. That is the reason why in those cases people think of going to criminal courts. Suppose somebody goes to a criminal court merely for the purpose of harassment. After all unless a *prima facie* case is established, the man who goes to the criminal court stands in danger of being accused of vexatious prosecution. Magistrates are most reluctant, naturally, to accept complaints where the case is not almost crystal clear in regard to similarity. , That being the attitude of the magistrates, quite rightly, hardly anybody ever goes to a criminal court except where he finds that that is the only way in which this man can be prevented, because ordinary civil restraint means nothing to him.

There is one other reason why we want to go to the criminal court. Our trouble is that we do not know who is doing this. We are not equipped with investigational bodies to be able to investigate and find out who exactly is doing it. We have no right of entry into anybody's place. We have no right of seizure. Unless incriminating materials are caught at the moment when he is going to deliver the thing, we cannot do very much. What we have to do is, to investigate ourselves to the best of our ability, place a trap and wait and see how we can do. This is very difficult.

One of the reasons why we say that the offences may be made cognisable is, it will empower the police upon being satisfied on confidential information that there is some reason to believe that something is being done, to intervene if they want. Our laying of information with the police is also initiating criminal proceedings for the purposes of a case for vexatious prosecution or giving false information. It is not as if we will rush to the police and give some false information. When we make a complaint to the police, we have got to take care that we do not act harshly, hastily or without due justification. The experience of the U.P. Government has been found to be very encouraging. The U.P. Government, I think, nearly two years ago, appointed a Director of Industries with special investigation powers of his own. The Director of Drugs, I understand, has his own independent set up and the Director of Industries is concerned with the rest. Under Director, they have set up a force—I do not know how many; they do not tell us that. They have a Superintendent, an Assistant Superintendent and quite a number of people. They tell us that we should place before them confidential information we have about the people or products and from where they are emanating. Upon receiving that information, they themselves investigate and if they are satisfied that something is happening, they go before the magistrate and take his orders. As a result of the activities of this special police force setup by the Director of Industries, we find that there has been a considerable amount of prosecution.

Shri Akhtar Husain: That is not the same as the State undertaking the prosecution itself. If the State undertook prosecution in doubtful cases in which individual parties are reluctant to undertake prosecution for fear of a suit for malicious prosecution, Government would be extremely unwilling to take upon itself the responsibility of launching prosecution when there are uncertainties. The Government itself may be faced with a suit for malicious prosecution. The Director of Industries in the U.P. makes investigation and launches prosecutions on behalf of his department and not on behalf of the State. The two capacities have got to be kept separate. The State Government has no responsibility. The Director of Industries or whoever that official may be, who is charged with the enforcement of these rules, launches prosecution as an official and not as the State Government itself.

Chairman: Let us first hear Shri Chandy.

Shri Chandy: As far as I know that is not the way it functions in the U.P. The Director of Industries—his is the department to which confidential information has to be given. Naturally, that department processes the information to see whether there is a *prima facie* case for them to make further investigation. Once they are satisfied, they make certain investigation of their own and when they find that action has to be taken, they go to the police and with their co-operation, take action of search and seizure, naturally supported by magisterial orders where necessary. Thereafter, once incriminating material is seized, the prosecution is invariably in the name of the State on the basis of the police report.

The point I make is this. If it is considered necessary in the light of prevailing rampancy of counterfeiting and manufacture of spurious goods in drugs and foods, to make offences relating to these things cognisable, is there not a case for extending that all round, because counterfeiting and manufacture of spurious goods is not confined only to goods and drugs? The second point I want to say is this. If it is felt that the police have a tradition of being, shall we say, somewhat above the law, we do not want to arm them with powers. We are up against this problem. Our submission is that the time has come for the Government seriously to consider increasing the punishment all round to three years so that all these offences can be made cognisable when the police will naturally intervene where they are absolutely certain that there is a *prima facie* case.

Chairman: When an offence is declared cognisable, the police have every right to interfere without being called for.

Shri Kanungo: That becomes the responsibility of the police. Do you take the position that protection of the property of the individual citizens, irrespective of its effects upon the public, as in the case of drugs, should be the responsibility of the State apart from providing for the law and procedure?

Shri Chandy: I do not say so. If it was merely an inter-party affairs, the problem could have been agitated in a civil court. It has been made a criminal offence. We are here only on the qustion of punishments.

Shri Kanungo: For criminal offences also, there are summons cases and warrant cases.

Shri Chandy: Why they are made criminal offences is not merely to protect property. My submission is, behind it all, there is need to protect the consumer also.

Dr. Sushila Nayar: While I quite see the contention of Shri Chandy that the public may be cheated due to infringement of trade marks, I would like him to consider whether he considers that cheating as equal in gravity to the cheating effected by spurious drugs which is a matter of life and death. Here, a man may be deprived of a little bit of money, may be cheated in not getting goods of equal quality. But, there it is a matter of life and death, as also with food adulteration. If the two are put on par, nobody is going to apply these provisions with as much rigour as they ought to be applied. In France I understand that the penalty for adulteration of drugs is death. They have not had occasion to use it because the people are terrified. People want money; but they want life more than money. Therefore, if you put them in the same category, would it not be detrimental to the interests of the public?

Chairman: He has no objection to make the offences regarding drugs more rigorous.

Shri Chandy: If you will refer to my submissions before Shri Ayyangar

when I discussed this matter with him, I have stated that at least offences relating to foods and drugs should be made cognisable.

Shri Prasad Rao: They have been made cognisable. It is stated in the report:

> "This point was emphasised before me by Shri Chandy when he discussed the matters referred to me for report. I have given particular attention to the difficulties experienced by trade mark owners and have examined with great care the memoranda and the oral evidence placed before the Committee. Most of the cases relating to this type of trade in spurious goods, which the Committee remarked has attained the proportions of a special trade, relate to pharmaceutical goods which fall under the head of "Drugs" as defined in the Drugs Act." etc.

In the concluding stage he recommends after examining all the evidence that has been placed before him.

> "My suggestion is that the Central Government might in the first instance notify 'drugs' and 'food' as defined in the enactments I have mentioned above, as the goods in respect of which this indication of trade origin should be given. The situation might be watched and if there is any evidence that there is any widespread illicit trade in any other class of goods, the provision in section 12(A) is flexible enough to be used to suppress such illicit practice in those particular trades. In my opinion, the effect of the changes in law which I have suggested above would suffice to import a healthy tone to honest competitive trading."

Even after taking into consideration all the data placed before the Committee and Shri Ayyangar, he had come to the conclusion that at the present moment, only the making of spurious goods in drugs and food alone should be made cognisable and not the other things.

Shri C. R. Pattabhi Raman: That is about origin. Could you give us instances of continued counterfeiting—that is the word used. It may be that a body of merchants may start simulating some other well known mark for a short time. But, they will fall by the road side.

Shri Chandy: I can give some. I do not know whether it is continued. This is happening particularly in regard to the using of old containers on which the trade mark does appear. Unless you are very careful to buy from a reputable garage, you will be given brake fluid with the name Wakefield on it. But, you will find some oil which has already been used. You use it in the belief that it is good fluid and apply the brake. You find you have run over the policeman.

Shri Prasad Rao: They are using the seal for hair oils. That sort of thing cannot be re-used.

Shri Chandy: Danger to life arises in so many ways. You buy an electric iron. You think it is good. The name H.M.V. is there, everything is wonderful, but it is not H.M.V. You get a shock.

Shri C. R. Pattabhi Raman: Also an electric shock.

Shri Chandy: All I am saying is that danger to life springs not merely from what we eat or what we administer to cure ourselves of diseases. I am not suggesting because of that there should be an extension of cognizability to other things. All I say is: let us not act under a prejudice.

Chairman: I do not think we are acting under any prejudice.

Shri Chandy: If Government are satisfied that the desire of counterfeiting is rampant in a given sector, let them then take appropriate action to see that the punishment is raised so that those offences become cognizable, or alternatively they may do as the U.P. Government does. Although the offences are not cognizable, they are prepared to place at your disposal a special police force in view of the peculiar position prevailing now in Lucknow, Banaras and a few other places.

Shri Prasad Rao: Knowing as you do the police methods, don't you think that by making this a matter for the police, they will try to harass even the small producer, even when it is done in a healthy competitive spirit.

Shri Kanungo: On that he has expressed his views earlier.

Shri P. T. Leuva: Is it not a fact that in every case of this kind there is always a police investigation, because the matter is referred by the magistrate to the police for enquiry?

Shri Chandy: The magistrate may refer.

Shri P. T. Leuva: The legal position I know, b... is it not the invariable practice for the magistrate to refer the case to the police for enquiry and report?

Shri Chandy: I would say in a city like Bombay the magistrates are aware of the danger, and they are quite prepared to grant you that privilege of referring the matter to police for investigation, but our trouble is this, that it must be done *in camera*. Otherwise, you appear before the Presidency Magistrate and produce half a dozen tins. Before half an hour is over, the fact that you are proposing to take action is known all over the place, and your action is infructuous. Unless magistrates recognise the need for taking up such matters *in camera*, it is very difficult to carry conviction with everybody in every place.

Shri Akhtar Hussain: In the event of a complaint being filed before the magistrate, and a warrant for search or other appropriate action being applied for before the magistrate, is there any real apprehension that the magistrate will not act promptly and issue the requisite warrant?

Shri Chandy: No, Sir. Our trouble is this. If we know who is doing it, we will not go to the criminal court. We will go to the civil court and get an injunction. In Lucknow this is happening, and we have only a vague idea that it may be in a particular quarter. We do not know who is doing it. So, what we do is, we go to the magistrate and say: "Here are specimens of what we consider to be counterfeits or infringements. These were bought from so-and-so (we would give him confidentially the seller's name from whom we bought it), but we know they are not the people who make the thing. Would you please refer this matter to the police for investigation." Then, if the magistrate is so please, he refers to the police, who begin to investigate as to who exactly is doing it. If we know who is doing it, we will go to the civil court and get an injunction within 24 hours.

Shri Akhtar Hussain: But is it not a fact that some well-known firms have got their own investigating staff? They come to know who is making these spurious goods, they send their own men to make the purchases of those spurious goods. They come to know who is the stockist of those goods, who is the actual manufacturer and then they give the information to the magistrate concerned, and the magistrate takes immediate action. This is how all these patent cases are being conducted at the moment.

Shri Chandy: Mine is the only firm, although I have got around me three other reputable firms,—Tatas, Glaxo Laboratories and Unilever—which spends over a lakh of rupees per annum to investigate because we have

this problem in the cottage industry. Anybody can make in his backyard and sell his soap. We do not take criminal action. We have over a thousand infringements in a year; 998 will be settled by negotiation, because very often the man is doing it without proper knowledge of his rights and other people's rights. So, we settle it. But there are people in Sadar Bazaar who do it deliberately. No amount of negotiation can do anything with them. They will settle with us. and the next morning they will do likewise in another name. With such people all we can do is to go to the police when we have information and say: "We have information that they are doing it. If you are satisfied about the information, will you kindly take action?" Sometimes, the police in Delhi State, realising the situation, do take action. Sometimes they refer us to the magistrate and we get an order from the magistrate, but only one firm or two firms can spend the money required to have a permanent investigation force.

What I am suggesting is this. For the benefit of the small man, it is necessary that at some point of time some assistance should be given. By "small man" I mean the middle man, people of middle size. The house of Tatas do not have an investigating force, because they do not place such importance on investigation as we do. In our case we find it necessary.

Shri Akhtar Hussain: The difficulty is that some of these infringement cases or spurious imitations of patented goods involve quasi-civil rights also, and it would be putting a great deal of responsibility on the police administration to launch these prosecutions when it can, with the same ease, be carried on by the party affected by means of a complaint to the appropriate magistrate.

Shri Chandy: There is some misunderstanding as to the circumstances in which people go to the criminal court. It is an imperfect remedy because there is no injunction. We go when our own name is used; we go in cases which are calculated counterfeiting. Sombody would say "Glaxo Laboratories" with regard to Glucose-D which is something which is sold in a packet. He will not say something else, he will say "Glaxo Laboratories, Glucose-D". It is a straightforward counterfeit. But what is to be done? We do not know who does it. How can we find out? We must at some point get the assistance of somebody who has the power to investigate.

Shri Akhtar Hussain: Why can't the party concerned have a private investigating agency to be able to ascertain who is manufacturing and selling them?

Shri Prasad Rao: He cannot afford, that is the point.

Shri Akhtar Hussain: There was a reported case of a soap manufacturer who had his own men for investigation.

Shri Kanungo: I think Mr. Chandy has made the point sufficiently clear. It is for the Committee to consider

Shri Khobaragade: If you want to make the offence cognizable, would you prefer enhancing the term of imprisonment to three years?

Shri Chandy: You can do it either way. You can make it cognizable notwithstanding the fact that the punishment is low, or enhance the punishment and automatically make it cognizable. That depends on the gravity of the situation.

In connection with this, there is another provision which Mr. Justice Rajagopala Ayyangar accepted at my request, and that provision you will find in clause 118. It is not as if there are not some safeguards, but in our view the safeguards are not adequate.

Hitherto, under the existing Merchandise Marks Act, the Central

Government have been having the power to compel people to indicate the place of origin of goods. Now they have also added the provision that Government will be able to compel people in fit cases not only to indicate the place of origin but also to give the name and address of the manufacturer. If that provision is applied to a variety of articles in regard to which Government are satisfied that there are infringements, half of our problem would be solved, because then Government are casting on manufacturers of certain types of articles the obligation to disclose tneir name and address.

The next question is: suppose that obligation is not adhered to, will Government make that offence cognizable? If they do that, half of our problem is solved. We only want to know who does it. Once we know that, we will go to the civil court. There is no point in going to the criminal court where you have to establish link by link the whole animus. It is a most difficult operation. Whereas in a civil court, I produce my title by virtue of registration. I produce the offending articles and say that he is responsible for selling it, or for printing it, whatever it is, and I get an interim injunction by the similarity. I have no such remedy in a criminal prosecution. It might go on from time to time. At some stage, the man says that he wants a transfer of the case. Then he will go in appeal. It will be most difficult. We do not want to go to the criminal court unless we are driven to it.

Chairman: So, you want the help of the police to unearth the criminal, not to inflict any extra punishment on him?

Shri Chandy: Yes, What is the punishment for violating clause 118?

Chairman: There is no penal provision for locally manufactured goods.

Shri Chandy: Locally manufactured or imported.

Dr. Venkateswaran: Please see clause 79 which contains penalty for offences under clause 118.

Shri Chandy: I am sorry. There is, reference to an indication of the country or place. May I then suggest that this be made three years? That will solve our problem.

Shri Kanungo: I think the witness has made his point sufficiently.

Shri Chandy: We only want to find out who the man is. We will try our rights.

Shri Khobaragade: You are not interested in punishing the culprit, but in finding out the origin of the spurious goods.

Shri Sonavane: I think Mr. Chandy has more interest for the proprietor and the manufacturer, not for the public who suffer by the infringement.

Shri Kanungo: Both the points are covered.

Shri Chandy: On clause 87, I have a small observation to make. Where in a criminal action the complainant bases his title on his registration, surely it should be open to the defedant to say that the title is not valid. However, the problem in criminal law is not so simple as in civil law because criminal action is a result of a title under common law or of a title under statutory law. There is no separate criminal action if your right is derived from common law, that is actual use. You take action, the other man says you have no title. But if you rely for your title on registration and registration alone, then I can understand. The moment he says your title is not valid because you rely exclusively on registration, the defence must lie. But, suppose his action is based not only on his statutory title but also on

his common law title and he decides to discard his plea that his title is based on registration. Then, what is the procedure to be followed? My submission is that after the words 'the registration of the trade mark is invalid', the words 'unless the complainant is prepared to rely on the actual use to prove his title' may be inserted. If he says, 'I do not bother; let us not waste time; I shall not take up the plea that my mark is entitled to be protected because it is registered; I shall go through the whole burden of proof of actual use', he should be allowed to proceed in that manner.

Shri Kanungo: It is an accepted principle in criminal law that where civil titles are in dispute, the criminal proceedings are stayed till the civil rights are decided.

Shri C. R. Pattabhi Raman: You want some proviso to be added to that?

Shri Chandy: This Bill enables the proprietor of an unregistered trade mark also to take action. How does he go about it? He goes about it by proving that he is the common law owner of the unregistered trade mark: And how does he prove it? He will have to produce evidence of actual use and so on. All that I am saying is that the mere fact that should not mean that he loses his somebody happens to be registered right, that is, the common law right of an unregistered trade mark.

Shri C. R. Pattabhi Raman: You want to add at the end 'in so far as the complainant relies on the registration of his mark'?

Shri Chandy: The question of the validity or the invalidity of the registration will no longer come in, because the man says that he discards the plea that it is his title.

Shri C. R. Pattabhi Raman: In other words, you want that this should apply only in so far as he relies on the registered mark.

Shri Chandy: The mere fact that I am registered should not mean that that everything would be held up.

Shri C. R. Pattabhi Raman: After the word 'rectification', you want the words 'in so far as the complainant relies on the registration of his mark'.

Shri Chandy: For this title.

Shri C. R. Pattabhi Raman: That is not necessary. The word 'mark' is sufficient.

Shri P. T. Leuva: In that case, a separate clause would be necessary. It cannot be added to this.

Shri Chandy: What is really intended is this. If a man relies exclusively on his registration for proving his title, then naturally he must stand or fall by that. But if he says that his title is protected both under common law and under statutory law, and if there is a challenge to the statutory right time would be taken to challenge it in the proper way because of the proper tribunal and all that, then it should be open to the complainant to say that either he sticks to his plea or he discards the plea. If he discards the plea, then let him fall back on his common law right for what it is worth and go ahead with it. If he succeeds, he succeeds, and if he does not succeed, he does not.

Shri P. T. Leuva: If we say 'registered trade mark only', then the other right will be protected.

Shri Chandy: A registered trade mark must certainly be a common law trade mark.

Shri P. T. Leuva: We can say that if he relies upon that only, then this procedure will be followed.

Shri Chandy: I do not think that the word 'only' would be sufficient.

Shri P. T. Leuva: Otherwise, a separate clause would be needed.

Shri Chandy: It is better to have a separate clause and make the thing clear rather than leave it to argument.

In regard to clause 77, I would like to have clarification on one small drafting point. I am not quite clear as to what exactly you have in mind.

In sub-clauses 1 and 2, you say:

'A person shall be deemed to falsify a trade mark....

A person shall be deemed to falsely apply to goods a trade mark.....".

But, when you come to sub-clause 3 you say:

"Any trade mark or mark falsified....'.

How has the word 'mark' suddenly appeared here?

Shri C. R. Pattabhi Raman: I think it follows the word 'mark' appearing in 'uses any package bearing a mark'.

Draftsman: In clause 77 (1) (a), we have:

"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....".

Now, forget the first portion. We now have:

"or a deceptively similar mark."

With reference to that, the use of the word 'mark' in sub-clause 3 would be appropriate.

Shri Chandy: Is that intended as some other category of mark?

Shri C. R. Pattabhi Rman: No, it is only by way of abundant caution.

There may not be any other category.

Shri Kanungo: It only ties up the first part with the later part.

Shri Chandy: If I understand correctly, the scheme of the Bill is that violation of property marks would still be actionable under the IPC.

Shri C. R. Pattabhi Raman: There is no deletion of that.

Shri Chandy: We are here concerned with trade marks and trade descriptions. However, I just wanted to have the clarification, because on first reading, it was not quite clear to us what exactly is intended.

Shri Prasad Rao: In regard to clause 85 (1) dealing with forfeiture of goods, you wanted to seek some clarification in regard to the words 'and things by means of'. You want to include machinery?

Shri Chandy: We were thinking of cases that we came to know from the Drugs Controller in Bombay. A man sets up a small tableting machine in his backyard, and he gets hold of some calcium gluconate, and he tablets it and sells it as Aureomycin or some such thing. There have been cases like that. It is no use taking away only what he produces. Why not deprive him of that little gadget?

Shri Prasad Rao: You mean machinery including the printing machinery?

Shri Chandy: I do not say that the whole plant and machinery should be removed.

Shri Kanungo: He means the tools for committing the offence.

Shri Chandy: Those which are immediately and proximately connected.

Shri P. T. Leuva: Then, those tools will be covered by this.

Shri Akhtar Hussain: Is it the view of the trade that exaggerations should be made penal and liable for punishment by a criminal court? That is to say, if a description of some article is given, and its virtues are magnified so much that they are not true to the reality of the quality of the goods, then, should such exaggeration or unduly high praise be made penal?

Shri Kanungo: How does exaggeration come in?

Shri Akhtar Hussain: There is a reference to it in the report of Justice Rajagopala Ayyangar. At page 112 of his report, he says:

> "I am not in favour of branding such venal exaggerations as criminal and sentence such traders to terms of imprisonment for being guilty of applying a 'false description' in marketing their goods.".

Shri Chandy: I do not think our draft is at all seeking to do that kind of thing. If somebody says that the product is vinegar, which is really a fermented thing, but produces something which is sour but not vinegar, that would be a false description. Although it serves the same purpose, that would be a false description.

Similarly, you know that famous case which is going on in America, where Mr. Sherman Adams is being accused of helping Mr. Goldfine. Mr. Goldfine produced a certain fabric which was supposed to consist of so much of this kind of wool and so much of that kind of wool; but really it was not so much of this kind of wool or that kind of wool. That would be a false description. If somebody says that his is the best cap in the world, well, that suits his vanity.

Shri Akhtar Hussain: I take it that your view is that it should not be made penal.

Shri Chandy: People are in the habit of puffing, and I do not think we should look upon puffing as an offence.

Now, I come to clause 97 in chapter XI. With due respect to the retired registrar, may I now come to a rather difficult problem, the problem of the powers of the registrar? Clause 97 is concerned with that. We have had occasion to refer earlier to the power of the registrar to rectify, which he must have; the power of the registrar to correct clerical errors, which he must have, but our submission in regard to this was that at that time he chooses to impose conditions, which is somewhat odd; and we sugested that he must proceed under the rectification clause.

Now, we come to clause 97 (c) where we talk about his review powers.

Our submission here is two-fold. First of all, under the Civil Procedure Code, review powers are subject to very strict limitations, and we feel that those limitations must be made in terms applicable to the exercise of review powers by anybody exercising any kind of judicial authority. The next point we want to make is in regard to a corresponding procedure with the section of the Civil Procedure Code—114 read with Order 42 of the Code.

The other point is about the Registrar clause 2(2)(d). Look at the definition of the term. The Registrar means the Registrar. It does not mean Deputy Registrar.

The Registrar here should be understood to mean the particular officer who gave the original decision, or is it to be understood that if the decision was given by the Deputy Registrar, it is not he who is reviewing the decision? Normally, we understood review is made by the man himself. Let it be quite clear. It is not the Registrar but the person exercising the powers of the Registrar for the time being.

Shri P. T. Leuva: The words used are 'his own decision'.

Shri C. R. Pattabhi Raman: For example, under the guise of reviewing, he cannot upset the decision already made, making it incongruous and unconnected with the original order.

Shri Chandy: The review should be subject to limitations.

Shri C. R. Pattabhi Raman: For example, if there is a patent error.

Shri Chandy: Those are well-understood limitations.

Shri C. R. Pattabhi Raman: What about 101? What about 'doing any act'?

Shri Chandy: This is the point I raised yesterday. 101 gives discretionary power to the Registrar to extend the time except where there is a specific provision, and where there is a specific provision namely, earlier so far as three months and two months were concerned, we said that some discretionary power should be vested in the Registrar. Perhaps the Committee would be pleased to consider that favourably.

Shri Panigrahi: Referring to clause 97, may I draw your attention to clause 115?

Shri Chandy: I was going to request the Chairman to let me come straight to 115 as it is a related clause. If you look at the end of it, in our view, the marginal definition is not quite correct. It is much more than revisional. It is in fact appellate.

> "The Registrar may, in any case where no appeal has been preferred under section 109, either on his own motion or on application made in.....for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity...."

I do not know what else is left.

Shri P. T. Leuva: When the powers are delegated to the subordinate officer, these powers are reserved always in the superior officer. Take the case of Evacuee Property Administration. There also the Custodian General has the power of review.

Shri Chandy: But there is a difference. Here the Deputy Registrar or Assistant Registrar gets his powers by delegation and exercises those powers according to what Dr. Venkateswaran told us yesterday, uncontrolled by the Registrar, although, in our view, that is not strictly so, because it is open to the Registrar to do so. A particular Registrar may not do it. But the Registrar exercises superintendence and control. How he is to exercise superintendence is not for us to decide. It is up to him to decide. But anyway once a decision has been given by an officer acting under powers delegated to him, the scheme of the Bill is that an appeal will lie to the competent High Court. Where is the need for a parallel provision for the Registrar himself to have an appellate function?

Shri C. R. Pattabhi Raman: You will find in all the old charters of the High Courts and also under the Constitution that the Chief Justice has got the general power of superintendence over the Judges in the court. That does not mean that he can call for the records of a judgment and upset it. Therefore, I am saying that this only gives him an overall revisional power.

Shri Chandy: Surely not, if I understand it correctly.

Chairman: He may 'call for and examine the record of any proceeding under this Act in which an order has been passed by any Deputy Registrar or Assistant Registrar or other officer for the purpose of.....and may pass such order in relation thereto as he thinks fit'. He may reverse the order or cancel it.

Shri C. R. Pattabhi Raman: I do not think the position taken up by Dr. Venkateswaran yesterday is

impaired by this. Actually, they are trying to co-ordinate. There are four or five zones. He can always call one man and say 'This is the line we are adopting in the other zones'. He can co-ordinate. There will be a sort of common law with regard to this revisional power of the Registrar here referred to where no appeal has been preferred. Therefore, why do you need revisional powers of the High Court?

Shri Chandy: First of all, let us see the limitations of the revisional powers—clause 115. What do they refer to? The High Court may call for the records of a case dealt with by a subordinate court. First of all, are we clear in our minds that the Deputy Registrar is a subordinate court of the Registrar?

Shri C. R. Pattabhi Raman: It cannot be on all fours with 115.

Shri Chandy: Therefore, the matter must go to the High Court. If neither party is dissatisfied with the decision of the Deputy Registrar, but the Registrar is dissatisfied or a succeeding Registrar is dissatisfied, as we find happening, are we going to have the whole matter reopened? We would say, 'no'.

Shri C. R. Pattabhi Raman: Are you fighting with the words 'On his own motion'?

Shri Chandy: Let the Registrar be a superior court. We have no objection.

Shri C. R. Pattabhi Raman: Would you like a time-limit to be fixed there?

Shri Chandy: No. I do not want to have any revisional powers. Alternatively, my submission is—in fact we raised this earlier, but we were brushed aside—we are against unnecessary litigation. We would be very happy if a person who is eligible to be appointed as a Judge of a High Court (or a couple of them) is appointed Registrar, and such a person is clearly and unambiguously declared as the appellate authority.

Shri Khobaragade: With concurrent jurisdiction with the High Court?

Shri Chandy: No. In other words, let the Deputy Registrars exercise their function independently of the Registrar as proper judicial authorities.

Shri Kanungo: So you object to any revisional powers being vested in the Registrar.

Shri Chandy: Let there be no parallel provision of appeal and revision, because if the Registrar exercises the power under 115, that decision itself is appealable. It only means that after the time has expired,—somebody refuses to take any action—he gets a fresh lease of life if the Registrar *suo motu* takes it up. Where is the need for all this. Give directions to the Deputy Registrars before. But do not interfere with their decisions afterwards, if you dislike it.

Another point we want to make is this. A mark is applied for. That mark is processed, as far as we know, at the central office where all marks are indexed. It is there and not in the branch office that whether or not there is a pending mark in conflict with this mark is considered, whether or not this mark is inherently adapted to distinguish is considered, whether or not evidence for distinctiveness should be called for—all these are determined in the main office under the direct control and supervision of the Registrar as he is located there. It is only then that the matter goes out to the Deputy Registrar to hear parties and if the Deputy Registrar comes to a decision with which the Registrar does not agree, let him not interfere after that. Let it be fought out by the parties who are aggrieved by that, if they are aggrieved. I do not think it is right for the Registrar to interfere there. This would put difficulties in the way of the proper functioning of the Deputy Registrars.

Shri Kanungo: Your point is that under the guise of revision powers of appeal should not be used.

Shri Chandy: That is one.

Shri Akhtar Hussain: How is the Registrar to exercise his powers of supervision and control unless he has conferred on him some authority to set right or rectify errors inadvertently made by those whom he has delegated authority!

Shri Chandy: He can direct his Deputy to review his own decision, if he wants to. After all, the review powers are given. He is simultaneously an administrative and judicial officer. That is the unfortunate position. Say that he is exclusively judicial or largely judicial. Why have a parallel provision? On the one hand, you go to the High Court. Suddenly, the Registrar decides to intervene, say, after three months, because he is dissatisfied with a particular Deputy Registrar. Therefore, a fresh lease of life is given to that litigation. Where is the need for it?

Shri P. T. Leuva: Please refer to section 27 of the Administration of Evacuee Property Act:

> "The Custodian General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any district judge or Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit."

Similar powers have been given to the Custodian General.

Shri Chandy: The Custodian General is the final appellate authority. There is no appeal to the High Court from his decision.

Shri Leuva: There is also an appeal to the High Court.

Shri Chandy: As far as we know, there is no parallel provision in the other case. Any way, we do not see the need for parallel powers here.

Shri Leuva: Sometimes, the time for an appeal may have expired. There may be cases of gross injustice. In that event, the Registrar may call for records. In many cases without any appeal or revision being filed, High Courts merely on reading newspaper reports call for records of subordinate courts.

Shri Kanungo: He disputes your contention. That is all.

Shri Khobaragade: There is also this difference. An appeal has to be filed immediately before the Custodian General against any order or judgment of the Assistant Custodian. In this case, there is provision for an appeal against the order of the Deputy Registrar to the High Court.

Shri C. R. Pattabhi Raman: I do not think that Act is similar to the Trade Marks Act.

Shri Leuva: The officers under the Trade Marks Act and the officers under the Evacuee Property Act are exercising quasi judicial powers—executive as well as judicial powers. That is why this provision has been kept there.

Chairman: We will take Shri Chandy's views into consideration. He has made his position clear.

Shri Panigrahi: What about the Registrar paying costs?

Shri Chandy: I think public authorities should not be called upon to pay costs. Otherwise, they will be reluctant to appear. We rely upon the Registrar in fit and proper cases to place facts, and I would not say, the law. The other thing should also be there. They should not demand costs. Let them appear in the public interest. We do not want to recover costs from the Registrar; we do not want him to recover costs from us.

Shri C. R. Pattabhi Raman: The Law Commission is recommending a procedural system of various heads of departments being sued and suing in

their names as in England. That change is coming—not complete change; similar to suing the President of the Board of Trade.

Shri Chandy: That is an actionable claim. The Registrar has no actionable claim. He is only a deciding authority.

Shri Khobaragade: What about clause 97 regarding affidavits? What is the difficulty?

Shri Chandy: I have had occasion to make representations to the Government on this question. Perhaps, we might discuss that briefly here. The problem is this. The Evidence Act does not apply to affidavits. So it is stated in the Act. The evidence before the Registrar has to be, in the first instance, by affidavits. It is only thereafter that if the Registrar considers it necessary, he calls for oral evidence. The principal evidence is in the form of affidavits.

Shri Khobaragade: Not necessarily, I think. Oral evidence can be led.

Shri Chandy: Later on. Our problem is this; how to get affidavits admitted. If they are sworn before the authorities recognised for that purpose under the Civil Procedure Code in India, there is no difficulty. Obviously, the Registrar immediately admits those affidavits. The problem arises only with regard to affidavits sworn abroad. Incidentally, the problem would also arise with regard to affidavits sworn in this country in relation to marks to be registered abroad. That is a question of reciprocity. Hitherto, they were sworn to before judicial authorities in foreign places or before Consular officials or before Notaries Public, and they were admitted as a matter of practice by the Registrar. I would not go into the legality or otherwise of that practice. That was the practice. In our own Notaries Act, it has been provided that no Notary will be recognised here unless he is practising here or Government notify reciprocity. No such notification, as far as we know has been issued. So, a Notary practising in the U.K. or France is no longer competent under the Indian Notaries Act to act as a Notary. That is one difficulty. The other difficulty is that our Consular Officials, if they are to be approached, they are not to be found all over. Naturally, we have to look to our own purse and requirements. We do not have Consular Officials merely to please other people. Other people have to go great distances to get hold of Consular Officials. With due respect to our officials, some of them do not know that they have power to administer oaths. They say, we refuse to do so.

The result is, affidavits come, affidavits are rejected, affidavits come back again, they are again and again rejected and time is wasted. We made a representation to the Registrar which we have made to the Government also that (a) steps should be taken by the Government as quickly as possible to come to reciprocity arrangements with all leading countries with regard to the Notary problem and (b) instructions may be issued to the Consular and Diplomatic corps that they have power to administer oaths and they may be given such directions that they do it properly. I am afraid, I do not know, in one case, the Registrar rejected an endorsement of an Embassy.

Shri C. R. Pattabhi Raman: Here again, I take it you are referring to foreign countries.

Shri Chandy: Affidavits to be made use of in this country. There is also the problem of reciprocity. Our own people are seeking registration of their trade marks in other countries in their export markets.

Shri Kanungo: As far as the Act is concerned, the difficulty is that there is no adequate provision for swearing of affidavits. That is a procedural matter.

Shri Prasad Rao: It should be taken at a Government to Government level on a reciprocal basis.

Shri C. R. Pattabhi Raman: Just as we have other conventions, similar reciprocal arrangements should be extended to the Trade Marks Act also.

Shri Chandy: I do not want to go into this question. We have had difference with the Registry Officials with regard to the meaning of section 82 of the Evidence Act. I do not want to go into the question of law. The point is this. Let us not put hindrances in the way of admission of affidavits merely on the ground that the manner of authentication does not immediately suit us. If it does not suit, let us come to reciprocal arrangements.

Shri C. R. Pattabhi Raman: The Registrar can always admit a document subject to proof. He can say, I will accept, give me better proof.

Shri Chandy: I do not want to go into it; it is embarrassing to me.

Shri Kanungo: His case is, adequate facilities should be available for getting proper affidavits acceptable to the Registrar. It is an administrative matter.

Shri Chandy: We have some comment on clause 105. It is said:

"No suit—

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered;

shall be instituted....."

We are in favour of the principle of the district court. We are for paras (a) and (c). But, in relation to (b), it should be "relating to any right in a trade mark." Why registered or unregistered? Let it be in both the cases. If it is a declaratory suit, it may be in an unregistered trade mark. Our submission is very simple. In part (b), merely say, "relating to any right in a trade mark".

Shri Leuva: What is the right in an unregistered trade mark?

Shri Chandy: Somebody wants to contest; a declaration.

Shri Leuva: There cannot be a declaratory suit for establishing a right in an unregistered trade mark. There can be only a passing off action.

Shri Chandy: Look at groundless threats of legal proceedings under clause 121. That is in relation to registered trade marks. Suppose I am the owner of an unregistered trade mark and I challenge. You feel aggrieved. What is your right? You certainly have, I believe, a right even today for a declaratory suit that my challenge is uncalled for. If trade marks are questioned, it can best be dealt with by the district court. Let it be done by the district court: whether registered or unregistered; declaratory suit or any other kind of suit. That is our submission.

Chairman: Going back to clause 97, you expressed difficulties regarding affidavits. There is a provision that diplomatic and consular officers can administer oaths or take affidavits.

Shri Kanungo: His point is that those powers are not used properly.

Shri Gursahani: On clause 106, we have two or three points. The first one relates to sub-clause (1) which empowers the court to order the destruction of trade marks which are similar to the trade marks of somebody else, and have them delivered up for that purpose. There may be cases where it would not be possible to destroy the trade mark because it is so impregnated into the article itself, and unless you order the destruction of the article itself you cannot destroy the trade

mark. Such a power has not been given. For instance, it might be a tablet bearing a certain name.

Sub-clause (2) lays down certain cases where the Judge will only grant nominal damages. The position is that if your right to property is infiringed, you are always entitled to nominal damages, but you are also entitled to substantial damages if you can prove that as a result of the wrongful action of the defendant you have suffered damages. In any case, the Judge can give only such damage as has been proved by the plaintiff, not whatever he asks. If that is so, why place any fetters on the discretion of the Judge that in certain cases he can give only nominal damages. Suppose a man is able to prove that he has suffered actual damage, should not the Judge have the power to grant those damages to him?

Shri C. R. Pattabhi Raman: If it is an innocent infringement, not malicious or designed, the case law is clear that you are given only nominal damages.

Shri Gursahani: Sub-clause (2) (b) (i) says that the Judge will grant nominal damages if the defendant is able to prove that he was not aware of the registration of the plaintiff's mark or of its use. I trust that the word "or" there is not disjunctive. In other words, he should prove both. If it is used as a disjunctive, we should suggest that the burden should be on the defendant to prove both. In many cases the defendant may be able to prove that he was not aware that a certain person's mark was actually registered, yet he may be aware of its use. If he is aware, such an infringement is not innocent.

Shri Chandy: I think it is used in the disjunctive here.

Shri Gursahani: Sub-clause (2) (b) (ii) refers to the use by the plaintiff. There may be cases where the use may be by the registered user, and the suit may be by the proprietor, in which case I know you will say that according to clause 46(2) use by the registered user is use by the proprietor, but I thought perhaps in this particular clause itself we could clarify it by saying "use by the plaintiff or by a registered user using by way of permitted use".

Shri Chandy: I have a small point on clause 114. This clause should be read along with clause 51 which says that where there is a permitted user arrangement, the principal owner shall necessarily be a party and it shall be open to the permitted user to call upon the principal owner to join a suit Then it goes on to say:

> "Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings."

It is a perfectly valid principle, but in clause 114 it is the other way:

> "In every proceeding under Chapter VII or under section 109, every registered user of a trade mark using by way of permitted use, who is not himself an applicant in respect of any proceedig under that Chapter or section, shall be made a party to the proceeding."

Shri C. R. Pattabhi Raman: Otherwise, supposing in the action the fundamentals are questioned.

Shri Chandy: I am not saying he should not be made a party. At any rate, he should be made a party only in form to complete the thing, but let him not be mulcted with costs if he does not choose to appear. In other words, something similar to clause 51(2) may be added here, *i.e.*, he may not be subjected to cost if he does not choose to appear.

Shri Akhtar Husain: Would you recommend the appointment of an

appellate tribunal for deciding questions of fact in an appeal against the Registrar's decision refusing to make a registration or making a wrong registration?

Shri Chandy: I thought we had skipped that point. I did not want to bring it up.

Chairman: That has been decided. They are for the tribunal.

Shri Chandy: We say let it be the one or the other. If you want to have within the Act an appellate body, let the Register be clearly and unambiguously designated as the appellate body and then let us see whether there is a case for appeals from his decisions being taken straight to the Supreme Court, because we do not want unnecessary litigation.

Shri Akhtar Husain: Is it recommended by you, or do you consider it expedient that a tribunal on the lines of the tribunal established under the Income-tax Act should be established for the purpose of deciding these suits?

Shri Kanungo: That was the view which was given by another association.

Shri Chandy: My association has always felt that a certain amount of specialisation in the judiciary is desirable for all of us. Therefore, we had submitted in our memorandum earlier, and again we have submitted here, that it is desirable if the Government would agree that it is in accordance with their new pattern of thinking, not otherwise, that the Registrar, a person who is competent to be appointed a High Court Judge, be given clearly and unambiguously appellate powers. The next question is whether appeals should lie from his decision to the specified High Courts or to the Supreme Court. That is a matter of very great importance, and if the court hearing the appeal is a Bench, it is better for us. Our submission is it would be desirable to have an appeal straight to the Supreme Court, but whether the Government would agree to load the Supreme Court with all that work is more than I know, but I do know that the Government is quite prepared to take all appeals from any labour tribunal by special leave to the Supreme Court, when a man is reinstated or not reinstated.

Shri C. R. Pattabhi Raman: In labour, it is wholly different. Industrial peace is the main thing. In income-tax you do not have direct appeal. You can go to the usual High Court.

Shri Chandy: We would not support an appellate tribunal within the Act if it means only lengthening the number of stages through which we have to go.

I would like to make a general submission. All legislations, however carefully drafted, however well-intentioned, succeed or fail by the quality of the men who are called upon to administer them, and I think in this case perhaps I should make a submission on behalf of the gentlemen working in the Trade Marks Registry. Examiners and so on, I think, should be given due status. This is an administrative or organisational problem. All I am saying is that in order to get this complicated legislation administered properly it is necessary to see that a proper status is assured to the people who are called upon to administer this Act.

Shri Chandy: May I seek a clarification from the Draftsman in regard to clause 121? The clause reads:

> "Where a person, by means of circulars, advertisements or otherwise....."

What is meant by 'otherwise'? Suppose a man sends a notice, and he proceeds to file an action, and before he files an action, the other man asks for a declaratory suit. Is that what is meant?

Chairman: It amounts to threatening.

Draftsman: This is not exhaustive. To cover other cases, this word has been inserted.

Shri Chandy: It would only mean two actions. One man will attempt and first have a declaratory suit; and the other man will follow and have an action for infringement.

Chairman: It means intimidating action. A mere notice cannot be construed as a threat.

Shri Chandy: Let that be made clear. That is all my point.

Shri Khobaragade: I want a clarification in regard to clause 111. I have not been able to understand the implications of the clear defence which an accused or defendant is allowed to raise, namely that the registration of the plaintiff's or complainant's trade is invalid. The plaintiff's or the complainant's case is that all the while his trade mark has been on the register, because if the trade mark is declared to be invalid in the particular proceedings, all his rights are gone. If the defendant wanted to have his trade mark declared as invalid, then he should have filed rectification action immediately. But he waits till the time that the plaintiff or the complainant files an action, a civil suit or a criminal suit for infringement, and then raises the contention that the trade mark was invalid. By that way, he is rather troubling the complainant.

Shri C. R. Pattabhi Raman: The rights of the user are saved.

Shri Chandy: Your contention is that there must be a finality to registration at some point.

Shri Khobaragade: A registered trade mark owner has his trade mark registered, and is using it. At the eleventh hour, the defendant or the accused raises the contention that that trade mark was invalid. Is that not going too much?

Shri Chandy: I would leave it to the hon. Member to convince his colleagues about it. We shall be very happy if he could do that.

Shri Prasad Rao: In your note to Justice Rajagopala Ayyangar, you have stated:

> "Large corporations with substantial financial resources can command the services of the best lawyers and can afford to agitate their cases from stage to stage to the highest tribunal in the country. This is not open to the large number of owners of industrial property who are either small or medium-sized business enterprises."

Do you suggest any statutory safeguards for these small and medium sized owners? Should there be any distinction between these two classes of people?

Shri Chandy: The question really at issue is not to give different rights but the question is whether in regard to certain expenses which have to be incurred in protecting a man's right some concessions may be shown by Government to the medium-sized man. If the proposition is that there should be classes of rights, I am against that. But if the proposition is that the small and medium-sized men should be allowed to obtain registration by paying a smaller fee on recommendation, shall we say, from the Handloom Board or from some other recognised body, that is a matter of administrative policy of Government. If they want to do so let them do so. But let them not, as a result of that, put the cost on the rest of us, because, after all, there must be some equity in these things.

Shri Prasad Rao: Do you think that co-operative producers should have any preference over the bigger producers in regard to payment of registration fees and other things?

Shri Kanungo: He has aswered that, nd he has said that he would not nd any preference in the fees.

Shri Chandy: But not otherwise.

Shri Kanungo: The rights should e the same, and the whole structure of the Act is the same.

Chairman: Let me thank you on behalf of the Committee for the valuable help you have given us. In fact, you have really educated us. All your suggestions will be taken due note of, and we shall do what we think best.

Shri Chandy: We are greatly obliged to you and to the Minister. Thank you.

Shri Akhtar Hussain: Before we disperse, may I know whether you an point out any instances where deceptively similar marks have been used or articles have been produced which are very similar to the articles of well-known manufacturers?

(At this stage, Shri Medhora showed some samples to the Chairman)

Shri Medhora: The bottles in regard to Tomco hair oil have been registered by us, and they are bottles belonging to us. But the infringing party has purchased second-hand bottles, and is making use of these bottles for packing his products so as to pass off his products as ours. In this particular case, they have also used our name, namely Tatas, which is a registered name. Actually, the bottles are our design, and therefore, no other party is supposed to use it. So long as our registration continues, no other party has any right to use it.

Shri Kanungo: When was the design of the bottles registered?

Shri Medhora: It was registered about six or seven years back. I cannot tell you offhand. But I can assure you that the registration still continues.

Chairman: That means that nobody can use bottles similar to this.

Shri Medhora: Actually, at the bottom of the bottles, the number of our registration is imprinted.

Dr. Sushila Nayar: Have you taken any action for infringement?

Shri Medhora: Action is being taken.

Chairman: Have you got any deceptive trade mark, so far as drugs are concerned?

Shri Medhora: I may also point out that this is not the only instance of infringement. Similar infringement takes place in regard to soaps. You can find a good number of soaps in the market which bear our name and all that, but which are outright counterfeits. These are the counterfeits which have given us great trouble.

Chairman: Thank you once again.

(The witnesses then withdrew)

The Committee then adjourned.