[Mr. Speaker]

supplementary. Then we will be opening the vista very wide. Has it anything to do with this question?

**Sardar Majithia:** No, Sir, not in this correction. But if you want me to—

**Mr. Speaker:** No, I do not want. If relevant questions are asked, hon. Ministers sometimes keep quiet, but if out-of-the-way questions are asked, they are anxious to answer.

**Shri Tangamani** (Madurai): That is an important question.

**Mr. Speaker:** That is another matter.

**Shri Tangamani:** I wanted to submit that a number of people, who formed part of the expedition team, have died.

**Mr. Speaker:** The hon Member knows only too well how questions can be asked and answered.

**श्री भक्त दर्शन** : श्रीमन्, अभी आपने कहा कि सदस्य लोग पूरा अध्ययन नहीं करते। मैं निवेदन करना चाहता हूं कि यह मूल प्रश्न मेरा ही था और मैं इस सम्बन्ध में दिलचस्पी लेता रहा हूं, इसी लिये पूछना चाहता हूं . .

**Mr. Speaker:** I am aware that this is an important matter. The hon. Member knows the procedure only too well. He puts a number of questions and supplementaries. If he had only put a question, I would have considered what steps ought to be taken. Of course, it is a very valuable life that was lost. He has suffered from pneumonia. Why should he tag it on with this correction? Now, assuming that no correction was made by the hon. Minister, would he have been satisfied with the original reply that was given? When the hon. Minister makes a correction, that opportunity should not be taken to raise a discussion.

**श्री भक्त दर्शन** : असल में स्थिति यह है कि जिस समय पहले जवाब दिया गया था उस समय उनका देहान्त नहीं हुआ था। उसके बाद देहान्त हुआ। इस लिये मैं जानना चाहता हूं

**अध्यक्ष महोदय** : देहान्त होने के बारे में हम क्या करें ?

## TRADE AND MERCHANDISE MARKS BILL—*contd.*

**Mr. Speaker:** The House will now resume further discussion on the motion for reference of the Trade and Merchandise Marks Bill, 1958 to a Joint Committee. Out of 3 hours allotted to this motion, 41 minutes have already been availed of and 2 hours and 19 minutes now remain.

Shri Narayanankutty Menon may continue his speech.

**Shri Narayanankutty Menon** (Mukandapuram): Mr. Speaker, the other day I was submitting that a large number of documents and a large volume of reports are available for the Select Committee to decide about the various provisions of this very important law and whatever submissions I make at present are only tentative in character so that the hon. Members of the Select Committee have got the opportunity to consider those suggestions when they are reporting on this particular Bill.

These suggestions were necessitated because before the drafting of the Bill was undertaken, the whole Bill and the principle behind it underwent a series of discussions at the hands of the original Committee which was appointed, which gave a majority report as also a minority report. The Government considered the whole report by appointing an officer, and certain recommendations were made by that officer and later on the whole matter was referred to another Judge of the Madras High Court, who, in all particular details, agreed with the minority report, and now the Bill has been drafted on the basis

of the recommendations of that Judge of the High Court. Therefore, when provisions of this Bill are discussed in the Select Committee, it is probable that both viewpoints, especially the viewpoint contained in the majority report of the Select Committee, will come for consideration of the hon. Members, and therefore it will be only proper that our own general opinion regarding the majority report and also the minority report are expressed for the benefit of the members of the Select Committee.

In the beginning I wish to submit certain principles involved in the law of trade marks, because it is quite likely that a confusion will arise between the principles and lay of trade marks, the law of patent and also the law of copyright. The law of patents was evolved in its fundamentals on the onrush of the Industrial Revolution, long after the law of patents was formulated and far long after even the law of copyright was formulated. The principle behind the law of patents acknowledges a creative mind, so that the individual, who is responsible for the use and working of his intelligence, could claim the product of his intellectual working to be his own property. The law of patents also in a way acknowledges the working of individual or collective intelligence and, therefore, the product of that collective intelligence is recognized as as his own property, as far as the society is concerned. But, in contra-distinction to the principles underlying the laws of copyright and patents, the law of trade marks began to grow in a different way. And we will find that very little intelligence, very little human endeavour is involved, so far as the law of trade mark is concerned, before a person in the society comes forward and says and property as his own.

Therefore, when the Select Committee considers the very conception of trade marks, it should take extreme care to see that only in very essential cases in which the public good and also *bona fide* business competition demands that the rights of trade marks should be conferred upon an individual. Therefore, I appeal to the members of the Select Committee to have utmost restraint in defining and extending the rights of trade marks under this particular Act so that no individual by means of his own imagination could annex public right of commerce and also trade to his own benefit and claim later that, almost for time immemorial, as his own private property.

When enacting this Bill certain suggestions were put before the Committee and those who were interested in the law of trade marks and the Trade Mark Asociations have submitted a series of memoranda, pleading for enlarging the scope of this Act. But when a trade mark is given in the name of a particular individual, he is given the absolute right to trade, as far as a small section of the trading community is concerned. Therefore, committed as we are to a particular pattern of society, when we define the scope as far as conferring by Parliament of a particular non-existent right to the individual is concerned, the paramount consideration should be, not the absolute nature of the right that is conferred upon that individual who owns the property created by this law, but the paramount consideration in defining the trade marks should be the public good and also honest trade in this country. Therefore, I repeat that extreme care should be taken in order not to view the right of trade mark as a sanctimonious public right which has been unknown to primitive jurisprudence and also to mediaeval jurisprudence, a right which has been evolved by the transactions in the modern society in the wake of the Industrial Revolution, a right which is not the result of honest labour but a right which is going to be conferred simply for the purpose of business competition. Therefore, extreme care should be taken only in

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acknowledging very limited right, as far as trade mark is concerned, and I hope when the Select Committee goes into the principle of the recommendations of Justice Rajagopala Iyengar, who agreed with the minority report, which rejected the far more wider demand for protective registration, I hope the Select Committee will certainly agree with me in this respect that the law and the right conferred upon the trade marks will be only very limited, and in certain cases symbolic, restricted only for the protection of that right to a very limited extent.

Another provision which the Select Committee should certainly consider is an extension of what I have submitted now. As the recommendation shows, as also the principle of the law of trade marks shows, the principle of the Bill is exclusively limited to the recognition of a distinctive right, as far as a particular property is concerned, and all the provisions of the Bill should conform to the recognition of this rule alone that the trade mark Act should give the right only as far as the protection of that property is concerned, and in defining it in a distinctive character no more right should be conferred, as far as the trade mark owner is concerned, and you should be loath to recognize any individual right more than the recognition of this physical definition of property to a very limited extent. Otherwise there is one constant danger that any individual commercial establishment or a private trader will try to acquire, on his own terms and definition, a large variety of trade and industry even far in advance in a competitive society, and he will be able to deny that right to another industrialist or commercial trader, who comes into the arena far later resulting in the creation of a virtual monopoly granted to him by means of this Act. The ultimate intention and object of the Parliament should be to continue that right to forestall that danger of creating a commercial monopoly by means of granting certain rights under this particular Act. Therefore, the provision should be so modelled, as it is already modelled with extreme caution and care, that this particular danger which is threatening is forestalled. Whenever a law on trade marks is brought, the commercial community and free trade will have to be taken into consideration and in every clause the Select Committe should remember that they should not trespass into this realm of public trade except to the extent of recognition of this very limited right as far as trade mark is concerned.

I will come presently to the three important recommendations made by the Committee I am making a mention of it today just because this Bill is being referred to the Select Committee. If this Bill would have been before this House today for consideration and passing, I would not have taken the time of this House to repeat whatever has been written or to side with a particular opinion because it is quite likely that these two conflicting and contradicting viewpoints expressed in the document which is to be placed before the Select Committee will be available for hon. Members and it is quite likely that some hon. Members may side with the majority report, which is quite logical in their approach, and other hon. Members may side with the minority report reinforced by the recommendation of the hon. Judge. Therefore I am repeating that the very basis of those recommendations should be studied by hon. Members and the reasoning and logic and the necessity of public good that is being recommended by the minority report and also the commendable action of the Government in appointing an officer and referring this matter to judge, will be realised by hon. Members.

The three points I will discuss and I will conclude. The most important point that is discussed where there

is a controversial opinion is the necessity of a special tribunal. The trade Mark Owners' Association have submitted a series of documents and also argued before all these committees that there should be a special tribunal appointed so that there may be a uniform law as far as trade marks are concerned. It is quite logical in the report that when they contended that there is anarchy in the trade mark law and therefore they demand a special tribunal. The Select Committee should look into the details because the learned judge has enunciated all the law on trade marks right from the beginning, be they reported or unreported cases, and the judge has come to the conclusion that all the High Courts that dealt with the law of trade marks irrespective of aspersions made against them in the memorandum submitted have come to a unanimous opinion and there is a commendable unanimity at least so far as the trade mark law is concerned. The Judge has rejected the plea that there should be any special tribunals for the trade marks concerned.

In this connection I wish to make a reference that whenever special branches of law are coming and whenever different interests are coming, every interest specially in these cases demand separate tribunals. The usual complaint is made that the High Courts of the land may vary in their decisions and may not have unanimity. At the same time we will have to remember that these High Courts are established under the Constitution and it is presumed that any judge or any bench of judges presiding over these High Courts have got complete and full knowledge of the law and when the decisions are given they are given correctly. Instead, the argument is cut in this way that if special tribunals are appointed, which have got only statutory recognition, but not having constitutional recognition, the divergent opinion is given by these tribunals as we are finding in the industrial courts today. We will ourselves find a large forum and quagmire of anarchy of these decisions and ultimately by the decisions of these *ad hoc* tribunals we will be confronted with a large number of varied decisions. For unanimity alone, the High Courts should get jurisdiction to decide these cases so that there is a Supreme Court to have an appeal from the High Courts and under the Constitution we get a binding and uniform decision as far as the law of trade marks is concerned. Therefore, I submit that the cause of special tribunals has not been properly made out. Their own arguments are defeated in that the High Court can have complete jurisdiction as far as these are concerned and the provision in the Bill as far as the right of appeal to the High Courts is concerned, it should be detained by the Select Committee.

The most important part of the recommendation is regarding defensive registration. As I have submitted earlier, the trade mark law does not give to the owner of the trade mark an absolute right under common law because by means of his profession in the trade he does not get any right at all. Somebody in the laboratory or somebody in his own business house thinks of certain names or makes certain compounds, he acquires the industrial property or commercial property which is in the common ownership and gives out a name. Are we to give absolute right as far as that particular individual is concerned, i.e., an unrestricted right to acquire this property? The Bill gives a right if he has got manufactured goods, if he has goods *in presenta*, which he could give a name to The law is prepared to recognise that particular right and protect his right as long as that is extant from being competed upon or being counterfeited. What is required under this suggestion of defensive registration is that anybody in his own house can coin a phrase, can just take the phraseology from the common vocabulary and go to the Registrar of Trade Marks for registering it and as long as he is alive and as long as his successors are alive that particular name could not be used for selling that property. The law gives a right

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if they are coined phrases which are not available in the ordinary vocabulary and which the common people do not understand. But when any name is there, the name through which people ordinarily understand a particular product, and if somebody is given an absolute right to take this name from the common vocabulary and go to the Registrar of Trade Marks to get this name registered, we will be giving to the word in the common vocato monopolise and give his own meaning to the word in the common vocabulary. Let us not give unlimited freedom to acquire even the names of our own languages for commercial transactions. Therefore, I support the principle behind this clause—any attempt to have defensive registration will have to be resisted by the Members of the Committee—and also that the recommendations are quite sound. A series of documents both from the United Kingdom and Australia have been cited before the Committee and it is quite possible that looking into these documents in any form of society, whether capitalistic or socialistic or semi-democratic, this right of advance registration, which is a right of unrestricted acquiring of property which is not his own but recognised by this law is right and therefore defensive registration in whatever manner, either directly or indirectly, should not be encouraged and the minority has been quite right in rejecting the proposal of defensive registration.

I find that in the lecture given by Mr. Barony Queen's Counsel, he has made a very emphatic and a very persuasive case as to why the right of defensive registration should be given. I should like to request the hon. Members of the Select Committee that that particular document will have to be gone into with extreme caution because he himself was introducing a theory of ownership of property which is unknown in common law and unknown to industrial and commercial laws. That document should be taken as a fanciful imagination of a single individual who is not connected with the society or with the trade and who was not acting in the interests of either the nation or of the commercial community. Therefore any attempt in this Bill to incorporate any provision for defensive registration will have to be resisted.

I will submit the last point and close. Another welcome feature that has been added relates both to the law of trade marks and the Drugs Act. The provisions and the principle have also been recommended by the Pharmaceutical Enquiry Committee and we find in the provisions in this Act a welcome feature that whenever there is a violation of the provisions of trade mark as far as the drugs and foods are concerned, exemplary punishment is given. I should like to submit that I am not satisfied with the so-called exemplary punishment that is given. Today, there is a menace in our trade that people are not at all taking the least precautions. Also deliberately we find counterfeit things, particularly drugs which are not genuine are given. There are numerous cases in the hospitals where essential drugs have been given in different names which are not genuine. People's health suffers and many deaths have taken place. The only answer to this is, declare those persons who have been convicted under the Drugs Act for selling contraband drugs under different names, as enemies of the community. Not only that. When a man goes to a criminal court, he may be convicted or he may be acquitted. The maximum punishment which is three years is no answer for the crime that the man has committed by giving a small solution which is injurious, instead of penicillin. The penicillin may not work. The man may die of pneumonia because of the bad effects of the drugs. A more exemplary punishment should be given. The names of these social enemies who are selling things for their own profit, who do not take any care for public health should be published and

they should be given a more exemplary punishment.

**Mr. Speaker:** Is there any provision in the Act as in the case of election law in which whoever commits an offence under the election law is banned for a period of years?

**Shri Narayanankutty Menon:** No.

**Shri Naushir Bharucha** (East Khandesh): It can be done.

**Shri Narayanankutty Menon:** There is no provision.

**Mr. Speaker:** A provision that he ought not to sell and then carry on the profession?

**Shri Narayanankutty Menon:** There are provisions in the Drugs Act for cancellation of the licence.

Finally, there is a very controversial point which I would like to submit before the Bill goes to the Joint Committee. The controversial point is regarding the jurisdiction of courts. Before our Constitution came into existence, the Chartered High Courts at Calcutta and Madras, exercising their writ jurisdiction have decided that the criterion for the exercise of jurisdiction and the determination of the cause of action is the place where the individual whose rights are affected resides. After the Constitution, a new law has been developed, the High Courts exercising jurisdiction under article 226 of the Constitution, said that jurisdiction is determined now in relation to the place where the particular order is passed. The whole principle behind that decision is under question today. Practical difficulties come in as far as any matter is concerned. The Trade Mark Registrar, whose office is situated in Bombay, passes an order in Bombay. The effect of both an order of registration and also rectification of registration is on the individual merchants either in the State of Kerala or Madras. Is it logical, as far as the principle of jurisdiction is concerned, that this man whose rights are violated in the State of Kerala or Madras will have to seek his remedy in the High Court of Bombay, just because the order has been passed in Bombay? That reasoning has no logic behind it. It has no sanction in jurisprudence in relation to determination of jurisdiction. Therefore, we should follow the fundamental principles of jurisdiction in civil action and jurisdiction should be entirely determined in relation to the place of residence of the individual whose rights have been violated and also in the area where the cause of action arose, where the rights and liabilities have arisen. Therefore, a suitable provision should be made in this Act and the provisions regarding appellate jurisdiction so amended that those High Courts within whose jurisdiction this particular order of registration operates, should have jurisdiction. Otherwise, this would lead to great difficulties as far as the actual persons whose rights are violated are concerned. They may not be in a position to go either to Bombay or Madras or Calcutta to get their remedies. I hope the Joint Committee will consider this question: the entire law with regard to jurisdiction as it has developed in our High Courts before Independence and also after Independence. In considering its logic, I hope they will make suitable amendments to the effect that the High Court, in whose jurisdiction these people whose rights are affected reside will get the automatic right to decide cases as far as trade marks are concerned.

Regarding jurisdiction, I will submit one thing and conclude. There is a cumbersome procedure in the Bill as far as action is concerned. The District court has got jurisdiction A man may file a suit in a District court and get relief, in the matter of trade marks. But, if, in the suit, a defence is raised by the other party and the fact of registration or the legality of registration is questioned, immediately the District court loses jurisdiction. The matter will have to be referred to the High Court for a proper rectification proceedings. In many other enactments, in our experience we have found that this is a laborious and cumbersome process. If a particular court of law, whatever may be the jurisdiction—make it a High Court or a District court—has jurisdiction to

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decide the merits or demerits or the pros and cons of a particular action, that court should get jurisdiction to decide all matters which are related to that matter. In an action for infringement of trade mark, it is very necessary, it is closely allied, it is an inherent matter that the validity of registration should be considered. The validity of registration should be decided by the District Court. I hope that the Joint Committee will make suitable amendments that the District Court which has got the jurisdiction to decide the action so far as the law of trade marks is concerned, gets the jurisdiction to declare about the validity of registration, so that the cumbersome procedure of referring the matter to the High Court and staying the suit, the reference being returned and then the matter being decided, may be avoided.

**Mr. Speaker:** May I know how long the hon. Minister wants to take?

**The Minister of Commerce (Shri Kanungo):** Not more than ten minutes.

**Mr. Speaker:** We started at 12-30. We had two hours and 19 minutes, that is up to 2-50. I will call the hon. Minister at 2-40. I may call him earlier if the number of Members wanting to spoke are not many.

**Some Hon. Members:** There are not many speakers.

**Mr. Speaker:** I am not going to put it off. If there are no Members, I will immediately call upon the hon. Minister. There is time till then. I will call him at 2-40. He can carry on for 10 minutes or a few minutes more.

May I have an idea as to how many hon. Members want to participate in this debate? Shri Naushir Bharucha, Shri Supakar, Shri Braj Raj Singh. Any other? None other.

**Shri D. C. Sharma** (Gurdaspur) *rose—*

**Mr. Speaker:** Shri D. C. Sharma wants to speak? He must stand up.

**Shri D. C. Sharma:** I stood up.

**Mr. Speaker:** Until he catches my eye. When I ask again, he must say so. All right.

**The Minister of Commerce and Industry (Shri Lal Bahadur Shastri):** It is very difficult to make out when Shri D. C. Sharma is sitting and when he is standing.

**Shri Naushir Bharucha:** Sir, this is not only a welcome Bill, but a necessary Bill. I am not prepared to say that it will attain the objectives at which it is aiming. But, there is no doubt that if it is carefully administered, there is likely to be some minimising of abuse of trade marks.

In view of the very great importance of advertisements in trade and commerce and the appeal they exert over vast masses, the subject of trade marks assumes special significance. I do not agree with the previous speaker who, somehow or other, appeared to be rather jealous of the proprietors of trade marks who, according to him, do not contribute any inventive genius, but still wanted to have proprietary rights in trade marks by merely coining a phrase or designing a pictorial design. Let it be understood in the first place that trade marks as well as merchandise marks are as much for the protection of the public as for the benefit of proprietors of such trade marks. Today, for instance, if I want to go in for a particular type of cloth, if I have got faith in a particular textile mill, I will take care to see that I get the goods of the particular trade mark of that particular textile mill. Therefore, it affords the consuming public greater protection than the benefit that is conferred upon the proprietors of such marks. I have gone through this Trade and Merchandise Marks Bill, but unfortunately I find there is a tendency for excessive legislation and even common law matters are sought to be codified into clauses. I hope that the Select Committee will look into it.

**13 hrs.**

The scheme of the Bill is broadly this. First we define registered trade marks, associated trade marks and certification trade marks. Then there

is definition given of the most important part of the Bill, namely, what is a false trade description and "deceptively similar" trade mark. Of course, there are the usual provisions of assignment, transmission, registration, conditions of registration, effect of registration and so forth.

The basis of the whole measure is to protect the genuine trade marks and at the same time to protect the consuming public and discourage the use of fraudulent trade marks. How far it will succeed, experience alone will show, because as our experience indicates there are numerous difficulties in administering even a very sound measure which regulates trade marks.

Sir, in the present case I do not wish to go into very many details, but confine myself to certain definitions which constitute the very essence of this Bill. For instance, take the definition of "false trade description" given in clause 2(f)(iii) "any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or metres than there are contained therein standard yards or standard metres". This is the usual fraudulent device resorted to by traders when there is a piece length. They say there are 36 yards when actually there are only 34 yards. But this false trade description can be both in terms of linear measurement as also in terms of weight, liquid measurements and gauge. I think this definition requires to be extended to include all these varieties of false descriptions and I have no doubt the Select Committee will look into this matter.

Among the important matters dealt with here is the definition of "trade description". First I shall read out (u):

> "(u) "trade description" means any description, statement or other indication, direct or indirect
>
> (i) as to the number, quantity, measure, gauge or weight of any goods; or
>
> (ii) as to the standard of quality of any goods, according to a classification commonly used or recognised in the trade; or
>
> (iii) as to the fitness for the purpose, strength, performance or behaviour of any goods, being "drugs" as defined in the Drugs Act, 1940, or "articles of food" as defined in the Prevention of Food Adulteration Act, 1954;"

This is an important part of the measure, this is the essence of it and we must thoroughly define what "trade description" really means. Now, take the complaint which is very common, namely, that spurious drugs, or adultrated foodstuffs are sold under colour of a particular trade mark. If it is proved that the trade mark or trade description does not fit in, then action can be taken. I should like to know how in actual practice this will be implemented.

Take for instance a particular drug. There is a particular trade description certifying that it is of a particular standard. Actually it may not be so. How are the people who are going to launch prosecutions going to determine this? In the first place, how are they going to have the machinery for detection of such cases? Today the complaint is that trade in spurious drugs is so vast and universal that what my hon. friend, the previous speaker Mr. Menon, said is quite correct. It is estimated that an important part of chemists' business consists of spurious drugs and it is openly said that unless they carry on trade in spurious drugs, it is not possible for a chemist to stand the competition. How is this going to be remedied by this measure? I find it rather difficult to understand.

Ultimately it might boil down to this, that you might have a good Act on paper, but it is very difficult to translate it into practice. What I am trying to point out is this that unless

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some machinery is placed at the disposal of those people on whom the responsibility of implementing the Act devolves, so that they are in a position to judge of the fitness of purpose and strength, in short some sort of a chemical and pharmaceutical test house, is placed at their disposal, it will be extremely difficult to find out in what manner the fitness of purpose or strength or performance is not up to the description.

I might give some instances to clarify the point I have been making. Some years ago in Bombay City somebody started selling what were known as "Memory Pearls", for students to enable them to improve their memory. The whole thing was a huge hoax and fraud played on students. No doubt the memory pills, or memory pearls as they were called, were marketed under a beautiful trade label, And I am not sure whether the trade mark was registered. The student world was exploited very badly. I do not know how under this Bill we will be able to check such things. I am of the opinion, as I shall show presently, that wider powers should be given to the Registrar to refuse registration, where obviously exaggerated claims regarding the quality of particular goods are made—sometimes absurd and false claims. I have known that in Bombay some amulets and talismans supposed to have divine powers of protecting people from evil are being sold. This might also form subject matters of trade mark. All these things must be denied the benefit of having a trade mark. That is what I have submitted should be the basic object of this. I do not think that the Bill as it stands will be able to attain that object.

**13.07 hrs.**

[MR. DEPUTY-SPEAKER *in the Chair*]

With regard to maintenance of Register A and B, I think it is a very welcome innovation which ought to be accepted. However, I am of the opinion that most of the goods which come up for registration have no India-wide appeal. For instance, goods of universal use, such as *biris*, cigarettes and things like that have sale only within a few districts. All of them do not have all-India sales. I think we should accept the principle in this Bill that when a person desires to have a particular trade mark registered, it should be confined to a particular State only. Often the proprietors of trade marks themselves do not ask for wider registration. The benefit of it would be that you will not needlessly prevent people from other areas of the country using the trade marks either in relation to the same goods or other goods, so far as the trade marks are confined to one particular State. This point must be looked into, because most of the trade marks relate to goods the sales of which are confined often to a few *talukas* or at the most a few districts. If some State-wise arrangement of registration could be made I think a great deal of trouble to people who desire to use the same mark in relation to some goods in other areas would be avoided.

Also, after registration, the period of seven years is far too long. The period of renewal must be five years at the most, because most of the trade marks are registered by businessmen who are enthusiastic or very optimistic about the success of their goods in the market in the beginning, and when they collapse within a year or two, become wiser with experience; but the trade mark continues to linger on the register without any use, and obstructing others from using the same trade mark. I, therefore, think the period of seven years should be reduced to five years.

There is another important recommendation made that the offices of trade marks and patents and designs should be amalgamated. I have seen that there is considerable unanimity of opinion on this subject, but I for one fail to see how that is going to help. Patents and designs form an altogether different subject. Trade marks are totally different. By combining

the two, how is efficiency going to be increased? I have not been able to find out this from the opening speech of the hon. Minister in charge of the Bill. My own opinion is this, that the two things must be kept completely apart. Their bases are different, and the work relating to both will suffer if ultimately the responsibility of administering both the things is thrown upon one person. You will appreciate the fact that in the administration of patents and designs what is required by the department is a man with technical experience, a man who has graduated in science, whereas with regard to the other thing no such qualification in particular is required. I, therefore, would request the Select Committee to go into this question whether it is worthwhile combining the two offices.

As I have said, the main point that troubles people is the spurious use of trade marks. The Bill has increased the penalties in respect of the abuse of trade marks or the use of false trade descriptions or false trade marks. But what is the increase in the penalty?—to two and three years. But let us not forget that there will be also the Probation of Offenders Act, so that this two or three years might be reduced to admonition or probation. If we really want to check these people, then I would ask that the following provisions to curb spurious goods must be incorporated in the Bill.

First, a minimum term of imprisonment must be prescribed I do not know how we will get over the Probation of Offenders Act, but I would plead that somehow or other we should see that wherever it is found that there has been an abuse of trade marks so as to exploit the public, a minimum term of imprisonment should be prescribed.

Secondly, there should be immediate seizure and freezing of stocks, and the procedure in relation to the freezing and seizure of stocks should be considerably simplified.

Thirdly, there should be cancellation of the trade marks of such firms. If a firm, company or individual is responsible, then all the trade marks of that particular firm, company or individual should be cancelled for a period of, let us say, three years minimum, because a firm which dishonestly exploits the public by using one particular trade mark cannot be entrusted with the use of other trade marks. On that principle I would say that should also be prescribed.

Then there should be prescribed a disqualification to apply for trade marks for a minimum period of three years. Such people ought not to be allowed the benefit of any trade marks whatsoever.

Finally, I would say that wherever a person carrying on business has been convicted for the sale of spurious goods under the law, he should be compelled to put up a board prominently saying that he has been convicted of such and such an offence. It might sound a novel method, but I appeal to the House to devise novel methods. A person would be far more afraid of a provision like this, if he is compelled by law to exhibit, say, for two years after conviction; such a board prominently in his shop.

**Mr. Deputy-Speaker:** That can be made a condition of probation.

**Shri Naushir Bharucha:** I am sure in that case these people would prefer to pay fine, or send a dummy to jail for a short period, rather than accept that condition at all. I submit that is a worthwhile, worth-exploiting device in order to deter people, because these people do sot deserve any sympathy whatsoever.

I have known of cases where people have sold tablets certified to be tablets for cure of diabetes. Actually, these tablets were nothing but sugar with some coating—something which is contra-indicated for diabetes. Things like that have happened, and therefore I say that when a person has been so very heartless in exploiting the ailing and the sick, no mercy

[Shri Naushir Bharucha]

should be shown to him. If he was compelled to exhibit a board that he has been convicted under the Drugs Act, I think that would have a very salutary effect.

It has been stated that the business in spurious drugs is as vast as the business in genuine drugs, and today nobody is safe as to what he is purchasing even in a particular brand.

Another difficulty is this, that most of your Bill will remain a Bill good on paper because it is very difficult to implement it.

I can give instances. It has been known that certain of Godrej soap trade marks are being counterfeited, the same stamp of Godrej actually being used. It is very difficult to detect it, because usually the people who counterfeit these trade marks are petty people who can shift their workshop from one place to another as soon as there is fear of detection. What they actually do is to make counterfeit dyes for well-known types of goods. They actually have a stock of them made, and then immediately dissolve the firm and go elsewhere. It is very difficult to get hold of them. Unless the Government assists those proprietors of trade marks with their police machinery in detection, and do whatever you like, the business in these things will flourish. It is no use having very good clauses defining what is false trade description if you cannot implement them and therefore I submit the real difficulty is not putting on paper a fool-proof, knave-proof Bill, but actually implementing its provisions. These points will, therefore, have to be taken into consideration.

I would suggest that these are the points which ought to be looked into, but the central point that is dominant in any legislation with regard to trade and merchandise marks would be how to protect the consuming community. That is the dominating factor, and whatever changes have to be made must be made, and I think that the law should be firmly and unflinchingly tightened up and improved. We have to invent new devices to check this class of people which is becoming a serious menace to society. I hope the Select Committee will bear these points in mind.

**Shri Supakar** (Sambalpur): I wish to make a few observations regarding some of the points which have only been cursorily touched by the two speakers who spoke before me.

The first point I will take up is the very high importance of the problem relating to counterfeiting of trade marks relating to drugs and food. The danger and the wide extent of the mischief that is prevalent in the country is beyond doubt, and therefore it is absolutely necessary that the Select Committee should take some more serious steps to prevent spurious drugs and food coming into the market, and impose some severer restrictions on such nefarious activities. In this connection, I am glad that some of the provisions of the Indian Penal Code have been incorporated into this Bill. But I have a suggestion to make regarding clause 78 of the Bill. Over and above making the penalty in the case of drugs and food adulteration and violation of trade marks severer, I suggest that Government and the Joint Committee make this a cognizable offence, so that over and above the person aggrieved or the proprietor of trade mark aggrieved or the consuming public taking action, the police should be in a position to take cognizance of the offence and take action thereon.

Another point that I would urge is regarding the requisites for registration enumerated in items (a) and (b) of sub-clause 1 of clause 9. I have looked into the previous law regarding these strict requisites that have to be fulfilled before registration. I find that it is consistent with the recommendation of Justice Ayyangar in his report. But I

am thinking whether the Joint Committee will consider it advisable to take into consideration the inclusion of the photograph of the person who applies for registration or some predecessor in his business along with the signature of the applicant for registration or some predecessor in his business under sub-clause 1 (b) of clause 9, because I feel that if the signature of the applicant or some predecessor in his business can be taken as an evidence of distinctiveness, there should be no objection to photographs also, if the photographs bear some evidence of distinctiveness.

Another point which I wish to make before I conclude is the distribution of the trade mark registries in different parts of India. It has been said that at present there are only three principal places of registration, namely Bombay, Calcutta and Bangalore. Justice Ayyangar has suggested that four or five more places like Nagpur, Kanpur and Delhi be added to this list.

Over and obove this extension of the centres of registration, I would suggest that in cases where the goods of trade are only of local importance, to which Shri Naushir Bharucha has made some reference in his speech, it should be possible for the traders to have registration of such goods in their own State or in their own area; and only in those cases where the goods sold, for which trade marks are sought to be registered, are of all-India importance or where the goods are consumed throughout the length and breadth of India, the registration should be made necessary in these very important centres of the country. I feel that in cases where a particular type of commodity is sold only in a few districts or only inside the boundary of a State, it should be possible to have the registration facility inside that State, and facilities for litigation in case of violation of the trade mark, and passing of actions should be provided inside the district courts or the High Courts within the boundary of that State. And if the Joint Committee can find its way to make provision for this contingency. I feel that a lot of mischief that is at present prevalent in different parts of the country will be minimised.

**श्री बजराज सिंह** (फ़िरोज़ाबाद) : उपाध्यक्ष महोदय, ट्रेड मार्क की प्रथा के पीछे जो सिद्धान्त है वह यह है कि प्राइवेट व्यक्तियों को यह अधिकार रहे कि जो चीज़ वह अपनी बुद्धि से पैदा करते हैं उसका अधिकार सिर्फ़ उन्हीं को होना चाहिये और उसका लाभ सिर्फ़ उन्हीं को मिलता रहे । कापी राईट और पेटेन्ट का जो अधिकार होता है उसी के साथ साथ ट्रेड मार्क के भी अधिकार की बात की जाती है लेकिन मैं प्रवर समिति के विचार के लिए कुछ सुझाव देना चाहूंगा कि यह अधिकार जो कि प्राइवेट प्रापरटी में होता है या प्राइवेट व्यक्तियों की अपनी बुद्धि से पैदा की हुई चीजों का खुद लाभ उठाने का होता है उसका कहां तक इस्तेमाल समाज के हित में होना चाहिए और कहां तक सिर्फ़ उन्हीं के व्यक्तिगत लाभ के लिए हो सकता है ।

जहां तक कापी राइट का सवाल है वह एक सर्वमान्य सिद्धान्त है कि जिस पुस्तक को या जिस कृति का कोई लेखक या कवि लिखता है वह उसकी अपनी एक ऐसी सूझ होती है जिसका कि उसे लाभ हमेशा मिलना ही चाहिए । लेकिन जहां तक इस मुल्क का सवाल है हम देखते हैं कि यहां किसी भी नाम को लेकर कोई व्यक्ति उसका रजिस्टर्ड करा लेता है किसी खास तरह के व्यापार के लिए और उस वस्तु का रजिस्टर्ड करा कर वह उससे कुछ लाभ उठाना चाहता है । उसमें कोई विशेष गुण अथवा बात नहीं होती है ।

उदाहरण के लिए आप दंतमंजन को ले लीजिये । कोई एक साहब सैरिन दंत मंजन के नाम की रजिस्ट्री करा लेते हैं भले ही सैरिन दंतमंजन में वह सिर्फ़ खरिया ही पीस कर दे दें या कुछ इसी तरह की चीजें मिला कर दे दें और इस तरीक़े का उनका

[श्री ब्रज राज सिंह]

दंतमंजन बिकता रहे और जो रजिस्ट्री करने वाले अफ़सर हैं वह उसमें यह नहीं देखें कि उसकी क्वालिटी किस तरीक़े की है और उसमें क्या गुण हैं । मेरा कहना यह है कि अगर इस तरह से रजिस्ट्री करा कर कुछ व्यक्ति लाभ उठाते हैं तो वह जो समाज के हित का उद्देश्य है वह नष्ट हो जाता है । इस तरह से व्यक्तिगत लाभ तो रजिस्ट्री कराने से लोगों को मिलता रहता है लेकिन समाज का जो हित है वह इस ट्रेड मार्क के पीछे नष्ट हो जाता है ।

इसी तरीक़े से औषधियों का सवाल आता है । बहुत सी ऐसी औषधियां हैं जिन्हें किसी नाम से रजिस्टर करा कर उनकी क्वालिटी के बारे में कुछ नहीं देखा जाता है और रजिस्टर किये हुए नाम से लोग व्यतिगत लाभ उठाया करते हैं । मेरा निवेदन है कि प्रवर समिति इस बारे में भी विचार करे कि क्या कोई इस तरीक़े की व्यवस्था की जा सकती है कि किसी भी नाम को रजिस्टर कराने से पहले जिस वस्तु को रजिस्टर किया जा रहा है उसको रजिस्टर करने के पहले यह देख लिया जाय कि उसमें जो क्वालिटी जिस तरह की बताई जाती है वह उसमें विद्यमान है या नहीं । अभी तक सिर्फ़ यह है कि जिस व्यापारिक वस्तु को वह रजिस्टर करना चाहते हैं उस नाम से कोई दूसरा व्यक्ति वह व्यापार नही कर सकेगा । मैं समझता हूं कि समाज का हित तब अच्छी तरह हो सकेगा जब वह देख लिया जाय कि जिस चीज़ का रजिस्ट्रेशन हो रहा है उस चीज में वह वस्तुएं या वे गुण हैं या नही जिन गुणों के बारे में कहा गया है कि वे उसमें हैं । आज कल होता सिर्फ़ यह है कि नाम ही नाम होता है गुण नहीं होता है और नाम से ही हमेशा पैसा पैदा किया जाता है और इस तरह समाज का जितना हित हो ना चाहिए वह नहीं हो पाता है । इस लिए प्रवर समिति को मेरा सुझाव है कि वे इस पर विचार करे कि कहां और किस हद तक इस ट्रेड मार्क के रजिस्टर करने के लिए जाया जा सकता है और कौन २ सी वस्तुऐं इस तरीक़े की है जिन को कि रजिस्टर किया जाए और किस तरीक़े की चीज़ें ऐसी हो सकती हैं जिनको कि रजिस्टर नहीं करना चाहिए ।

उदाहरण के लिए कापी राइट का सवाल है । वहां पर यह होता है कि जो उस चीज का पैदा करने वाला है, लेखक है, कवि है उसको अपनी कृति का कापी राइट दिया जाता है, उस चीज को उसने अपनी बुद्धि से पैदा किया है । इस लिए यह ठीक है कि वहा पर उसको उससे व्यक्तिगत लाभ होना चाहिए । लेकिन केवल नाम के रजिस्टर करा लेने से किसी व्यक्ति को लाभ मिलता रहे यह कहां तक समाज के हित में है इस पर प्रवर समिति विचार करे । साथ ही साथ यह भी देखना चाहिए कि इन चीजों से समाज को कहां तक लाभ हो सकता है । यह भी देखना चाहिए कि इस प्रकार के रजिस्ट्रेशन से समाज को हानि तो नही पहुंचेगी । अगर किसी ने कोई भी मौलिक चीज पैदा की है, तो उसका रजिस्ट्रेशन किया जाये इसमें कोई आपत्ति नही है । वहा तक व्यक्तिगत सम्पत्ति को सुरक्षा मिलनी चाहिए । लेकिन अगर सिर्फ़ कोई व्यक्ति किसी नाम को रजिस्टर करालें और उस नाम से अपनी चीज को बेच कर लाभ उठायें, तो मैं समझता हूं कि यह समाज के हित में नही है । तो मैं चाहूंगा कि प्रवर समिति इस पर विचार करे कि किन शक्लों में और किन परिस्थितियों में यह रजिस्ट्रेशन होगा और किन परिस्थितियों में रजिस्ट्रेशन नहीं किया जायेगा । कोई आदमी एक नाम को रजिस्टर करवा लेगा और उस नाम से व्यापार करेगा और उस नाम से उस चीज को बेचने का किसी और व्यक्ति को अधिकार नहीं होगा, तो इससे तो समाज को लाभ नहीं हो सकता ।

उदाहरण के लिए फिरोजाबाद में चूड़ियां बनती हैं । उनमें एक दूसरे में कोई विशेष फर्क नहीं है । लेकिन ऐसा हो सकता है कि एक व्यक्ति अपनी चूड़ी का नाम राज कपूर रख दे और उस नाम को रजिस्टर कराकर अपनी चूड़ियां बेचना शुरु कर दे । इससे उसे व्यक्तिगत लाभ तो बहुत हो सकता है क्योंकि कोई दूसरा व्यापारी वह चीज उस तरह नहीं बेच सकेगा, लेकिन इससे समाज का क्या हित होता है, और दूसरे व्यापारी जो कि उस चीज को बेच कर लाभ उठा सकते हैं उसको हानि हो सकती है । इसलिए मैं चाहता हूं कि प्रवर समिति इस सिद्धान्त पर विचार करे कि किस हद तक हमको रजिस्ट्रेशन करना चाहिए, और दूसरी चीज यह भी देखे कि उस चीज में जो गुण बताया जाता है क्या उस गुण की जांच भी की जा सकती है या नहीं पेश्तर इसके कि उसका रजिस्ट्रेशन किया जाये । खास तौर से जहां तक ओषधियों और इंजैक्शन्स आदि का सम्बन्ध है वहां इस बात की बहुत आवश्यकता है । हमारे देश में एक बहुत बड़ा रोग पैदा हो गया है । आज पैनिसिलिन के नाम से दूसरे इंजेक्शन्स दे दिये जाते हैं, एक प्रकार की गोलियों की जगह दूसरी गोलियां दे दी जाती हैं । इससे समाज को बहुत हानि हो रही है ।

असल में जहां तक ट्रेडमार्क का सिद्धान्त है वह तो यह है कि अगर कोई व्यक्ति कोई मौलिक चीज पैदा करता है तो उसे उसका लाभ उठाने का अधिकार होना चाहिए और कोई दूसरा आदमी उस चीज से लाभ न उठा सके । तो यह तो मैं समझ सकता हूं कि अगर किसी ने अपने दिमाग की मौलिक सूझ से या अपनी खोज से कोई चीज पैदा की है तो वह उसका लाभ उठावे और उसको ऐसा करने का अवसर दिया जाना चाहिए । लेकिन अगर किसी व्यक्ति की कोई मौलिक सूझ और खोज नहीं है और वह केवल एक नाम लेकर उसको रजिस्टर करवाकर लाभ उठाना चाहता है, तो प्रवर समिति विचार करे कि इस तरह के व्यक्ति को भी उस चीज का रजिस्ट्रेशन कराने का अधिकार होना चाहिए अथवा नहीं ।

जब इस तरह की व्यवस्था होगी तो हम उस चीज की तरफ आगे बढ़ेंगे कि एक व्यक्ति की व्यक्तिगत सम्पत्ति की किस हद तक सुरक्षा होनी चाहिए । यह सही है कि ट्रेडमार्क का सिद्धान्त ऐसा सिद्धान्त है जो कि व्यक्तिगत सम्पत्ति को हमेशा के लिये सुरक्षा देता है । इसीलिये मैं चाहता हूं कि इस सिद्धान्त के मातहत किसी व्यक्ति के लिए केवल नाम रजिस्टर कराकर हमेशा के लिए लाभ उठाते रहने की गुंजाइश नहीं होनी चाहिए, जिसमें कि किसी प्रकार की रोकटोक ही न हो सके । इस चीज से हमारा उद्देश्य पूरा नहीं होगा ।

दूसरी बात मैं यह कहना चाहता हूं कि इसके लिए विशेष न्यायालय या ट्राइबुनल कायम करना और जो मौजूदा अदालतें हैं उनके अधिकार क्षेत्र को खत्म करना उचित नहीं है । प्रवर समिति इस पर विचार करे कि जो न्यायालय और हाईकोर्ट मौजूद हैं वे ही इस कानून के मातहत आने वाली समस्याओं को हल करें और विशेष न्यायालयों की आवश्यकता नहीं होनी चाहिए ।

इसी सम्बन्ध में मुझे एक और निवेदन करना है । प्रवर समिति को इस बात पर भी विचार करना चाहिए कि जहां पर इसका रजिस्ट्रेशन होता है वहीं की हाईकोर्ट में इस पर विचार किया जा सकता है या कि जहां जहां उस रजिस्ट्रेशन का असर पड़ता है, जैसे कि उत्तर प्रदेश में, बंगाल में, बिहार में आसाम में अगर उसका असर पड़ता है तो वहां की हाईकोर्ट भी उस बारे में विचार कर सकती है या नहीं । मैं समझता हूं कि न्याय का सामान्य सिद्धान्त यह है कि जहां भी एक चीज का प्रभाव पड़ता हो वहां के न्यायालय को उस प्रश्न पर विचार करने का अधिकार है । तो प्रवर समिति इस पर विचार करे खास तौर की अदालत को ही अधिकार देना कहां तक उचित होगा और जहां जहां इसका असर

[श्री ब्रज राज सिंह]

पड़ता है वहां की अदालतों को भी विचार करने का अधिकार होगा या नहीं ।

साथ साथ मैं एक बात और कहना चाहूंगा । एक तरफ हमने यह सिद्धान्त मान लिया है कि अगर कोई आदमी अपनी खोज से कोई मौलिक चीज पैदा करता है तो खोज उसका रजिस्ट्रेशन ट्रेडमार्क के अन्तर्गत कर देना चाहिए । मैं यह जानना चाहूंगा कि रजिस्ट्रेशन कर देने के बाद राज्य का यह कर्तव्य भी होना चाहिए कि उसके उस अधिकार की रक्षा भी करे । अगर इस प्रकार किसी चीज का रजिस्ट्रेशन होता जाता है और फिर कोई व्यक्ति उस चीज को बेच कर लाभ उठाना चाहता है तो उसको सजा मिलनी चाहिए । इसके लिए ज्यादा से ज्यादा कड़ी सजा की व्यवस्था होनी चाहिए । ऐसे लोग समाज को बदनाम करते हैं । इस सम्बन्ध में मैं श्री भरूचा जी के सुझाव का स्वागत करूंगा । मैं चाहूंगा कि प्रवर समिति उस पर विचार करे कि अगर कोई व्यक्ति ऐसा काम करने में सजा पा चुका है तो क्या ऐसी व्यवस्था की जा सकती है कि उसको मजबूर किया जाये कि उसकी दुकान पर ऐसा साइनबोर्ड लगाया जाये कि उसे इस सम्बन्ध में दो साल की या जो कुछ भी अवधि हो, सजा हो चुकी है । साथ ही साथ मैं यह भी कहूंगा कि सरकार और प्रवर समिति इस पर भी विचार करे कि क्या कोई ऐसी व्यवस्था हो सकती है कि अगर कोई सख्स काउंटरफीट ट्रेडमार्क के सिलसिले में सजा पा जाये तो उसके खिलाफ यह कार्रवाई की जाये कि वह चुनाव में खड़ा होकर विधान सभा में या लोक सभा में न आ सके क्या इस प्रकार की व्यवस्था हमारे चुनाव कानून में की जा सकती है, इस पर भी विचार किया जाये ।

अन्त में मैं यह कहना चाहता हूं कि यह एक बहुत ही महत्वपूर्ण सिद्धान्त की चीज है । और हमको उसे इसी निगाह से देखना चाहिए, इस निगाह से नहीं देखना चाहिए कि इससे हम किस व्यक्ति को लाभ पहुंचा सकते हैं यह ठीक है कि अगर किसी व्यक्ति ने खोज की है तो उसको उसका लाभ मिलना चाहिए लेकिन बिना किसी प्रकार की खोज के केवल नाम रजिस्टर करा लेने से अगर कोई आदमी व्यक्तिगत फायदा चाहता है तो उसके लिए कोई औचित्य नहीं हो सकता और इस प्रकार की चीजों को रजिस्टर नहीं करना चाहिए । सिर्फ मौलिक खोज द्वारा पैदा की हुई चीजों का रजिस्ट्रेशन होना चाहिए और ऐसी चीजें पैदा करने वालों को लाभ हो । साथ ही हमें यह भी देखना चाहिए कि उस चीज से समाज को लाभ होता है या नहीं । अगर कोई आदमी किसी नाम का रजिस्ट्रेशन कराकर व्यक्तिगत लाभ उठाता है और उस से समाज का कोई लाभ नहीं होता तो उसका रजिस्ट्रेशन नहीं होना चाहिए। मैं निवेदन करूंगा कि प्रवर समिति इन बातों पर अच्छी तरह से विचार करे ।

**Shri D. C. Sharma:** Mr. Deputy-Speaker, Sir, I look upon this Bill as an ordinary citizen of India and not from the point of view of a legal pundit or of an industrialist or of a man of property. When I do so, I think that this Bill is going to bite much more than it can chew. By that I mean that in this Bill an attempt has been made to combine so many things, to bring together so many different elements that I feel the Bill when it is passed will not be as easy to implement as it should be.

On the floor of this House, I have always wanted comprehensive Bills, but I must say that so far as comprehensiveness is concerned, this Bill errs on the side of excessiveness. Though there is some kind of gain in unifying the law and consolidating the law, there is going to be corresponding laws so far as the administration of this law is concerned. I wish the Ministry should not have tried to go much farther than what commonsense, expediency or practical considerations dictated.

At the same time, when I read the notes on clauses, I find that everywhere reference is made to the ambiguity of the previous Acts, the Trade Marks Act of 1940 and the Indian Merchandise Marks Act of 1889. It has been said that these clauses have been added in order to remove these ambiguities. But I submit very respectfully that this Bill itself is not very free from ambiguity. There are certain terms and things in it which, I think, are as liable to ambiguity as the old Trade Marks Act and the Indian Merchandise Marks Act. I would, therefore, request the Joint Committee to see to it that the charge of ambiguity levelled against the old Acts should not be made to apply to the clauses of this Bill also.

Again, I wish to submit that this Bill has been compared with law of patents and the law of copyright and so on. To tell you the plain truth, we recently revised the law of copyright, and being a person who is interested in writing, though being a person who cannot describe himself as a writer, I know that though the law of copyright has been amended, it has been brought in tune with the International Convention of Berne and made up to date so far as international standards are concerned, that law of copyright does not provide any protection to any writers whose works are plagiarised. The law is lame in this respect; infringement of the copyright is not as easy to punish as it should be. I think the same thing applies more or less to the law of patents. I do not know whether this law will be made so tight—I do not want to use another word, because the hon. Deputy Minister of Finance objected to that word one day.....

**The Deputy Minister of Finance (Shri B. R. Bhagat):** Who objected? I did not.

**Shri D. C. Sharma:**....that the infringement of this law does not remain as easy as it is now, that the person who infringes the law gets arrested and punished and not that even the person who infringes this law goes Scot-free after discussions, debates and arguments in a court of law. Therefore, the other suggestion that I would like to make to the Joint Committee is that they should see to it that the infringement of this law does not remain so easy as the infringement of the law of copyright or other similar laws.

Then again, I would say one thing. Of course, this law is symptomatic of the kind of society in which we are living. We are living in a competitive society, in an exploitative society, and of all kinds of exploitation, I believe the exploitation on the part of industrialists is not always welcome. As stated in the Statement of Objects and Reasons, this is a law relating to industrial property. I believe that the industrialists are going to profit greatly by this law. But laws should never be one-sided; laws should never be a party to benefiting one group of population and not be a party to the good of another part of the population. Industrialists are few, but the people who enjoy the benefits of the industry or who consume the products of industry or who use what the industrialists make are many.

Therefore, in this Bill one has to balance the good of the few against the good of the many, balance the industrial advantage against the social advantage and balance the interests of the producer against the interests of the consumers. This is what has got to be done. But this Bill does not give any promise of that. This Bill is there only to protect the interests of those who have industrial property; it does not give any hope to those who are going to make use of that industrial property in one way or another.

As has already been said by some hon. Members, the Joint Committee should see to it that trade marks are the genuine indicators of the quality of goods. The trade mark should be a mark not only of exploitation, of profit, of monopoly, of commercial advantage; it should also be a mark indicative of the quality of the product. Unless that is done, I think we will be enacting a law which will,

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no doubt, be to the advantage of the industrial magnate and of the trader, but will not be to the advantage of the consumer. I would, therefore, suggest very respectfully to the Joint Committee that they should look at this law from that aspect also, from the aspect not only of the manufacturer, the maker and the trader, but also of the user and of the consumer. If they can balance the good of one against the good of the other, I think it will be a great advantage done to this country and to all of us.

Somehow I feel that according to this Bill, registration is going to be made—if I can use that expression—cheap. I think there is going to be a cheapening of the process of registration of these trade marks.

**Shri Supakar:** High fees will be charged.

**Shri D. C. Sharma:** But high fees are not the guarantee of high quality. It says:

> "It has been represented to Government that many valuable trade marks in use are now denied the benefits of registration on the ground that these marks do not satisfy the test of distinctiveness prescribed under the existing Act and that it is necessary to enlarge the field of registerability so as to entitle them to registration".

I was saying that the trade mark is a mark of distinctiveness and a high kind of distinctiveness. But there is going to be a kind of cheapening of this process by granting trade marks even to those who do not satisfy the test of distinctiveness.

Sir, I have been a teacher and our university suffered as a result of the Partition in 1947. We came over to East Punjab. Unfortunately, we had then no schools or colleges and no places to run the classes and the university. Only recently we have started building a university. We did not know where to accommodate the students or where to find all the teachers. We were in a very bad mess at that time. It was said that to keep the students occupied and busy we should institute what was called social service degree or certificate. They were very good at that time and met the needs of a particular social situation. I do not say that our universities did anything wrong by instituting these degrees. They were necessary to keep the young men at that time occupied within the social context of the time. But the social service degrees were not thought by some other universities to be equivalent to the normal certificates and degrees. It is because they did not have behind them that content of knowledge, scholarship etc. which they should have. Similarly, a trade mark should be the hall-mark of some distinctive quality.

**Shri C. R. Pattabhi Raman** (Kumbakonam): I am wondering whether trade mark has anything to do with standards. If anyone speaks about standards, they are totally different from trade marks. It is only concerned with registration, ownership of the mark.

**Shri D. C. Sharma:** Well, I think my hon. friend is right because a legal pandit would look at it from that point of view and say that trade mark is not an indicator of quality. Why do we buy Pears' soap?

**Shri C. R. Pattabhi Raman:** People will reject those soaps which are not good.

**Shri D. C. Sharma:** People will take a long time in rejecting them and when people want to reject them all the legal pundits would gather together in order to constitute a kind of a tribunal against the people.

I say that a trade mark is a mark of quality. But if you want to serve only the industrialists by legislation, you can do whatever you like. But I say that this trade mark should also be a thing which is productive of social good. You cannot have a trade

mark unless that trade mark also indicates some kind of a quality. Otherwise, what is the good of having a trade mark? For instance, you take Pear's soap. I hope I am not advertisting any kind of soap here. We think of Pear's soap; it has a trade mark but it is also an indicator of the quality of the soap. So, I think that these trade marks should not be made cheap. I feel that in this Bill we are going to make it cheap.

What is that due to? Take the financial memorandum. What does the financial memorandum say? It is said that the passing of this Bill will necessarily involve some additional expenditure but it is anticipated that all the expenditure of the Registry will be balanced by the fees to be realised on new items for which fees have been prescribed, the anticipated increase in revenue consequant on the introduction of Part B Register, and the resultant economy consequent on the amalgamation of the Patent Office and the Trade Marks Registry.

I have nothing to say against the amalgamation. It may promote efficiency. But the introduction of a part (b) register is not conducive to the realisation of the object. That is going to be a commercial concern set up to look after the other commercial concerns and this concern will justify its existence only by the number of trade marks issued and certificates issued because it has been said here that it will be self-supporting and self-paying. This kind of dependence is something of which I do not approve. I hope that some kind of a standard will be observed so far as licences are concerned.

We are living in an age of commercial advertisements. There is no doubt about it. As time progresses commercial advertisements will assume more and more important role in our life and in our economy. I do not want to enter into the ethics of commercial advertisement and I do not want to say anything about that. But something has got to be done, as is said in this Bill, with regard to false trade marks. Many suggestions have been made with regard to that. But if we think that the ordinary police should be there to detect these cases, it is going to be a vain hope. Of course I can see that the trader whose trade mark is infringed will be there to get at the person who has done it but I have found in the case of copyrights that generally you do not get at the person who has infringed the copyright. Our universities publish some books but these books are all published by some persons and they sell them in the market at much cheaper rates than the unversity books. The university has the authority; it can catch hold of these persons. The police is there. Everybody is there to help and yet we never have been able to get at the man who has printed those books in a surreptitious way. We have never done that.

**14 hrs.**

If you are going to have the sanctity of trade mark, if you are going to stand for the dignity of trade marks, how are you going to get at the persons who have false trade marks and false trade descriptions? I think the Bill will defeat its own end, because the police that you have at present will not be able to tackle this problem. Therefore, you have got to set up a special unit of police to deal with this. I think a special unit of police should be set up to deal with the Law of Trade Marks, the Law of Patents and Copyrights and so on. If you want to catch the persons who have false trade marks, you should do that. If you think that the needs will be met with things as they are now, I think this will be another law which will not be operative. It will neither be dead nor alive—I do not want to say that this law will be obsolescent or moribund. This law will not be very effective.

I say this because, if you look at the newspapers—the language newspapers or even the English newspapers—you will find that they are specialising in advertising patent medicines. They have also now taken

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to the advertisement of special kinds of food. Sir,, I was reading a book on advertisements on spurious drugs. I was told about a drug called Bunco and the advertisement was "Bunco will buck you up."

**An Hon. Member:** Did you use it?

**Shri D. C. Sharma:** This drug is not to be found in India; it is found in some other country—I do not want to mention its name. The man made millions out of this drug. When somebody asked him what magic was there in his drug, he said: "There is no magic. This drug is distilled water and, perhaps, that does some good to the people who take it". Of course, that drug cannot be harmful. Bunco was not harmful, but there are other kinds of drugs. I see victims of these drugs so many times. They complain against these drugs. It is because we have come to believe in commercial advertisements, these products are advertised in the papers and, somehow, we think that whatever is printed is very sacred and very valid, and is something to which we cannot take exception. Human nature is like that, not only in India but elsewhere also.

Therefore, this kind of thing has got to be controlled. I think Shri Naushir Bharucha proposed a solution to this problem which was, I should say, very moral in its approach. It is a moral solution—I do not want to mention the name of this kind of solution. This kind of remedy has been resorted to by many great persons. They have told the wrong-doers that they must make a clean breast of the wrong and that they should not be afraid of making themselves, so to say, conspicuous in the eyes of those on whom they have committed some kind of wrong. I know about an English poet, whose name I do not want to mention. He committed a wrong and his mother sent him to school giving him a slate on which was written that the boy had committed such and such a wrong. He went to the school with that slate round his neck on which was written the wrong that he had committed. The poet has said that that did him a lot of good. Sometimes, by making a clean breast of your crime or sin reduce its recurrence and you reduce its incidence in future.

Therefore, so far as these things are concerned, I think the punishment should be made as stringent as possible; because the man who gives spurious drugs is a poisoner of society, the man who gives spurious articles of food is a criminal of the highest order. I think the Select Committee will see to it that the punishment for these persons is made as stringent as possible.

I find that the Ministry has looked at this problem from the legal point of view—it is good—and also from the commercial point of view. They want to make the Registry Office a self-supporting institution. Well, it may be good; it may not be good, but I want that they should look at this whole problem from the social point of view. They should see to it that something is done so that it is productive of social good.

Sir, the period of renewal, which is now 15 years, has been reduced to 7 years. I do not know what the advantage is. The only advantage is what is given in the Financial Memorandum, that they will get more fees. I think this kind of approach should not be there.

Under clause 23, Sir, they can correct the register or certificate of registration. I tell you, this is a loophole for corruption. This is a loophole for many undesirable things. I hope very tight rules will be made for this kind of thing. I know that in our place when we want to correct the dates of births or other things, they lead to all kinds of undesirable things.

I would also like the Select Committee to go through clause 9 as carefully as possible. The requisites for

registration in parts A and B of the register are laid down in this clause. Of course, it may be perhaps useful from the administrative point of view to have two parts of the register, but I would say that the transference from one part to the other should be made as strict as possible.

I submit, Sir, that this is a good Bill, and it is needed by the exigencies of the time. Some amount of thought has been given to it and some painstaking efforts have been made to word its clauses. But I hope that the taint of ambiguity which is to be found in other Bills will not be there.

About caluse 21, I want to make one observation. This clause contains a useful provision—to prevent threats from scrupulous persons. It is a good clause. But I feel that the remedy which is proposed will not in any way help these persons against whom these threats are made. Therefore, if you want to save persons from the threats of unscrupulous persons, you should kindly make this clause a little more tight.

Sir, it is a very long Bill, a lengthy Bill. I hope the Select Committee will spend a good deal of time over it so that this Bill becomes useful not only as law, but also useful so far as the administration is concerned and also useful so far as the social good is concerned.

**Shri Balasaheb Patil** (Miraj): Mr. Deputy-Speaker, Sir. this is a Bill which codifies three different enactments as has been stated in the Statement of Objects and Reasons appended to the Bill. In the preliminary speech that was delivered by the Minister it was stated that it is intended to curb the fraudulent trade practices. Also it has been stated in the body of his speech that the Government has policy that have been recently developing in trade and commerce. It may be true to a certain extent that these are good objects, but the main and the most important object must be, as has bene stated by my hon. friend Shri Naushir Bharucha, the right that is given to society. Provision is made for a trade mark which gives the right to society, or an individual. There is one provision in the Bill saving that trade make may be registered with a view to give a right to society which may be formed in future. Therefore, it seems that this codified law will confer certain rights upon the society also.

It is protects the individual or society as against another person in competition in trade or commerce, it may be an individual gain, but the gain to the society must be seen first. We must know what will be the effect of a trade mark which is registered or which is certified upon, on the consuming public. Looking from that point of view, I agree with the remarks made by Shri D. C. Sharma that when application, for the registration of a trade mark is made, the Registrar should not only see to the formalities that are laid down, to the restrictions that are to be put by the Central Government, to see whether it should be forwarded to the Central Government or not to be forwarded, but also see, first of all, whether the quality is good and ascertain why this trade mark should be registered and what will be its effect on society.

Why I lay stress on this point is because there is an under-current traversing this Bill itself showing the intentions of the framers of the Bill. Looking to scheme of the Bill, we find that first of all there is a Registration of Trade Marks. Secondly, there are certification trade marks, false trade marks and many other things. We find from clause 2(1) (c) that a certification trade mark means "a mark adapted in relation to any goods to distinguish, in the course of trade, goods certified by any person in respect of origin,....mode of manufacture, quality, accuracy or other characteristic from goods not so certified.." etc. If we look to the scheme of this

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Bill, this certification trade mark is a secondary thing. It is to be registered in Part B and not in Part A. What is to be registered in Part A? They are the trade marks that are up-to-date on the register up to the passing of this law.

Furthermore, by the enactment of this measure we are going to have one type of registration in Part B. If we have the object of entering these certification trade marks in Part B, we should also follow the principle that underlies these certification trade marks and make some provision in the Bill itself to the effect that whenever there is an application, the Registrar should look to certain other things such as welfare of the society, etc. It is needed for two things: first of all, it will check the innumerable persons making applications. The Minister in charge of the Bill has given the number of applications also, and he has divided the country into four regions—western, eastern, northern and southern. The figures regarding the applications have also been given in the preliminary speech of the Minister. They come to thousands. That means so many persons come in and make applications, reserving the right, because, when once the right is conferred on them, it will remain for seven years. That right will protect them for that period in spite of their not trading in the particular goods or series of goods. Therefore, this will give them a right. So, if the Registrar looks to the quality of the goods and then register the trade mark, that will be a check on the number of applications.

Secondly—and this is most important—once some trade mark is registered, it is a valuable right of a person. It will remain there for seven years. There are other provisions for the rectification, modification, cancellation, etc. No doubt, there is also a right for the Registrar to cancel a trade mark, and there is the supreme right to the Central Government to cancel at any time. There are provisions to that effect, no doubt. But the thing is that those provisions will be used only in rare cases whenever there is a grave complaint made by so many persons against the use of certain trade mark. The point is this. Supposing, for the first time, the trade mark is used by a certain person or an association of individuals, it comes in the market for a few years. For a few years the quality is very fine, and this indeed happens in the field of drugs and foodgrains. The quality may be very fine and good for the first few years. Thereafter it deteriorates. The consuming person and the person who manufactures the goods or the person who gets the trade mark feels that those goods are sold because of the trade mark. Take even the case of cigars and cigarettes. We find that since there is a trade mark for them, the persons are going in for them. That means these goods have some quality. The trade mark is supposed to guarantee the quality contained in those goods. But, supposing a person uses those goods whose quality remains good for only two or three years. The question is whether the registered trade mark should be in Register A or not. From this point of view also, there must be some provision in the Bill. The Registrar should make an enquiry about the things that are given the trade mark. He must find out whether the goods for which the trade mark was given continue to have the same quality throughout the period of seven years, and if he finds that at the end of four years the quality of the goods does not remain the same, as it was originally, and that something has been added, then the trade mark should be expunged from Part A register. From this point of view also, the principle that must be adopted is to protect the consuming society.

The next thing is about the question that was raised about the jurisdiction. Looking to the number of applications,

it is found that the applications are made by persons living in every part of the country. The applicant may be living in Kashmir or in some place in the eastern region. We find from clause 5 that for the purpose of this enactment there shall be established a Trade Marks Registry. Sub-clause (2) of clause 5 says that the head office shall be at Bombay and a branch office shall be at Calcutta. The Bill, as it is before us, says that there will be one main office, the head office, and one branch at Calcutta. In the speech that was delivered by the Minister, it was stated that there is a proposal to open new branches of Trade Marks Registry and to provide that the High Court having jurisdiction over the State in which a trade marks office is situated, will have jurisdiction over such office, within the territorial limits. The number of places of Registry is under consideration. The Minister has stated that there will be four places. He has added Madras and Delhi to the list that is given in the Bill. What I feel, and the reason given by the Minister himself, is this. Supposing a person stays far away from Bombay, and makes an application. Then he has to run to Bombay and give evidence before the Registrar. If there is an objection he has to come again to Bombay and answer the objection that is raised. Supposing there is a question of rectification. Supposing, as the Bill itself says, a person is charged for using a false trade mark, then the only defence that he can raise is that the trade mark has not been registered legally. That is the defence given by this Bill. Though it was not provided in the previous enactment, it has been inserted in this Bill. Therefore, a person has to run again to the Bombay High Court, and the proceedings may go on for years to come, because there are several cases pendings before the High Court, in fact, before every High Court in India due to the increase of work. They remain there for several years. There is anxiety for the person, as well as expenditure. Therefore, it was stated by the Minister himself that there should be new branches. So, I submit that as there are so many applications, let there be so many branches, say, one at Nagpur. This is reiterated in the report that is given by the Judge himself. That will facilitate the work as well as minimise the work of the registrar and will give easy approach to the persons who are making the applications.

I now come to the procedure that is laid down in this Act. There is a funny thing in section 103. Suppose I want to make an application. The section says that I should approach the registrar and get his advice. It says:

> "The Registrar may, on application made to him in the prescribed manner by any person who proposes to apply for the registration of a trade mark....give advice as to whether the trade mark appears to him *prima facie* to be inherently adapted to distinguish or capable of distinguishing, as the case may be."

So, the Registrar will give advice to a person who makes an application. Of course, there may be some rule made by the Central Government for fees for the advice and other things in this Bill. His views may be final; I do not know. Because, the power has been reserved to the Central Government. It is a delegated power of the Government.

Then, in the second half of the section, it is stated:

> "If on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice was given.."

Suppose a person goes to the Registrar and get his advice after spending money and time. After he has made his application, what happens? Then, within three months he must make an application. That is the restriction put there. It further says:

> "..the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the

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trade mark is not adapted to distinguish, or is not capable of distinguishing...."

Now, under the first part of this clause, an advice is to be given. The Registrar gives an advice in the affirmative. Then, under the second part, he says: no. Then, the section says that he will not be charged any fees for registration. What I submit is that you make the provision or recast the provision in such a way that the Registrar will make the investigation and consideration first and then will give a full length advice, so that all the botheration that will follow after making the application will not be there.

Then, even after the advice, there is a lengthy procedure after section 18 and onwards as to how the application is to be made and then there are formalities and formalities. Then objection has to be raised by the other person and then the advertisement. What I feel is that as soon as the application is made, before the objections, there must be advertisement. The scheme as it is, is: first of all application, then objections within three months, then consideration of the objection by the Registrar, giving order, then the advertisement. What I feel is that as soon as an application is made, the advertisement should be there so that everybody will know about the application and will have a chance to file objections, which will save time and money. From this point of view there should be a change in the scheme, in the procedure. The procedure should be such that the person will be harassed to the minimum. He should spend as little as he possibly can.

Further, in this codified Bill, it is stated by the hon. Minister himself, there are certain provisions in respect of the civil rights of the persons who get registered trade marks, and there are also ciminal provisions. Now suppose a person is aggrieved by the infringement of his trade mark. Then he has to go to the civil court. He cannot go to the criminal court, because there are provisions under which only when the Registrar makes a report to the criminal court, there will be criminal charges and proceedings will be instituted. Suppose a person is accused of falsification or using the trade mark of another. If the aggrieved party goes to the civil court, what provision is there? There is a provision that it shall be instituted in any court inferior to the District Court. The words used are "inferior to the district court". There are four or five courts inferior to the district court. There are first class, second class, third class, senior division and other courts also. Therefore, when we have loose words here, there will be conflicts in civil cases. In civil cases there are three stages. First of all, there is the injunction against the infringement; secondly, there will be damages for the rights infringed; and thirdly, the question of the profits that the other person might have got. Now, this amount may run into thousands and the junior courts will not have jurisdiction, because they are bound by the jurisdiction of Rs. 10,000 or Rs. 15,000. Therefore, these words ought to be changed.

Then, this is a special law. It confers certain powers on certain courts. It confers powers on the Registrar. It confers powers on all High Courts to hear appeals from the Registrar. There is provision for application to a civil court. Even then, a party can file a claim under this law only. There is no provision which says that the provisions of the Civil Procedure Code will apply. That is very necessary. Even if the right is given under the special law, there must be some provision for appeals from it. It may be stated that an appeal will lie, as provided in the C.P.C. That is also necessary.

Then I come to another important matter. Under the provisions of this Act, most of the powers have been reserved to the Central Government. If we look at section 69, we find that

the Central Government is vested with vast powers. It says:

> "The Central Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds....."

The clause further says:

> "..and neither a High Court nor the Registrar shall have any jurisdiction to make an order under section 56 on any of those grounds."

The Minister has stated in his speech that Government will adopt a certain policy towards the trade and commerce. Once the policy is there, once the statement of that policy is circulated and advertised, what is the need for the Central Government having these powers in their hands?

Furthermore, if a person is living in a corner of this vast country, he has to run up to Delhi, appear before the Central Government and give evidence and then get redress, if at all it is given to him. I would suggest that first of all the Government should formulate certain principles of its policy towards trade and commerce and then these powers must be vested either in the Registrar or in the High Courts, so that the persons aggrieved may get redress very easily and that also at a very low cost.

Further, what about the procedure before the courts, Registrar, High Court and the Central Government? The procedure that is laid down is giving evidence on affidavits only. No doubt, there are some advantages in giving evidence on affidavits, because it saves times, money and so many other things. But it gives a one-sided picture. Whenever a person makes an affidavit, he makes it before some honorary Magistrate or a *nazir* or some person appointed in that behalf. He exclusively allows the witnesses to go there and speak and that can be produced before the court at any time.

**14-30 hrs.**

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

This has no advantage of cross-examination because after all in any case, which could be said to be a judicial case, wherein we have got to give justice—and justice is to be given—the most important thing is that we have to see the truth in it and in order to get the truth, cross-examination is utterly necessary. Hence, what I feel is that instead of saying that evidence may be given on affidavit and thereafter if the courts think that evidence must be given in person on oath, then he should take it it should be changed that the courts should take the evidence orally following all the procedure that is laid down in the Civil Procedure Code or the Criminal Procedure Code and thereafter, if necessary and if it is found difficult to get the persons before the court, then only by affidavit. This way the provision must be made in this Act; otherwise true justice will be denied to the persons that are aggrieved under this new codified Bill.

Much has been said about the spurious products in the trade. There are provisions in regard to that. Suppose, there is a false trade mark or certain persons make preparations in drugs or goodgrains and if they are checked then first of all they will be tried in a criminal court. Conviction will be there if the charge is proved or there will be acquittal. Secondly, their goods will be confiscated. There is also provision to that effect in the clauses. But, will it be sufficient? A doubt has been expressed by so many hon. Members here that this will not be an adequate provision for checking such type of unhealthy trade practices which are on

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a large scale practised in India. All these things must be looked into by the Select Committee and I hope that the Select Committee will do justice to all these grievances that are put forth.

**Shri Kanungo:** Sir, the rather prolonged debate on this simple motion for committal of the Bill to the Select Committee has made my task much easier, because the necessity and the utility of the measure has been appreciated all round. The purpose of remitting a Bill of this kind to a Select Committee is to have it examined carefully so that more elegance and more accuracy can be brought into the provisions. No law can be perfect, but it should be an improvement upon the particular law which it wants to replace and that is the only excuse which I have of putting this particular Bill before the House.

I would humbly submit that the purpose of this particular measure is limited and other purposes which are necessary and laudable by themselves should not be tagged on to it. For example, the control of drugs is provided for by a separate statute which has been discussed and passed by this House. There is no doubt that passing of material as drugs which has not the necessary potency or which is deliberately adulterated is certainly heinous, but these tendencies can be checked and are meant to be checked by legislation which is already on the statute book. If they are inadequate and if they do not serve the purpose, then I very humbly submit that attention should be paid to refining, amending or enlarging the scope of such legislation. The same applies to food. In any case, we have to remember that apart from the legislation which the House passes or which is already on the statute-book, the right to a trade mark also flows from common law. In other words, the right to the use of a trade mark—a distinctive mark—can be sustained under given circumstances by common law. All that is required—to provide by this legislation is to define the rights and privileges and the liabilities and obligation to parties who take the precaution of registration. Therefore the purpose being limited I would very earnestly submit to you not to consider the extraneous matters however laudable they might be in connection with this particular Bill.

I would submit that though trade mark is described as industrial property—certainly it is industrial property—it is more or less an intangible property in the sense that the value has got to be built up by assiduous labour spent on trading and establishing the integrity of the trader. The other aspects of it are combined in nature. One hon. Member suggested that perhaps such property may not be conducive to the interests of society as a whole. I do not see how that situation can arise because the protection of a trade mark gives an incentive to traders of integrity, to traders who have been able to build up service to their customers to earn the benefit of their organisation, their work and their integrity. To that extent it is certainly a service to the society.

Further, a trade mark gives the consumer the facility to distinguish between known qualities and others. The reputation of a trade mark can be built up only by quality, though the qualities and other factors can only be described and built up by other legislation for which provision has been made in the statutes, not in this particular one. The consumer has the advantage of identifying particular goods by a particular trade mark which to him offers the qualities which are associated with the product and the proprietor.

I need not dilate upon the various procedural matters and other points raised by many of the hon. Members because the Joint Committee which is comprised of Members of both the Houses will go into them in great detail. In the matter of jurisdiction

I might only submit that this matter has been made more convenient from the point of view of the persons who register and who own the property and it is an improvement upon the existing law of 1940.

With these words, I commend the motion for the acceptance of the House.

**Mr. Chairman:** The question is:

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

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

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

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

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

*The motion was adopted.*

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## INDIAN STAMP (AMENDMENT) BILL

**The Deputy Minister of Finance (Shri B. R. Bhagat):** Mr. Chairman, Sir, I beg to move:*

"That the Bill further to amend the Indian Stamp Act, 1899, be taken into consideration."

As the House is aware, the Bill was first introduced in the Lok Sabha, on the 26th April, 1958 and it was moved for consideration and also partly discussed. But, in order to provide for an important constitutional provision, it had to be withdrawn. It has been introduced again. This is a simple Bill. I have already on an earlier occasion spoken about it and I do not propose to taken any further time of the House in repeating what I said a few days back.

With these words, I move.

**Shri Naushir Bharucha** (East Khandesh): May I just invite the attention of the hon. Minister that this Bill was withdrawn because the recommendation of the President was not there. He must have, no doubt, obtained the recommendation. But such recommendation is not to be kept in the Minister's pocket. It has to be conveyed to the House. It has not been conveyed to the House.

*Moved with the recommendation of the President.