[Shri Morarji Desai]

payment to Uttar Pradesh for common works of Gandak project. An additional recovery of Rs. 2.16 crores over and above the amount assumed in the original budget out of the loans advanced by the State Government has also been provided. I might mention in this connection that the outstandings of the loans advanced by the State Government now are of the order of Rs. 55 crores, of which short-term loans to agriculturists due for recovery this year amount to Rs. 47 crores. However, for the present a recovery of Rs. 22.66 crores in all only has been assumed but with proper organisational effort it should be possible to recover more. The Budget now shows an overall deficit of Rs. 1.5 crores but it is hoped that it will be possible to cover this during the course of the year by recoveries of outstanding dues.

The Budget includes a total Plan provision of Rs. 65.76 crores as against an outlay of Rs. 62.75 crores in 1967-68. In addition, the State Electricity Board will find Rs. 5 crores from its own resources for covering its Plan expenditure. While drawing up the Plan, every effort has been made to meet the requirements of the priority sectors of Agriculture, Irrigation and Power. The provision for Agricultural production is Rs. 3.23 crores and for Minor Irrigation Rs. 10.47 crores. Irrigation, including Multipurpose River Valley Schemes, accounts for Rs. 18.26 crores, flood-control Rs. 1.5 crores and Power, Rs. 10.75 crores. The total Plan Outlay of Rs. 70.76 crores will be financed to the extent of Rs. 53.5 crores by Central assistance.

It will not be out of place to add that in the field of Agricultural production, significant results were achieved in the State in 1967-68 due to the special measures taken during the year. It is also expected that given good weather conditions, better progress may be expected in 1968-69. The main strategy for agricultural production this year is to extend the area under irrigation and to maximise the production of foodgrains in the irrigated areas through High Yielding Varieties and multiple cropping in order to achieve a production potential of 89.51 lakh tonnes by the end of 1968-69. Increased emphasis is also being given to lift irrigation, particularly by exploiting ground water resources and it is expected that an additional irrigation potential of 4.5 lakh acres will be created this year. An area of 11.38 lakh acres was covered during 1967-68 under the High Yielding Varieties programmes and the target for 1968-69 is 15.31 lakh acres. The consumption of chemical fertilisers has also shown a marked increase and is expected to be 5 lakh tonnes in 1968-69. Over 15,000 agricultural pumps were energised during the last year and this incidentally exceeds the total number of pumps energised during the previous 15 years; and another 15,000 pumps will be energised during the current year. High priority has also been given to the completion of the major irrigation schemes under execution and with the additional Central assistance for the Gandak project already agreed to, the execution of the project would be expedited.

Sir, the House is aware of the ordeal that Bihar has passed through because of the severe drought conditions in the State in successive years. Relief measures had to be undertaken on an unprecedented scale and the assistance provided by the Government of India for this purpose amounted to as much as Rs. 18.5 crores in 1966-67 and Rs. 41.74 crores in 1967-68. A good monsoon last year has made a considerable difference to the economy of the State and the well-being of the people. Nevertheless, much remains to be done, if the economy is to be placed on a sound footing so that the sufferings of the last two years are not repeated. I have no doubt that given stable conditions in the State, the people of Bihar will prove themselves equal to the task of improving their economic condition through self-help and determination.

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*The Lok Sabha adjourned for lunch till fourteen of the Clock.*

*The Lok Sabha re-assembled after Lunch at five minutes past Fourteen of the Clock.*

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

STATUTORY RESOLUTION *RE*: INDIAN PATENTS AND DESIGNS (AMENDMENT) ORDINANCE; INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL; AND PATENTS BILL

MR. DEPUTY-SPEAKER : Mr. Dandeker.

SHRI N. DANDEKER (Jamnagar): I take it that the procedure will be that I make a formal motion...

MR. DEPUTY-SPEAKER: Yes. You first move your Resolution.

SHRI N. DANDEKER: I beg to move:

"This House disapproves of the Indian Patents and Designs (Amendment) Ordinance, 1968 (Ordinance No. 8 of 1968) promulgated by the President on the 6th July, 1968."

MR. DEPUTY-SPEAKER: Now the hon. Minister may move both the motions together.

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (SHRI F. A. AHMED): I beg to move:

"That the Bill further to amend the Indian Patents and Designs Act, 1911, be taken into consideration."

This Bill is to replace the Indian Patents and Designs (Amendment) Ordinance, 1968 (Ordinance No. 8 of 1968) promulgated by the President on the 6th July, 1968.

MR. DEPUTY-SPEAKER: The hon. Minister may move the other motion also simultaneously. Then he can start.

SHRI F. A. AHMED: I beg to move:

"That the Bill to amend and consolidate the law relating to Patents be referred to a Joint Committee of the Houses consisting of 33 members, 22 from this House, namely :—

(1) Shri Rajendranath Barua
(2) Shri C. C. Desai
(3) Shri B. D. Deshmukh
(4) Shri Kanwar Lal Gupta
(5) Shri Hari Krishna
(6) Shri Amiya Kumar Kisku
(7) Shri Madhu Limaye
(8) Shri M. R. Masani
(9) Shri G. S. Mishra
(10) Shri Srinibas Mishra
(11) Shri Jugal Mondal
(12) Shri K. Ananda Nambiar
(13) Dr. Sushila Nayar
(14) Shri Sarjoo Pandey
(15) Shri P. Parthasarathy
(16) Shri T. Ram
(17) Shri Era Sezhiyan
(18) Shri Diwan Chand Sharma
(19) Shri Maddi Sudarsanam
(20) Shri Atal Bihari Vajpayee
(21) Shri Ramesh Chandra Vyas
(22) Shri Fakhruddin Ali Ahmed, and 11 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 second week of the next session;

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

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 11 members to be appointed by Rajya Sabha to the Joint Committee."

So far as the first Bill is concerned, I would like to inform the House that I am introducing this Bill with the purpose of replacing the Ordinance which was passed on the 6th July, 1968. The reasons for promulgating the Ordinance have already been explained in the statement which was laid on the Table of the House by me on the 22nd July, 1968.

The Defence of India Rules, 1962, were amended in May, 1963 vesting the Central Government with powers to give directions to the Controller of Patents and Designs with regard to the actions to be taken on applications for patents for inventions of any specified class. In exercise of these powers, the Central Government directed the Controller to proceed with the applications for patents for inventions relating to good drugs and medicines only up to the stage of their acceptance and not to take any further action on them. The time-limits prescribed in the existing Act for taking different actions were extended by the Controller in exercise of the powers vested in him under the Defence of India

[Shri F. A. Ahmed]

Rules, 1962. There were, however, 5600 applications for patents pending on the 1st July, 1968 which were subject to the directions given by Government. The time-limits prescribed in the existing Act for the acceptance of most of these applications and sealing patents on them would have expired on 10th July, 1968 and they would have become time-barred. It was therefore, necessary to make provisions for granting extension of time to keep such applications alive.

Hon. Members may appreciate that the purpose of keeping grant of patents in the field of food, drugs and medicine in abeyance pending the coming into force of the new Patents Act is that such patents when granted would be subject to special provisions regarding term, Government's rights with regard to their use or acquisition in public interest and grant of licences as of right to interested parties which had been contemplated to be made in the new Patents Act.

The Patents Bill, 1967 was introduced in this House on the 12th August 1967 and this contains special provisions. Till the Patents Bill, 1967 is enacted, it is necessary to amend the Indian Patents and Designs Act, 1911 on the same lines as has been done by the ordinance so that the grant of patents in the field of food, drugs and medicines on the pending applications and applications which may be made hereafter is kept in abeyance. The Bill also contains provisions empowering the Controller and the Central Government in maintaining secrecy with regard to the inventions relevant for defence purposes and imposition of penalties in case of contravention of the Controller's directions.

Hon. Members will see that the present Bill proposes to amend the Indian Patents and Designs Act, 1911 by inserting new sections 78D to 78E in it. The clauses of the Bill are self-explanatory and it is not necessary to elaborate on them. Therefore, I move that the Bill to replace the ordinance be taken into consideration.

Now, I would like to say a few words about the other Bill also. I would like to point out that the Indian law which first recognised the need for giving protection to inventions is more than a hundred years old. The Exclusive Privileges Act, 1856 provided for giving statutory recognition for the grant of a right to an inventor to exploit his invention on an exclusive basis for a specified period of time in return for his disclosing the details of his invention to the public. This law was largely based on the corresponding law of the U.K. at that time. It was amended from time to time to conform to the subsequent changed conditions. The grant of patents in respect of inventions was for the first time introduced in the Indian Patents Act, 1911 which was placed on the statute-book on 2nd March, 1911. This Act also underwent several changes, the latest being the Indian Patents and Designs Act of 1953.

Even though there has been patent protection for inventions in this country for several decades, this has not resulted in stimulating inventions on as large a scale as was expected. This was recognised immediately after the attainment of Independence and it was felt that the matter required investigation. In 1948, a committee known as the Patents Enquiry Committee was appointed to review the working of the Indian Patent law and to make recommendations to Government for improving the system. This committee submitted its report in 1950 and on the basis of the report, the Patents Bill, 1953 was introduced in the Lok Sabha on 7th December, 1953. While the Bill was pending, a further examination of the law revealed that the Bill would need extensive amendments and consequently it was not proceeded with and was allowed to lapse on the dissolution of the First Lok Sabha.

In 1957, the Government of India requested Shri N. Rajagopala Ayyangar who was then a judge of the Madras High Court and later retired as judge of the Supreme Court to examine the whole question again and advise Government as to how best the law should be modified in order to secure the use of the patent system to the best advantage of the country. In his comprehensive report on the revision of the patent law submitted to Government in September, 1959, Shri Ayyanagar dealt with in detail all important aspects of the patent system, the object and basis of patents grant, its effect on the economy of industrially underdeveloped countries etc., and came to the

firm conclusion that even in developing countries like India, the patent system had an effective role to play and that it should be retained. He, however, recommended that several modifications and improvements should be made in the Patents Law whereby the system would become an effective tool for the industrial growth of the country.

The Patents Bill, 1965 based mainly on the recommendations contained in his report and incorporating a few more changes in the light of further examination made particularly with reference to patents for food, drugs and medicines was introduced in the Lok Sabha on the 21st September, 1965. The Bill was referred by both Houses of Parliament to a Joint Committee of Parliament for further consideration and report. The Joint Committee went into the provisions of the Bill with very great care; after examining the voluminous memoranda and the representations submitted to them by various organisations and individuals, both Indian and foreign and the evidence given before them, the Joint Committee presented their report with the amended Bill to the Lok Sabha on the 1st November, 1966. The Patents Bill, 1965 as reported by the Joint Committee was formally moved for consideration in the Lok Sabha on 5th December, 1967 but could not be proceeded with for want of time and consequently it lapsed with the dissolution of the Third Lok Sabha on 3rd March, 1967.

As patents have assumed a role of growing importance in industry in India and abroad, the Government of India lost no time in introducing the necessary legislation on patents in the new Parliament. Accordingly, the Patents Bill, 1967 containing comprehensive provisions to amend and consolidate the law relating to patents and also embodying the amendments recommended by the Joint Committee referred to earlier was introduced in this House on the 12th August, 1967. The Bill as introduced has raised misapprehensions in the pharmaceutical industry and a number of representations have been sent by the organisations of pharmaceutical producers of India and others. Government after giving careful consideration to these representations feel that the Bill will make significant contribution to the development of industries including the pharmaceutical industry. It is hoped that investment both Indian and foreign for establishing new industries and developing research facilities will be forthcoming in a larger measure.

I might explain that the present Bill seeks to replace provisions in the Indian Patents Act, 1911 relating to patents. The provisions of the present Act relating to designs will continue to be in force till the subject of industrial designs has been examined and such amendments to the law as may be found necessary are brought before this House.

I shall now briefly mention some of the important provisions of the Bill.

The Bill makes provision for bringing the different clauses into force in a phased manner. The reason for this is that the Bill provides for a world-wide search for novelty which will enhance the value of the Indian patents and bring them on a par with patents of any advanced country.

Further, the patents office would have to be of appreciable strength both in number and quality of its staff to undertaking exhaustive world-wide searches. This would take some time, before bringing into effect all the relevant provisions of the law. For example, clause 13 (2) will have to be deferred till the patents office is suitably equipped for discharging the new responsibilities efficiently.

The Bill seeks to codify the kinds of inventions which are not patentable. So far, patentability has been left to be governed by commonsense, but with the rapid expansion of technological development and the broadening of the area of inventions and discoveries, it is essential that there should be a specific provision in the law itself for this purpose.

The other important feature of the Bill is the special provision which it incorporates in regard to patentability of inventions relating to food, drugs and medicines or chemicals. Patents shall be granted only in respect of process of manufacture, and in respect of product when produced by such process but not for the product *per se*. This is in clause 5. It is considered that in the interest of further development of inventions, it is not advisable

[Shri F. A. Ahmed]

to grant patents in respect of substances in the field of food or drugs, medicines or chemicals.

The second series of provisions in the Bill which are intended to secure that the patented inventions are worked in this country relate to compulsory licensing. Our past experience is that the provisions in the present Act relating to compulsory licensing have not resulted in the starting of new industries based on the patents to a considerable extent. In order to make the compulsory licensing provisions work effectively in practice, the Bill extends the grounds on which compulsory licensing could be ordered by the Controller of Patents.

The next important new provision in the Bill relates to revocation of a patent on the ground of non-working. This provision is intended to induce patentees to take prompt steps for working their patents in India either by themselves or by licensing others for the purpose. The very large majority of Indian patents are owned by non-Indians and the fact that many of these patents are not worked in India is really one of the grave drawbacks of the working of the patent system in India. The Bill provides that where in respect of a patent a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the grant of a compulsory licence, apply to the Controller of Patents for the revocation of the patent on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented article is not available to the public at a reasonable price. This provision also stipulates that applications for revocation of patents on the ground of non-working should be disposed of by the Controller of Patents ordinarily within a year.

The Bill includes provision for the conclusion of reciprocal bilateral arrangements on a large scale with foreign countries for the mutual protection of inventions on the analogy of the provisions contained in the Trade and Merchandise Marks Act 1958 in respect of trade marks. These provisions are designed to revise the present section 78A of the Indian Patents and Designs Act of 1911 which is confined to reciprocal arrangements with the U.K. and some of the Commonwealth countries only.

The Bill also seeks to enable Government to authorise the import of a patented article in certain specified circumstances by a licence of a patent (other than the patentee) subject to various conditions including the payment of royalty to the patentee. The provision is merely an enabling one so that when considered absolutely essential in the public interest that the patented article should be imported at a reasonable price, the Government has the power to do so. I may point out, however, that in such circumstances the patentee will receive reasonable royalty.

The Bill also gives power to Government to acquire an invention for a public purpose by notifying its intention in that behalf on payment of compensation to the patentee to be determined in such manner as may be agreed upon between the parties or in default by a reference to the High Court. This is an enabling provision which may be utilised only when circumstances warrant and is also contained in the patent law of Australia.

The Bill before the House also provides that appeals from the decisions of the Controller of Patents in all cases, including compulsory licences, would lie to the High Court. This should give satisfaction that normal judicial rights of appeal are preserved. The Bill also includes a provision that every such appeal shall be heard by the High Court as expeditiously as possible and that an endeavour should be made to decide an appeal within a period of twelve months from the date on which it is filed.

Before I conclude, I would like to emphasise that the several provisions of the Bill are the result of long examination and careful study of the various points of view. The main objective before Government in introducing the Bill has been the acceleration and promotion of research, inventions and industrial growth of the country through a well-regulated patent system. I have no doubt that poised as we are for a big spurt in industrial development, the patent system is destined to play a significant part in it, giving a meaningful inducement to inventors and investors and safeguarding the national requirements of the country and its economic field.

I move.

MR. DEPUTY-SPEAKER : Resolution moved :

"This House disapproves of the Indian Patents and Designs (Amendment) Ordinance, 1968 (Ordinance No. 8 of 1968) promulgated by the President on the 6th July, 1968."

Motions moved :

"That the Bill further to amend the Indian Patents and Designs Act, 1911, be taken into consideration."

"That the Bill to amend and consolidate the law relating to patents, be referred to a Joint Committee of the Houses consisting of 33 Members, 22 from this House, namely :—

1. Shri Rajendranath Barua
2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Amiya Kumar Kisku
7. Shri Madhu Limaye
8. Shri M. R. Masani
9. Shri G. S. Mishra
10. Shri Srinibas Mishra
11. Shri Jugal Mondal
12. Shri K. Ananda Nambiar
13. Dr. Sushila Nayar
14. Shri Sarjoo Pandey
15. Shri P. Parthasarathy
16. Shri T. Ram
17. Shri Era Sezhiyan
18. Shri Diwan Chand Sharma
19. Shri Maddi Sudarsanam
20. Shri Atal Bihari Vajpayee
21. Shri Ramesh Chandra Vyas
22. Shri Fakhruddin Ali Ahmed, and 11 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 second week of the next session;

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

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 11 members to be appointed by Rajya Sabha to the Joint Committee."

There are some amendments by way of motions for circulation.

SHRI SHIVA CHANDRA JHA (Madhubani) : I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st November, 1968." (10)

MR. DEPUTY-SPEAKER : Shri B. S. Sharma and Shri Kushwah are absent. All these motions and the Resolution are before the House.

SHRI N. DANDEKER (Jamnagar) : I wish to divide my comments clearly into two parts. The first is concerned with the Ordinance and the amending Bill which seeks to embody the Ordinance into law, and the other is concerned with the main Bill which is to be referred to a Joint Committee.

Taking the first part, it is interesting to take a quick look at the history of this matter, because it is my submission that the extension under the Defence of India Rules of the powers of the Central Government to embark upon a delaying action in respect of patent applications concerning foodstuffs, drugs and medicines was a deliberate misuse of the powers under the Defence of India Rules, and the embodiment of those powers in the Ordinance and the continuance of the misuse of those powers through an amending Bill is what I object to.

Originally, when the Defence of India Rules and this particular Rule 47 was brought into operation, the subject matter of intervention,—whether by the Controller of Patents or by the Central Government,—was concerned with matters relevant to the defence of the country, and to that one cannot possibly take objection. In 1963, however, it suddenly dawned upon the then Minister of Health,—the Minister in those days being Dr. Sushila Nayar,—that she wanted to have a Patents Act whereby drastic changes were to be

[Shri N. Dandeker]

made in the law relating to Patents concerning foodstuffs, drugs and medicines. But instead of proceeding about the matter in that way, which would have been honest, what the Government did was to misuse the powers under the Defence of India Rules for the purpose of merely delaying all applications for Patents in regard to these three matters. And today, even at the time of this Ordinance, at the time that is to say when the Defence of India Act and rules ceased to be operative and therefore the Ordinance became necessary, something like six thousand applications relating to food, drugs and medicines, having nothing whatever to do with defence, were stalled, and are in fact now pending.

Meanwhile, Sir, when this misuse of the powers under the Defence of India Rules came to the notice of the Pharmaceutical, food and other industries, protests were made to the then Prime Minister Shri Lal Bahadur Shastri in 1964. And when the late Shri Lal Bahadur Shastri was abroad in 1964, representations were made that this kind of bottling up of these applications was meaningless and that advertising and sealing of those Patents which were eventually to be admitted would involve a backlog of work that would choke the whole thing and meanwhile progress will be impossible. As a result of the discussions that the then Prime Minister Shri Lal Bahadur Shastri had in foreign countries during his visit in 1964, executive instructions were issued that the examination of these applications should proceed and everything else should be done except only the sealing of those Patents which were to be granted. In other words, there was a plain admission of misuse, even though there was no revocation of the particular extension of the Defence of India Rules that I am speaking of. But there was a plain admission that the whole thing had been misused and the misuse should be minimised.

Now, Sir, what is sought to be done is that, instead of quietly burrying this thing under the expiry of the Defence of India Act and the application of those Rules, they seek to continue by the promulgation of the Ordinance and by the embodiment of that Ordinance into this Bill what was plainly totally wrong and irrelevant from the point of view of defence which was the sole purpose of these Defence of India Rules which expired some time ago. This Ordinance therefore is one which continues something which should never have been and the Bill is one that continues something that should never have been in the Ordinance and in the Defence of India Rules. I have, therefore, moved a motion to the effect that this House disapproves of this particular Ordinance, with the consequent effect, if this motion is carried, that this amending Bill could not proceed further. I have got here considerable data on the results of this kind of thing. I know personally also that a considerable development in the food industry and pharmaceutical industry and the manufacture of drugs and so on could have been made in this country if the patents on those applications had been proceeded with. There has been a considerable set-back in the manufacture of new types of foodstuffs and drugs and medicines which could have been undertaken but for this bottling up of these applications merely because the Government had in view in 1963, in 1964 and still has in view the amendment of the patent law embodied in the new Patents Bill that is going before the Joint Committee and which will eventually become law. I do not think that this House has ever been ungenerous in the matter of allowing Ordinances to be passed, where the Ordinance seeks to do something, as in the case of the expiring Defence of India rules to embody something in the interest of defence. But here there was just nothing at all to do with defence. I have, therefore, moved the motion that this Ordinance be disapproved, the consequence of which is that this amending Bill will also go.

I have got some amendments to this Amendment Bill. But I should now like to come straight to the main Bill which is to be referred to the Joint Committee. Since this matter is to be referred to the Joint Committee, I do not propose to make any lengthy observations. But I should like to touch upon some of the salient features to which the hon. Minister has referred.

SHRI K. N. TIWARY (Bettiah): It has passed through the Select Committee once.

SHRI N. DANDEKER : In that case, it should have been brought exactly as the Select Committee had recommended. But they are going to make changes as they are not satisfied with what the Select Committee has done; they are making changes. Therefore, I am entitled to comment upon the Bill.

The Bill still suffers from a total misunderstanding of the objects and purposes of the law relating to patents. Large investments in research merely lead, after a considerable amount of expenditure, to possibly just one or two inventions either relating to products or relating to processes. In all the countries that have made scientific and technological progress it is possible in respect of both these matters—both as regards products as well as the processes—to take out patents. But in the very fields in which we want the largest amount of research investment, we are not going to allow product patents at all. I refer to patents in the matter of foodstuffs, drugs, medicines. We are going to allow only process patents. This, it is suggested, will result in better scientific research and more inventions and so on! I really do not follow this argument. I have been talking with people in Government and outside Government, connected with the pharmaceutical industry, connected with the cattle-feed industry, human food industry and so on, and they laugh at the proposition that if you do not give a patent for the product but give only a patent for the process, you are going to have in this country a tremendous upsurge of inventions; it beats me too. I know something about the magnitude of investment that is involved in research, how much of that investment is futile, because out of 20 different lines of research, may be two result in something that has commercial potential. Then, when you have got two or three for commercial potential, there is a pilot plant investment project to see whether you can produce it on an industrial scale. And when you have done that, there is again involved a tremendous investment in market survey, market testing and market pushing to know whether further investment in the particular product on the industrial scale would be worthwhile. All these risks have to be taken; and when a risk is to be taken in a product of that kind, if a person is told, "you can only patent the process but not the product", I am astonished that anybody should think that people are going to be very forthcoming to spend money in product research for the purpose of developing new products without patents.

I am associated with a pharmaceutical concern; we have for the last two years intensively tried to bring about the utilisation of indigenous raw material to make intermediates for the production of certain essential drugs and medicines. It is a very difficult job, but it has got to be undertaken; and that it has got to be undertaken means that we have got to incur heavy expenditure. You may succeed or you may not succeed. But am I to understand that having invented that process by which you can discover intermediate products, so that we can build up and substitute those intermediates for foreign-imported intermediate products, we can only get the process patent and not the product patent? It just makes no sense, because it is quite easy for anybody to get round a process patent by making just a little change and then develop a supposedly different process as a result of which he can say he is not pinching anybody's process patent but it is a process of his own. This is a most dangerous provision in this Bill that in regard to chemicals, in regard to foodstuffs and medicines and in regard to drugs, there shall be no product patent but only a process patent.

The second thing is this : I wish the Ministry would apply its mind to it. The drastic cutting down of the life of a patent even in those cases where patenting is being allowed has to be reconsidered. Even the Government pharmaceutical factories and research installations like those of the CSIR will indicate, first of all, how much investment is involved merely in research work to invent some process or product; they will be able to show how much investment is involved in pilot plant investment before you get on the track of the standard required at the commercial level of production and at the level of commercial costs that it can stand. They will show how much is required by way of investment in pushing the product into the market because even if you may have one of the world's finest products, it requires

[Shri N. Dandeker]

a tremendous amount of sales and marketing expenditure before the product will catch on. Therefore, there is involved on the one hand, considerable research and investment expenditure and, on the other, there has to be a considerable period of time within which this expenditure can be recouped. But this Bill proposes to reduce that period of time to dimensions which will not, I fear, have any stimulative impact upon the desire of people to go ahead and invent new products or new processes.

The third aspect of this Bill to which I would like to invite your attention, Sir, before I close, is this. I entirely agree with the point that where a product or a process is required for a national purpose,—for instance, for the defence forces,—it ought to be open to the Government of the country to say "we are going to utilise this patent and pay fair royalties." But when you go to the other field where compulsory licensing is to be permitted in favour of third parties,—namely, in cases where someone says that "this product or process is not available in this country; two years have elapsed since this patent was registered but the patentee or the patentor,"—whatever is going to be the right word,—"is not exploiting this in this country and so, please, may I have a compulsory licence enabling him to exploit this patent ?",—that is another matter altogether. Worse still is the case of the gentleman who says, "This product is being sold at an unreasonably high price". Of course to him, it is unreasonably high. He has not had to make any investment on research, pilot plant, product development or market expenditure. And so he goes along happily to the patent office and says, "I can manufacture this at 50 paise and sell it at 75 paise as against Re. 1 at which it is being sold now. This product is being sold at an unreasonably high price even when it is produced in this country. Therefore, I want compulsory licensing of this patent in my favour."

These are extremely dangerous provisions and unless they are very carefully circumscribed, it will be very difficult for anyone to incur expenditure on inventions. I hold no brief for those who register a patent merely for the purpose of preventing that particular product being manufactured in this country. Nevertheless, we must not overlook the fact that there is considerable risk-taking in the decision to set up a plant and manufacture a product. If that product does not go down well with the public, you have sunk all that investment and expenditure into the drain. But more serious is the other case where somebody comes along and says that a particular product is being manufactured in this country, but is being sold at an unreasonably high price and therefore, a compulsory licence should be given in his favour to exploit that particular patent.

Sir, there are other aspects which I have highlighted when the earlier Bill that lapsed was debated in this House. The present Bill still suffers from many of those deficiencies. I suggest these are matters of grave importance, *viz.*, there ought to be both product patents and process patents. There should be no field from which product patent is excluded. There should be a sufficiently long period of validity for the patent. And thirdly you have to be very careful in regard to giving compulsory licence in respect of somebody's patent in favour of a third party.

While I support the motion in so far as reference of the main Bill to a Joint Committee is concerned, I would like to express these apprehensions to which I have referred.

SHRI BEDABRATA BARUA (Kaliabor) : Sir, in these matters where divergent views of national interest may be expressed, I have no hesitation in taking the side of the common man of India to whose interest it is that food and drugs should never be the subject of profiteering in any form. It is with this basic approach that we have to look back to the last 20 years and the number of struggles that those people had waged, where the interest of the common man is hurt, against foreign collaborations, foreign monopoly interests, etc., over such products as drugs and food, in which the vital interests of the commonest of the common man is involved.

I would have liked a better and speedier progress in the direction of control of these patentees. But better late than never. Government have come forward with a Bill and it has got some very good features. It would be quite good that the

Joint Committee goes into it, hears suggestions from both sides and formulates a set of proposals which would look not only to the interests of those who consider that any reward is not good enough for having invented a process through the help of our own scientists who must have been paid by our own people and educated by our own people. The question is whether individual rights over patents should have precedence over the claim of scientific research, over the claim of our people for those things at reasonable and proper prices and may not be cheated in any particular way. When we look back for the last twenty years it is our sad experience that the foreign monopoly concerns dealing with drugs were charging not only 100 per cent but sometimes even 400 or 500 per cent of the cost of production. Even today, in spite of there being production of drugs in the public sector (by the Indian Drugs and Pharmaceuticals Limited)—its production capacity exceeds even the total capacity of the most industrially advanced country of the world, namely, Soviet Union—the people in the private sector are still selling their products at very high prices and they are boosting their sales. In spite of all these difficulties, the IDPL is doing quite well and, so far as research is concerned, it has devised new processes and produced new drugs. In spite of all the criticism, it is a recognised fact that IDPL has gone into production and it is able to sell drugs at 30 or 25 per cent of the price at which the private drug manufacturers in the country were selling them. Therefore, we have to give every encouragement to IDPL so that it may be able to produce more and more drugs at still lower prices and supply to the people instead of allowing a few monopoly concerns to sell their products at a price of their choosing for all times to come.

So far as the restrictions placed on firms are concerned, they can be defended on grounds of public policy. The question of acquisition will arise only when a party which has got a particular process sits upon it and does not allow the people of the country to have the benefit of it. In the case of monopolies government should have the power to acquire them after paying compensation. In fact, I would object to the provision for referring the matter to the High Court. We know how the rights are adjudged by courts sometimes. Under the existing system of law, unless we have got the authority to compulsorily acquire these things, the appeal to the High Court will take a number of years and the people of the country would be deprived of the benefit of such acquisition during that period. So, in my opinion, the Defence of India Rules should be applied not merely to defend our frontiers, they should be applied even to control the prices of drugs and food. Even during the British regime the Defence of India Rules were applied against hoarders and blackmarketeers. I do not think any form of privilege claimed against the people in the matter of drugs and food can be anything better than blackmarketing in food and other products. So, the Defence of India Rules should justly be applied in this case.

I hope the Select Committee will give proper consideration to this Bill and the monopoly interests that have been making these products will in future function in a manner whereby they will earn their reasonable profits, while at the same time, keep in view the national interests.

**श्री कंवर लाल गुप्त** (दिल्ली सदर) : उपाध्यक्ष जी, अभी मंत्री महोदय ने कहा कि पेटेंट बिल का एक उद्देश्य होना चाहिए कि देश में इंडस्ट्रियल ग्रोथ हो, रिसर्च हो और एक सर्वसाधारण व्यक्ति की आवश्यकताएं पूरी हों। उद्देश्य यह होना चाहिए इस से कोई इनकार नहीं कर सकता। पर मैं मंत्री महोदय से आप के जरिए यह पूछना चाहता हूं कि क्या यह उद्देश्य हमारे देश का पेटेंट बिल से पूरा हो रहा है या नहीं? मैं यह कहना चाहता हूं कि जो उद्देश्य आप ने बताया वह पेटेंट बिल से अभी तक पूरा नहीं हुआ और मेरी इस बात की पुष्टि जो इन्क्वायरी कमेटी आप ने बिठाई थी, पेटेंट इन्क्वायरी कमेटी उन्होंने अपनी रिपोर्ट के पेज 165 पर स्पष्ट कहा है :

"The Indian patents system has failed in its main purpose, namely, to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial

[श्री कंवर लाल गुप्त]

purposes in the country so as to secure the benefits thereof to the largest section of the public."

उपाध्यक्ष जी, यही विचार जो दूसरी कमेटी, आयंगर कमेटी थी, उस ने रखा है कि पेटेंट बिल से हमारे देश का कोई लाभ नहीं हुआ और आप को आश्चर्य होगा कि इस विधेयक के बारे में मैं श्री दंडेकर जी के साथ सहमत नहीं हूँ। श्री दंडेकर जी का व्याख्यान या विचार इंडस्ट्रिआलिस्ट्स के विचार हो सकते हैं लेकिन मैं जो कुछ कहूंगा वह एक सर्वसाधारण जो कन्ज्यूमर है उस की दृष्टि को सामने रख कर कहूंगा। कितनी देरी से हमारी सरकार ने इस पेटेंट की पालिसी बनाने में एक अजीब ऐटीट्यूड रखा यह आप देखें। आजादी के बाद जैसा कि मंत्री महोदय ने कहा, किस तरीके से पहली लोक सभा में आया, उस के बाद दूसरी लोक सभा में आया ही नहीं, फिर कमेटी बिठाई, फिर तीसरी लोक सभा में आया, फिर खत्म हो गया। 1950 से लेकर आज तक 19 साल में उपाध्यक्ष जी, इस बिल में एक भी अमेंडमेंट नहीं हुआ और एक बहाने से या दूसरे बहाने से यह पेटेंट बिल इसी तरह चलता रहा। इस तरह से एक शैबिली, लाइट हार्टेडली और नानसीरियसली इस सरकार ने इस चीज को लिया है।

दूसरी चीज मैं कहना चाहता हूं कि जो विधेयक अब भी आया है यह काम्प्रीहेंसिव नहीं है। इस में कुछ बातों की चर्चा जरूर की गई है। कुछ अच्छी बातें भी जरूर हैं जिन से कि मैं पूर्णतया सहमत हूं। लेकिन यह और काम्प्रीहेंसिव बिल आना चाहिए था ताकि इस की जड़ तक जा कर देश के लाभ में कौन सी चीज है वह किया जा सकता। जो यह पेटेंट बिल लाया जा रहा है, उस को आप देखें। आज हमारे देश की क्या आवश्यकता है कि हमारे यहां जितने पेटेंट्स रजिस्टर हुए हैं उन में 90 प्रतिशत फारेनर्स के हैं, केवल 10 प्रतिशत भारतीयों के हैं। यह होने से फारेनर्स की इस में मोनोपली, उन का एकाधिकार है और भारतियों का उस में कोई दखल नहीं है। यह तो एक तरह से वन वे ट्रैफिक हो रहा है। बाहर के लोग आ कर हमारे देश में पेटेंट रजिस्टर्ड करवा जाते हैं और हमारे लोग मैं माननीय मंत्री जी से पूछूं कि कितने हिन्दुस्तानियों ने बाहर जा कर पेटेंट रजिस्टर करवाया तो मेरा ख्याल है, शायद एक या दो होंगे, उन के अलावा और किसी ने रजिस्टर्ड नहीं करवाये। यह वन वे ट्रफिक बदलना चाहिए।

दूसरी चीज मैं कहना चाहता हूं कि जो अंडर डेवलप्ड कन्ट्रीज हैं, जो डेवलपिंग कन्ट्रीज हैं उन के लिए यह पेटेंट बिल बहुत ज्यादा आवश्यक नहीं होता। इटली का उदाहरण आप लें। इटली के अन्दर ड्रग्स के अन्दर फूड के अन्दर कोई पेटेंट रजिस्टर्ड नहीं है। जापान में दूसरी लड़ाई के बाद यह पेटेंट बिल वह लाये। तो मेरे विचार से ऐसे तो प्रवर समिति इस पर विचार करेगी लेकिन मैं चाहता हूं कि जब तक एक स्टैंडर्ड रिसर्च का, टेकनिकल नो हाउ का हमारे देश में न आ जाय इस पेटेंट से हमारे देशवासियों को लाभ नहीं होगा, ज्यादातर फारेनर्स को लाभ होगा और अगर हम देखें, मेरे पास कुछ आंकड़े हैं, एक यू० एन० रिपोर्ट निकली है, रोल आफ पेटेन्ट्स इन दी ट्रांसफर आफ टेकनालाजी टु डेवलपिंग कन्ट्रीज उस में यह परसेंटेज पेटेंट्स की बतलाई गई है जो कि विदेश वालों ने जिस देश में रखे हुए हैं। आप को ताज्जुब होगा यू० एस० ए० में जो फारेनर्स हैं उन का 15.32 है, जापान में 34.2 है, यू० के० में 47 परसेंट है और इंडिया में 89.32 परसेंट है। तो मेरा कहना यह है कि इस तरीके से उन की जो मोनोपली है, उस को खत्म करना चाहिए। आप कुछ अच्छी बातें इस बिल में लाये हैं। खास तौर पर सरकार को अधिकार दिया गया है कि कम्पल्सरी लाइसेंसिंग की जो हमारे दंडेकर जी ने मुखालिफत की है मैं उस के विरुद्ध में नहीं हूं। मैं उस के पक्ष में हूं और चाहता हूं कि सरकार और रैडिकल कदम इस के बारे में उठाती। मेरे ख्याल में

वह रैडिकल कदम नहीं हैं, और ज्यादा होना चाहिए था।

दूसरी चीज--वह किस तरीके से लूट रहे हैं, मैं इस के एक दो उदाहरण देना चाहता हूं। विदेशों के पेटेंट से, हमारे देश की रिसर्च को, हमारे देश की इंडस्ट्री को किस तरह से धक्का लगा है यह भी मैं दो एक उदाहरणों के जरिए बताना चाहता हूं। आप को याद होगा कि हैफकिन्स इंस्टीट्यूट का जो केस है इसी तरह से बंगाल केमिकल्स का केस है, हमारे देश की यह कम्पनियां कुछ ड्रग्स, कुछ मेडिसिन्स बनाना चाहती थीं, लेकिन विदश वालों ने उन के रास्ते में बाधा डाल कर के उन को बनाने नहीं दिया क्योंकि हमारे देश का करोड़ों रुपया बाहर जाता है।

अब एक बात कही दंडेकर जी ने कि प्राडक्ट को भी पेटेंट करना चाहिए, प्रोसेसिंग को ही नहीं। मैं कहना चाहता हूं कि प्राडक्ट को कभी पेटेंट नहीं करना चाहिए क्योंकि बाहर से माल आयेगा तो हमारे देश की लेबर की खपत होगी, न टेकनिकल को हाउस की खपत होगी, न एम्प्लायमेंट होगा, न हमारे देश का पैसा लगेगा। तो कोई भी ऐसी चीज पेटेंट रजिस्टर्ड न की जाय जो हिन्दुस्तान में न बनती हो और बाहर बनती हो। यहां बनना चाहिए और जो इस बिल में यह थोड़ी बात कही है, हालांकि हाफ हार्टेड वे में कही है वह पूरे दिल से मंत्री महोदय लावें तो पूरे सदन की उन को सपोर्ट मिलेगी। किस तरह से वह कीमतें ज्यादा लेते हैं इस के दो एक उदाहरण मेरे पास हैं: लिब्रियम की 63-64 की प्राइस में बता रहा हूं कि इंटरनेशनल प्राइस से इंडियन प्राइस कितनी ज्यादा है। लिब्रियम की प्राइस 63-64 में 555 रुपये पर किलो यहां थी जब कि दिल्ली के एक व्यापारी ने इम्पोर्ट किया तो उस की प्राइस 312 रुपये पर किलो थी। यह दुगुना ज्यादा केवल पेटेंट की बजह से लोगों को कीमत देनी पड़ती है। इसी तरह से विटामीन बी-12 की कीमत यहां 230 रुपये और इंटरनेशनल मार्केट में 190 रुपये थी। इसी तरह से एक चीज और है डेक्सामौथाजोल। यह शुरू में जब पेटेंट किया तो पेटेन्टी ने 60 हजार रुपया पर किलो के हिसाब से बेचना शुरू किया। लेकिन जब चारों तरफ से शिकायत हुई कंट्रोलर ने चबाया तो उसी पेटेंटी ने हिन्दुस्तान में 60 हजार की जगह 16 हजार रुपये किलो पर बेचना शुरू कर दिया। कितनी लूट ये करते हैं इस के उदाहरण मैं ने मंत्री जी की सेवा में रखे।

इसलिये मैं कहना चाहता हूं, जो भाई अपने प्राफिट मेकिंग की बात सोचते हैं, जिन का केवल इंडस्ट्रिअल आउटलुक है वह कुछ जनता की बात भी देखें, जनता का लाभ किस में होता है, यह बात भी सोचनी चाहिए। ब्लेक बैन बैन, पूरी तरह से बैन हो इस के हक में मैं नहीं हूं। लेकिन जहां तक हो हम को फारेनर्स के पेटेन्ट को रजिस्टर नहीं करना चाहिए, डिस्करेज करना चाहिए जब तक कि कोई विशेष आवश्यकता न हो।

उपाध्यक्ष जी, अब जैसा मैंने कहा यह वन वे ट्रैफिक है, इसके उदाहरण आपके सामने रखना चाहता हूं। 1949 से ले कर 1958 तक जो फारेनर्स ने पेटेन्ट्स रजिस्टर्ड करवाए हिन्दुस्तान में उन की संख्या 21177 है और हिन्दुस्तानियों की 2 हजार से भी नीचे ह। तो मेरा कहने का मतलब यह है कि पेटेन्ट बिल से अगर किसी को फायदा हो रहा है तो वहां फारेनर्स को फायदा हो रहा है।

15 Hrs.

इस बिल के अन्दर सरकार को जो अधिकार दिये गये हैं कि इम्पोर्ट करने का जो अधिकार है, उस को एक्वायर कर सकते हैं--मैं उन का समर्थन करता हूं, लेकिन इस के बारे में कुछ ज्यादा सोचने की जरूरत है और जब सिलेक्ट कमेटी में यह बिल जायगा तो कुछ और प्राबलम्ज उस के सामने आ सकती हैं और वह उन पर विचार किया जा सकता है।

मैं अन्त में यही कहूंगा कि मंत्री महोदय अगर कोई कौम्प्रीहैन्सिव या रेडिकल बिल लाते तो ज्यादा लाभ होता। अभी मेरे एक

[श्री कंवर लाल गुप्त]

मित्र ने कहा कि ड्रग्ज के बारे में अवधि क्यों कम कर दी गई है, दूसरी चीजों के लिये जब कि चौदह साल की अवधि रखी गई है, ड्रग्ज के लिये 10 साल की अवधि कर दी गई है– मैं तो यह कहना चाहता हूं कि यह अवधि और भी कम होनी चाहिये थी, क्योंकि हिन्दुस्तान की आबादी इतनी ज्यादा है कि अगर दो या तीन साल भी किसी पेटेन्टी को अपना माल बेचने के लिये मिल जाय तो वह 50 करोड़ की आबादी से करोड़ों रुपये कमा सकता है। इस लिये ज्यादा अवधि रखने की जरूरत नहीं है। मैं तो चाहता हूं कि सरकार बिल को कन्ज्यूमर के प्वाइन्ट आफ व्यू से, एक साधारण आदमी के प्वाइन्ट आफ व्यू से कौम्प्रीहैन्सिव शक्ल में बनाये।

इन शब्दों के साथ मुझे खेद है कि इस मामले में मैं बनस्थित श्री दंडेकर के, जिनके साथ मैं बैठता हूं, सरकार के ज्यादा नजदीक हूं।

15.01 HRS.

## COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

### THIRTY-FOURTH REPORT

SHRI K. M. KOUSHIK (Chanda): I beg to move:

"That this House do agree with the Thirty-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 7th August, 1968."

MR. DEPUTY-SPEAKER: The question is:

"That this House do agree with the Thirty-fourth Report of the Committee on Private Members Bills and Resolutions presented to the House on the 7th August, 1968."

*The motion was adopted*

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15.02 HRS.

## CONSTITUTION (AMENDMENT) BILL—*contd.*

(*Amendment of article* 120) by Shri Era Sezhiyan

MR. DEPUTY-SPEAKER: Now we take up further consideration of the following motion moved by Shri Era Sezhiyan on the 26th July, 1968:—

"That the Bill further to amend the Constitution of India, be taken into consideration."

The time allotted is one hour and 30 minutes, of which 18 minutes have been taken. We have now got one hour and 12 minutes. I think, I can call the Minister at ten minutes to 4.00...

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA): Yes.

SHRI S. KANDAPPAN (Mettur): I am afraid, we have to extend the time.

MR. DEPUTY-SPEAKER: That we shall see, from the progress of the debate. Mr. Sheo Narain to continue his speech.

**श्री शिवनारायण** (बस्ती): माननीय उपाध्यक्ष महोदय, हमारे संविधान के आर्टिकल 120 में दिया गया है कि इस सदन का काम काज चलाने के लिये हिन्दी या अंग्रेजी ये दो भाषायें सर्वमान्य रहेंगी। लेकिन आज मैं क्या देखता हूं कि देश में भाषा के नाम पर कितनी कटुता बढ़ती जा रही है। हिन्दीं जो राष्ट्र की सब से बड़ी भाषा है, देश के सब से ज्यादा लोग जिसको बोलते हैं और समझते हैं, लंगड़ी और टूटी-फूटी हिन्दी बंगाल में बोलते हैं, बम्बई में बोलते हैं, मद्रास में भी बोलते हैं, आन्ध्र में भी बोलते हैं, आन्ध्र में मैं स्वयं गया हूं, वहां पर मैंने देखा है कि हिन्दी और उर्दू मिली जुली भाषा की शक्ल में बोली जाती है, मुझे दुख के साथ कहना पड़ता है कि जो भाषा देश के इतने बड़े भाग में बोली जाती है, फिर यह कटुता क्यों? उपाध्यक्ष महोदय, संविधान कोई मजाक नहीं है कि हर समय उस में अदलाव-बदलाव किया जाता रहे। मैं हर भाषा का सम्मान करता हूं। मैंने अपनी ओपनिंग स्पीच में यह कहा था कि हम उत्तर भारत के लोगों को मलायलम पढ़नी चाहिये ताकि हमारे डी० एम० के० के भाइयों को जो ग्रज है, वह दूर हो सके। अभी तो दो ही भाषाओं की यहां पर व्यवस्था है, अगर 14 भाषाओं में यहां पर कार्यवाही