

**Title:** Further discussion on the Designs Bills, 2000 moved by Dr. Raman Singh on the 20th April, 2000 (Bill passed).

1435 hrs

MR. CHAIRMAN: We will take up Item No. 13, further consideration of the motion moved by Dr. Raman Singh on the 20<sup>th</sup> April, 2000.

Dr. Raghuvansh Prasad Singh – not present.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Madam, I oppose the Bill. Superficially, it may appear to be a non-controversial Bill, but in reality, it is highly objectionable.

Now, this legislation is primarily presented to consolidate and amend the law relating to protection of designs. This is the purpose for which this legislation has been brought. Now, the question is this. Is this Bill brought for the protection of Indian designs or foreign designs? That is the question to be answered when we deal with the provisions of this particular legislation.

This Bill is the off-shoot of our policy of globalisation, liberalisation and privatisation. This is an extended form of it. In other words, it is a sale of our national interest to multinational companies. I am stating these things not in a figurative mood.

\*At 1410 hours quorum bell was rung. No quorum was made. At 1413 hours quorum bell was rung again and no quorum was made. At 1416 hours once again quorum bell was rung and no quorum was made. Thereafter, the Secretary-General informed the Members present as follows:

"There is no quorum. The House, therefore, cannot meet; and we may not start the House till there is a quorum. Hon. Chairman has directed that the House will re-assemble at thirty-five minutes past Fourteen of the Clock."

I want to draw the attention of those concerned to section 44 of the Bill. This section deals with the powers of the Central Government. This legislation is directly connected with foreign legislations. Section 44(1) says:

"Any person who has applied for protection for any design in the United Kingdom or any of other convention countries or group of countries or countries which are members of inter-governmental organisations â€" "

So, the registration in India is related to registration in the United Kingdom or inter-governmental organisations or nations belonging to the World Trade Organisation. That is made explicitly clear in the explanation 1 to section 44 which says:

"For the purposes of this section, the expression "convention countries", "group of countries", or "inter-governmental organisation" means, respectively, such countries, group of countries or inter-governmental organisation to which the Paris Convention for Protection of Industrial Property, 1883 as revised at Stockholm in 1967 and as amended in 1979 or the final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisation applies. "

So, it is crystal clear that the provisions of this section are directly connected with the provisions contained in the World Trade Organisation. This statute has been introduced for the purposes of serving the interests of the World Trade Organisation. That is why, at the outset, I expressed my apprehension that this is a sell-out of our national interests to multinational companies. This is made clear by the reference to section 44 of this Bill. Moreover, I may further state:

"Anybody, alone or jointly with any other person, be entitled to claim that registration in a foreign country.  
"

That registration is applicable here also. Suppose, an Indian citizen has applied for registration of a design under section 3; now, his interest will be subservient to the interest of the person who has made registration in a foreign country. We are making statutes to the whims and fancies of the statutes of the foreign countries. A person who has applied for a registration, suppose, in the United Kingdom, he will get preference under section 44. Suppose, somebody has applied for a registration in the United States of America, that application will get the preference over the application that was subsequently submitted in the Indian State. So, the Indian citizen's interest is not given priority, and priority is given to the foreign citizens' registration, which was made in a foreign country. That is how section 44 is applied. That is why, we oppose this statute. It is there only to serve their purpose.

Madam Chairperson, you may remember that there is a petition pending before the Supreme Court. An American company has applied for a patent right over *basmati* rice. Even the name itself is Indian, but the patent right will go to an American company. They have filed a petition before the Court. The Government of India has filed a counter-affidavit saying that we have the right for the patent. Why have we come to such a pitiable situation before the Supreme Court? Here is an American company claiming right over *basmati* rice in India, and the Indian Government is the defendant or the respondent in the petition. The Government has filed a counter-affidavit to the effect that *basmati* rice is Indian, and its patent right cannot be given to anybody else. All such things have been raised in the petition. We have come to such a miserable situation by passing the Patents Act. This is another sister legislation with regard to the Patents Act.

Now, section 3 makes it clearer. I will read section 3.

"The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of this Act."

So, a person acting as the Controller-General of Patents and Trade Marks will have to act as the Controller of the Designs. He is given the double job -- he is administering the provisions of the Patents Act, and he has to act as the Controller of Designs.

It is more or less a sister legislation to patents legislation. Manufacturers of Indian preparations in the country apprehend that their rights will be curtailed by this Act as well as by the Patents Act. I submit that this will lead to a sell out of our traditional preparations. We manufacture certain *ayurvedic* medicines in the country. I am sure that within a short time the patent rights on these ayurvedic medicines will be in the hands of multinational companies who would apply for registration in a foreign country, bring that registration to India and claim preference over Indian legislation. This is going to happen under the provisions of Section 44 of the Act. It will lead to very difficult position so far as our interests are concerned. Section 44 is crystal clear in this respect. I, therefore, have to oppose this legislation with all vehemence.

I draw the attention of the House to the period of registration. The period of registration provided for in the Bill is ten years to start with which could be extended under certain conditions for a term of another five years. That makes the total period of registration fifteen years. Here, who is taking the vital decision on registration? The vital decision is taken by the Controller of Designs. The Controller is given wide powers and there is no curtailment of his powers. He can act in any way he chooses to. No other authority is given any discretionary power. On any action or on any order passed by the Controller, an appeal to the High Court is provided. The High Court is the authority to deal with such matters. The Controller can refuse registration to an applicant without stating reasons. This is highly arbitrary. A poor Indian citizen who is holding the secret of a preparation in India has to compete with an application from a foreign country. The foreign applicant would claim priority over the poor Indian, under Section 44 and he would say that he is competent to have that registration. Ultimately the poor Indian will be thrown out. The Controller can take a decision in favour of the foreign applicant for no reason because he need not state any reasons for the rejection of an application.

Why should the Controller be invested with such enormous power? For whose interest is he given such unlimited powers? I respectfully ask the Government as to why the Controller is given such unlimited powers. Will it not create any suspicion and doubt in the administration of justice? That is why I wish to draw your attention to these matters. The powers of the Controller should be curtailed. Also there must be a periodical check over the Controller's powers. The Controller is a person who has multifarious duties to perform. He is the Controller of Designs; he is the Controller of Patents; and he is the Controller of Trademarks. He has to deal with these many issues at the same time. He is put to great difficulty as he has to handle all these affairs himself. If a person holding all these posts is given such unlimited powers, misuse of power will be the ultimate result.

In order to prevent misuse of powers, there must be some check over the powers vested in the Controller of Designs. I suggest that the Government bring in some amendments to curtail the Controller's powers and to provide a periodical scrutiny of his powers. Otherwise, the purpose for which this statute is going to be enacted will not be served. We would like to serve the patent rights of Indian patents and not foreign citizens alone.

So, I submit that the Act is defective in many respects.

Another point which I would like to mention is about the publications. The Controller will have to publish a list of persons who have been given registration. We do not know where it is to be published. There is no provision.

The Controller will have to delegate powers to some other people. India is a vast country. Hundreds of thousands of applications may come up for design registrations. As per the provisions of the Act, there is only one Authority and that Authority will have to delegate powers to many others. That is not provided. We may provide it in the rules. I do agree. But there is no specific provision and it is not known where it is to be published. The High Court is the only Authority which can look into the matter. There is no other Authority. There are cases wherein *suo motu* appeal will lie. Even the Controller can refer certain applications to the High Court on his own accord. In all other matters, the aggrieved party should prefer an appeal before the High Court and that too is a very very retrograde step, if I may put it so. That will not help the poor man and

our applicant will be a poor man. He cannot compete with the multinational interest who is opposing his case. So, a very peculiar situation may arise and, that is why, I oppose this legislation. It is not in the interest of the State.

So, I would request the hon. Minister either to change the Bill drastically or he may show courtesy of withdrawing the Bill in national interest.

With these words, I conclude.

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Respected Chairperson, I really want to appreciate the progressive legislation so that the Indian artisans who are living in the villages and who do not know about the intellectual property rights will register their inventions and new creations according to the expectation of the law. It will give more richness to them if they know about this law. There will not be any poverty for the poor artisans who are actually rich in their artisan works and who are enriching Indian culture. Section 44 is especially a very good provision which makes the Indian creations to compete throughout the world and also the Convention countries can get the benefit and they can get more money out of their inventions and creations.

I would like to suggest that this provision can also further go to provide an Office just like in Switzerland to go for registration to cover up all the Convention countries. If a registration is made in India itself, automatically it should be covered throughout the Convention countries or the countries which are accepting our registration. Instead of going again to the International Office in Europe and register and then get the benefit, this type of arrangement will give us more focus towards India so that the Asian countries can come to India and register their designs and inventions and get the benefit, instead of going to Europe for registration.

I find the design is defined by just copying from *Mozley & Whiteley's Law Dictionary 10<sup>th</sup> Edition Butterworths 1988*". We have to think about the future progress and make the definitions useful for future.

The definition should not be restricted. I am just reading a portion of the 'Definitions' clause. I quote from clause 2(d):

"'Design' means only the features of shape, configuration, pattern, ornament or composition of lines or colour applied to any article whether in two dimensional or three dimensional or in both form, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye"

This might be a definition given by different countries. But why should we not have the progressive thinking to make it 'judged by the five senses of the human beings'? I am making this suggestion because if you see a design made in a Madurai temple, it would only be a small stone pillar but if you touch it, it will give you all the *saptaswaras*. If you want to say that it should be 'judged solely by the eye', you cannot use the ear. There are many things that we can smell and that can give light. There are many things that can be felt by touch like the touch-screen system on computers. There are many architectural pieces in our country that will give more inspiration and more happiness through the use of all the five senses. So, a broad definition can be made on those lines because the poor sculptors in the villages are not identified. They are not given the recognition of their greatness. Their works are not shown to the world.

According to the *New Shorter Oxford Dictionary*, the word 'design' is derived from the French *desseign*, which is, in turn, derived from the Latin *designare* and it gives the meaning: 'a plan or scheme conceived in the mind'. The very important thing here is the human mind or how the human beings apply their minds to make inventions. It is not 'eye' alone that has to be taken into consideration. The latest *Encarta World English Dictionary, 1999 MacMillan Edition* gives the meaning: 'invent, to contrive, devise'. These dictionaries give more meaning to the word 'design'.

Therefore, I would like to suggest that the framers of this clause might think about it and bring in a broader sense to the word. Let us be a country that gives more light to the definition rather than borrowing the definition from other countries or from other dictionaries.

Clause 22 deals with piracy. But clause 4 actually helps the pirates to escape from the clutches of law. If they are very vigilant, when they are about to be prosecuted for piracy, they can go to the Controller and get their registration removed. The Controller will have to very carefully go through the application for removal of registration. If he finds that it is not a *bona fide* registration, that person should be prosecuted under clause 22.

Finally, I would like to suggest that through this legislation India's richness should be shown throughout the world. I would request the hon. Minister to make a separate provision to make known throughout the world all the artisans, blacksmiths, goldsmiths living in the remote corners of the country. They are doing their work without knowing that they are creating richness. If they register their designs, you should be able to say, here is the welfare Government that is ready to give the legal aid to register their inventions and designs and see to it they get the benefits out of it. There should be a real propagation and awareness of this throughout the nooks and corners of the country so that the villagers are benefited by this legislation.

### 1500 hours

SHRI RAMESH CHENNITHALA (MAVELIKARA): Madam Chairperson, I rise to support the Bill. This Bill is a technical one. As we passed the Copyrights Bill, it is very necessary to pass this Bill also. It is connected with the World Trade Organisation and the Intellectual Property Rights.

In 1911, we passed this legislation which needs more teeth and some modifications. Today our country is passing through the process of industrialisation. Changes are taking place all over the world. Whether we like it or not, we are in the process of liberalisation. More and more capital investments are coming from abroad and we have to streamline this. When the process of industrialisation is underway, this kind of legislation is very necessary.

My colleague, Shri Radhakrishnan was mentioning that this Bill is brought forward to protect the multinational companies. I would not agree with that. This Bill is brought forward to protect the people of our country who are inventing their own designs and their own drawings. This Bill is giving a kind of protection which we are giving to our rural artisans and the rural people who are trying to invent new designs and new drawings and I do not know how this is going to help the multinational companies. Generally, the hon. Member Shri Radhakrishnan spoke in line with the Members belonging to CPM. Whenever they speak, they speak about the multinational companies and they would criticise everything under the Sun. That is their attitude. That is why, he criticised this Bill. I do not want to go into that aspect.

The point that I want to mention is that when we are in the process of industrialisation, this type of legislation is a must to protect the interests of designers; and we do not have such a law today. So, this compels the Government to come forward with this piece of legislation.

In this legislation, 48 clauses are incorporated. Due to the changed atmosphere and the new situation, re-defined clauses 43 and 45 are to be incorporated. I would like to mention two important points regarding this Bill. I do not want to take much time of the House.

The first point is regarding the role of the Controller. The role of the Controller has to be viewed very seriously. According to this piece of legislation, the Government is giving more powers to the Controller. Too many legislative powers are given to the Controller. Naturally, when more powers are vested in the Controller, he would delegate the powers. When he is going to delegate his powers, extra care should be taken there. I do not know whether the Government will be able to monitor this aspect or not. I also do not know whether the Government will be able to scrutinise the nitty-gritty of this. The Government should be very careful when it gives more powers to the Controller.

So, my request to the hon. Minister, through you, Madam, is that the Government should reconsider the status and the powers given to the Controller. Definitely this is going to create a kind of confusion and after some time, the Controller will become an authoritarian. So, this should be viewed separately and corrective measures have to be taken in this regard.

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The second point is regarding the tendency to copy various designs. The general tendency of the human beings is to copy various designs. I am not saying that we do not do it. We are also doing it. We renew the old designs. Once we register them after renewal, definitely we get the protection. We must be very very careful in this regard. Once we are registering them, they will get the legal cover. After getting the legal cover, nobody will be able to trace them. So, we should be very very careful. Once a design is registered, nobody can change it.

This is a technical Bill. This piece of legislation will definitely give protection to the own workers, designers and people engaged in designs. This Bill will definitely give more mileage to our rural artisans and people living in rural areas.

**वाणिज्य और उद्योग मंत्रालय में राज्य मंत्री (डा. रमण):** स्थापित महोदय, मैं डिजाइन बिल पर बहस में भाग लेने और अपने मूल्यवान सुझाव प्रस्तुत करने के लिए सम्माननीय सदस्यों को धन्यवाद देता हूँ। सम्माननीय बनातवाला जी उपस्थित नहीं हैं। डा. रघुवंश प्रसाद सिंह जी, साहू जी, राधाकृष्णन जी, ई.एम. सुदर्शन नाचियप्पन, रमेश जी एवं अन्य सभी माननीय सदस्यों का मैं स्वागत करता हूँ। जितने भी माननीय सांसदों ने मुझे उठाए हैं और सुझाव दिए हैं, उनके उत्तर मैं देने की कोशिश करूंगा।

स्थापित महोदय, मैंने इस विधेयक को प्रस्तुत करते समय ही इस बात का उल्लेख किया था कि डिजाइन अधिनियम 1911 में, इसके बनने के बाद से लेकर 9 दशकों में एक बार भी संशोधन नहीं किया गया है। इस अवधि के दौरान प्रौद्योगिक और नई तकनीक को लागू करने के बारे में यह बात उल्लेखनीय है कि डिजाइन के क्षेत्र में काफी परिवर्तन आ गया है। वर्तमान विधेयक को, वर्तमान प्रथाओं के अनुरूप आधुनिक किए जाने का प्रयास किया गया है और अन्य देशों के विधेयकों के इसी तरह के कानून के अनुरूप बनाए जाने के प्रयास किए गए हैं और इस प्रकार सभी को मिलाकर डिजाइन क्रियाकलापों को बढ़ाने के प्रयास किए गए हैं।

विश्व व्यापार संगठन में भारत की सदस्यता और पेरिस सम्मेलन को दृष्टि में रखते हुए दिसंबर, 1998 से ही हमने अपने राष्ट्रीय दायित्व को पूरा करने हेतु कुछ परिवर्तन सुनिश्चित किए जाने पर बल दिया है। यह आशा है कि इस कानून को बनाए जाने और इसके अन्तर्गत बनाए जाने वाले भारत के कानून के अन्तर्गत प्रशासन पद्धति अधिक पारदर्शी और उपभोक्तानुकूल बनेगी।

अब मैं इस माननीय सदन के सम्मानित सदस्यों द्वारा उठाए गए प्रश्नों का उत्तर देने का प्रयास करूंगा। सबसे पहले माननीय बनातवाला जी ने काफी रचनात्मक दृष्टिकोण इस विधेयक के संबंध में अपनाया है। मैं उन्हें आश्चर्य करना चाहता हूँ कि सरकार की मंशा ऐसा कोई कानून अधिनियमित करने की नहीं है जिससे भारत की स्थिति किसी संगठन के अधीनस्थ होती हो। बल्कि सरकार का यह दृष्टिकोण है कि केवल मजबूत विधान ही विश्व में देश की हैसियत को सुधारने की दिशा में एक सक्रियतात्मक पक्ष पेश कर सकता है। उक्त डिजाइन विधेयक, 1911 करीब 9 दशकों से अधिक समय से अस्तित्व में है। इसका आधुनिकीकरण डिजाइन के क्षेत्र में आर्थिक कार्यकलापों में सहायता करने और डिजाइनरों के अधिकारों को संरक्षण करने में मदद करने के लिए किया जा रहा है। हमारा दृष्टिकोण "ट्रिप्स" करार के तहत न्यूनतम मानकों को पूरा करना और से उपभोक्ताओं के अनुकूल बनाना है।

स्थापित महोदय, मुझे विश्वास है कि मेरे इस स्पष्टीकरण को ध्यान में रखते हुए वे अपने संशोधन प्रस्तावों पर जोर नहीं डालेंगे। मैं संक्षेप में माननीय सदस्यों के प्रश्नों के जवाब देना चाहूंगा जिनमें उन्होंने काफी चिन्ता व्यक्त की है। विधेयक में उपबंध विश्व व्यापार संगठन के अधीन अपेक्षाओं से अधिक हैं। माननीय सदस्य ने चिन्ता व्यक्त की है कि व्यापार संगठन के करारों के तहत इंटेलेक्चुअल प्रापर्टी राइट्स ट्रिप्स एग्रीमेंट, 1994 के दायरे में शामिल हैं। इस करार में सदस्य देशों द्वारा केवल न्यूनतम मानकों को ही अपनाने की व्यवस्था है।

डिजाइन अधिनियम, 1911 पर विचार के लिए एक अंतर-मंत्रालयीन दल बना था जिसने इस परिवर्तनों की सिफारिश की है, और जिनका समावेश वर्तमान विधेयक में कर दिया गया है। इस विधेयक में किसी भी रूप में वे तत्व निहित हैं जो कि ट्रिप्स अपेक्षाओं से परे हैं।

बनातवाला जी ने दूसरा विषय उठाया कि वर्तमान विधेयक ट्रिप्स करार की धारा 61 का पालन स्वतः ही नहीं करता है। धारा 61 में सदस्य देशों से व्यापार चिह्न अथवा कार्पीराइट की चोरी के संबंध में जानबूझकर उल्लंघन करने के संबंध में जो क्रिमिनल प्रोसीजर और पैनल्टी के संबंध में प्रावधान की अपेक्षा की गई है, इस संबंध में मैं कहना चाहूंगा कि जिन मामलों में डिजाइन का उल्लंघन निहित रहता है उन वस्तुओं के अभिग्रहण अथवा जब्त करने पर वह लागू नहीं होता क्योंकि उक्त विधेयक ट्रिप्स की अपेक्षाओं से परे नहीं है। इसलिए इसमें कोई अतिरिक्त शक्ति का प्रावधान करना आवश्यक नहीं समझा गया है।

तीसरा विषय पैनल्टी के संबंध में है - बिना कैद के 25,000 रुपये जुर्माने का पीनल प्रावधान जो अधिक से अधिक 50,000 रुपये है, माननीय सदस्य ने पर्याप्त नहीं माना है। मैं सम्मानित सदस्य से निवेदन करना चाहूंगा कि पुराना जो 1911 का प्रावधान था, उसमें 1000 रुपये की पैनल्टी का प्रावधान था, अब उन अधिकतम पैनल संबंधी उपबंधों को संशोधित किया गया है और यह पैनल्टी 25 गुणा से 50 गुणा तक बढ़ा दी गई है। चूंकि इंटेलेक्चुअल प्रापर्टी राइट के सभी पहलुओं में इंस्ट्रुयल डिजाइन की कमर्शियल वैल्यू है, वह ट्रेडमार्क और पेटेंट के अनुरूप नहीं है। सम्मानित सदस्य इस विषय को बहुत अच्छी तरह से जानते हैं। इसमें व्यापार चिह्न अथवा

पेटेंट के स्तर के अनुरूप कैद अथवा हाई पैनेल्टी का उपबंध इस स्तर पर समुचित नहीं समझा गया है।

चौथा पाइंट न्यायालयों की शक्तियों को सीमित कर देने के विषय पर है। उच्चतम न्यायालय में अपील की व्यवस्था नहीं की गई है। माननीय बनातवाला जी, बौद्धिक संपदा अधिकार कानून का एक विशिष्ट क्षेत्र है। सम्मानित सदस्य ने स्वयं स्वीकार किया है कि भारत में न्यायपालिका को इस क्षेत्र में नवीनतम प्रगतियों के बारे में पर्याप्त रूप से सुविज्ञ होने की आवश्यकता है। तदनुसार, उल्लंघन इत्यादि के मामलों में दायर करने की प्रक्रिया जिला न्यायालयों और उससे ऊपर के न्यायालयों तक ही सीमित है। इसी प्रकार सरकार का उच्च न्यायालय की शक्तियों को सीमित करने का कोई इरादा नहीं है। इस अधिनियम के अंतर्गत उच्च न्यायालय में विशेष लीव याचिका के माध्यम से अपील की जा सकती है।

पांचवा विषय विदेशी एप्लीकेशन के संबंध में है कि विदेशी आवेदक को प्राथमिकता भारतीय आवेदक के हित में नुकसानदेय होगी। मैं माननीय सदस्य को बताना चाहूंगा कि टेक्नोलॉजी में चेंज होने के बाद ट्रिप्ले समझौते में भारत की भागीदारी और औद्योगिक संपदा के संरक्षण के संबंध में पैरिस कन्वेंशन के कारण डिजाइन एक्ट 1911 में संशोधन करने की आवश्यकता है। पैरिस कन्वेंशन, जिसमें पेटेंट और डिजाइन कार्यालयों द्वारा अपनाये जाने वाले अंतर्राष्ट्रीय व्यवहार और प्रक्रियाओं के सामंजस्य के अंतर्गत अभिसमय देशों में आवेदन दायर करने की प्राथमिकता प्रदान करने की व्यवस्था है। जिस प्रकार भारतीय आवेदकों को अन्य अभिसमय देशों में प्राथमिकता मिलेगी उसी प्रकार भारत को भी पारस्परिक प्राथमिकता प्रदान की जायेगी। तथापि, इस प्रणाली के पारस्परिक लाभ हैं जिन्हें नियमों के सेट द्वारा उपलब्ध कराया गया है। इसमें भारत को भी लाभ है कि हम अन्य देशों में जाकर अपने डिजाइन को रजिस्टर्ड कर सकते हैं

और उनको भी प्राथमिकता है। इस तरह जो हिन्दुस्तान के डिजाइनर हैं, उनको भी इससे लाभ मिलेगा।

एक विषय उन्होंने नियंत्रण की शक्तियों की शक्तियों को घटाने के संबंध में उठाया है। उन्होंने कहा है कि नियंत्रण की शक्तियों को घटाया जा रहा है और केन्द्र सरकार की शक्तियों में वृद्धि की जा रही है। इस विषय में बहुत सारी कंट्रोवर्सी हैं। श्री रामजीवन जी ने तो शक्तियों को बढ़ाने की बात कही है और माननीय बनातवाला जी ने कहा है कि नियंत्रण की शक्तियों को घटाया जा रहा है - यह सही नहीं है। वास्तव में नियंत्रण की शक्तियों में वृद्धि की गई है क्योंकि केन्द्र सरकार द्वारा अपनी कुछ शक्तियां नियंत्रक को हस्तांतरित की गई हैं। नियंत्रक द्वारा केन्द्र सरकार से निर्देश प्राप्त होने का संबंध मात्र प्रशासनिक मामलों से है। यह प्रशासन के और अधिक विकेंद्रीकरण हेतु सरकार के समग्र दृष्टिकोण का एक भाग है।

माननीय अनादि साहू जी यहां नहीं हैं। उन्होंने लैप्ड डिजाइन के बारे में अपनी बात रखी थी। लैप्ड डिजाइन की चोरी को साबित करना कठिन होगा। इस विषय में अधिनियम में चोरी के संबंध में विशिष्ट उपबंधों की व्यवस्था की गयी है। चोरी के दावों के दायर में लैप्ड डिजाइन की भी अनुमति प्राप्त करके कानूनी जटिलताएं पैदा करने का इरादा नहीं है। प्रस्तावित अधिनियम के तहत बनाये जाने वाले नियमों द्वारा ऐसे विशेष प्रकार के मामलों को बाहर रखकर उचित सुरक्षा प्रदान की जायेगी जिनमें समय आदि के आधार पर यह तय किया जायेगा कि नियमों को अंतिम रूप देने की अवस्था में आशंका पर पर्याप्त ध्यान दिया जा सके।

दूसरा, सिंगल एडमिनिस्ट्रेटिव हैड के संबंध में माननीय साहू जी ने विषय रखा था कि क्या इसमें एक ही एडमिनिस्ट्रेटिव हैड रहेगा। इसमें कोई दिक्कत तो नहीं आयेगी। भारत में अनेक वार्डों से प्रशासनिक पदानुक्रम की एकीकृत प्रणाली अस्तित्व में रही है।

इस प्रणाली के संदर्भ में ऐसे व्यक्तियों को पेटेंट अथवा डिजाइन तथा व्यापार चिन्ह प्रशासन के शीर्ष से सम्बन्ध बनाता है। मात्र महानियंत्रक पद ही, जो एक चयन पद है, प्रशासन शीर्ष है। प्रशासन प्रणाली को सरल रखने की दृष्टि से इन क्षेत्रों में अलग-अलग पदों पर विचार नहीं किया जा सकता। खंड चार में, खंड 34 में अलग-अलग सुझाव माननीय अनादि साहू जी ने रखे हैं। इसके बाद अभी जो सुझाव माननीय श्री रामकृष्ण जी ने यूनाइटेड किंगडम के सम्बन्ध में रखा है कि उनकी जो पहचान है, खंड 44 में यूनाइटेड किंगडम का विशेष रूप से उल्लेख किया है, चूंकि डिजाइन एक्ट 1911 का है। इस मामले में भारत और यू.के. के बीच में राटमंडल संधि अभी भी विद्यमान है, किन्तु पेटेंट के मामले में 19वें संशोधन के दौरान उस संधि के प्रकार को संशोधित कर दिया गया है। अधिनियम के सारे उपबन्धों में यू.के. और अन्य राटमंडलीय देशों को समझौता राट के बारे में अनुसूचित किया गया है। माननीय रामचन्द्र जी ने दूसरा विषय पूछा था कि इंडियन और फॉरेन हमारे अंदर (व्यवधान)

**SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Who will get the priority?**

**DR. RAMAN:** We will get the priority. मैं आपके विषय पर ही आ रहा हूँ। आपने एप्लीकेशन के सम्बन्ध में कहा था कि अभी हिन्दुस्तान के 2395 डिजाइन पेटेंट हैं और विदेश के सिर्फ 699 हैं। उनको यदि प्राथमिकता है तो हिन्दुस्तान के जो डिजाइनर हैं, उनको भी प्राथमिकता मिलेगी, यदि हम कहीं प्रायर्टी में एप्लाइ कर रहे हैं। आज हमारे पास एप्लीकेशंस की संख्या ज्यादा है। आपने जो मूल विषय बासमती के विषय में कहा, आपकी शंका डिजाइन से सम्बन्धित नहीं है और यह पेटेंट का विषय है। बासमती के मामले में गवर्नमेंट ने जो पेटेंट है, उसको चेलेंज करने का निर्णय लिया है और सम्भवतः आज या कल में प्रतिवेदन यू.एस.ए. में फाइल हो जायेगा। डिजाइन और पेटेंट अलग-अलग विषय हैं। Recently we have passed the Geographical Indication Act to provide for the Darjeeling Tea, Basmati, etc. इसको प्रोटैक्ट करने के लिए इसमें साफ-साफ प्रावधान रख दिया गया है। यह डिजाइन के तहत तो नहीं आता, मगर ज्योग्राफिकल इंडीकेशन एक्ट जो हमारा आ गया है, इस एक्ट के तहत इन सब बातों को संरक्षण नहीं दिया जा सकता। इसमें कंट्रोलर एक ही रहेगा। आपने विशेष तौर से कंट्रोलर के लिए पूछा था, the report of the Controller General will be placed before Parliament annually. हर साल वहां पर यह विषय उठाया जायेगा।

**श्री रमेश चैन्नितला (म्वेलीकारा) :** कंट्रोलर को आपने इतना ज्यादा पावर दे दी है, इसके ऊपर आप विचार कर सकते हैं क्या? (व्यवधान)

**डॉ. रमण :** आपने तो बहुत अच्छे ढंग से सारी बात रखी है। मैं आपके विषय में भी बात रखूंगा। High Court will bring expertise in deciding the disputed cases. माननीय सदस्यों ने अपने जो विचार रखे हैं और खास तौर से डैफिनिशन के सम्बन्ध में आपने जो शब्द रखे हैं, बहुत साहित्यिक ढंग से आपने उस विषय में डैफिनिशन को आपने प्रमाणित किया। जो-जो डैफिनिशन में हैं, the definition of the design is based on the original definition in the 1911 Act. मगर एक्सटर्नल फीचर्स में, जिसमें आपने परिभाषित किया। Seen by the eyes, ears because the design refers to the external features of the article. This is the globally followed definition. पूरी दुनिया में इस परिभाषा को लोग मानते हैं। इस परिभाषा के तहत और खास तौर से चोरी के सम्बन्ध में, we will apply the case with the current situation. आज जो तात्कालिक मामले हैं, जो विरासत के मामले हैं, उसमें यह मामला उठता होगा, not the lapsed design, लैप्ड डिजाइन पर यह सम्बन्धित नहीं होगा।

मैं सारे सदस्यों को बताना चाहूंगा, चूंकि इस बिल में काफी लम्बे समय से और राज्य सभा में पास होने के बाद यहां भी लगातार दो महीनों से इस बिल पर काफी चर्चा हुई। माननीय बनातवाला जी ने बहुत दिन से इस विषय में काफी सुझाव दिये। मैं सब का सम्मान करते हुए सभी सदस्यों से निवेदन करना चाहूंगा कि चूंकि इस बिल के विषय में आप सब के सुझाव आ गये हैं, आपने जो मार्गदर्शन दिया है, जो विचार आपके आये हैं, उन विचारों को ध्यान में रखकर मैंने सारे विषय में आपको जानकारी दी है। मैं सबसे निवेदन करना चाहूंगा कि इस विधेयक को पास किया जाये।

MR. CHAIRMAN : The question is:

"That the Bill to consolidate and amend the law relating to protection of designs, as passed by Rajya Sabha, be taken into consideration".

*The motion was adopted.*

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 and 3 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

**Clause 4**

Prohibition of  
Registration of  
Certain designs

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

"Page 3"

*after line 14, insert*

"(e) is dictated by inevitable or essential functional consideration." (4)

MR. CHAIRMAN: I shall now put Amendment No.4 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendment No. 4 was put and negatived.*

MR. CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

*The motion was adopted.*

*Clause 4 was added to the Bill.*

Clause 5

Application for  
Registration of  
Designs

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

"Page 3, line 29,--

*after "if he thinks fit" insert*

"and for reasons recorded in writing" (5)

MR. CHAIRMAN: I shall now put Amendment No.5 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendment No. 5 was put and negatived.*

MR. CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

*The motion was adopted.*

*Clause 5 was added to the Bill.*

Clause 6

Registration to  
Be in respect of  
Particular article

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

"Page 3, line 40,--

*omit* "whose decision in the matter shall be final" (6)

MR. CHAIRMAN: I shall now put Amendment No.6 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendment No. 6 was put and negatived.*

MR. CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

*The motion was adopted.*

*Clause 6 was added to the Bill.*

*Clauses 7 to 21 were added to the Bill.*

Clause 22

Piracy of  
Registered  
design

SHRI G.M. BANATWALLA : I beg to move :

"Page 8, -

*after* line 13, *insert-*

"(2A) The registered proprietor of a design shall have the right to apply to the High Court for an order -

- a. to prevent any person not having his consent from making, selling or importing articles bearing or embodying a design which is a copy or substantially a copy of the registered design when such acts are undertaken for commercial purpose;
- (b) to prevent an infringement of any of his rights as a registered proprietor of a design; or
- (c) to preserve relevant evidence in regard to an alleged infringement of his rights as a registered proprietor of a design." (3)

"Page 8, lines 5 and 6, --

*for* "twenty-five thousand rupees"



*substitute "fifty thousand rupees" (7)*

"Page 8,--

*omit lines 10 and 11" (8)*

"Page 8,--

*for lines 12 and 13, substituteâ€”*

"Provided further that a suit or any other proceeding or relief under this sub-section shall be instituted in the High Court." (9)

"Page 8, -

*after line 2, insert-*

"1(A) whoever is guilty of wilful contravention of this section, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1(B) In any case of wilful contravention of this section, the High Court may order seizure, forfeiture and destruction of the infringing articles for sale and of any materials and implements the predominant use of which has been in commission of the offence." (12)

MR. CHAIRMAN: I shall now put Amendment Nos.3, 7 ,8, 9 and 12 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendments No. 3, 7 to 9 and 12 were put and negatived.*

MR. CHAIRMAN: The question is:

"That clause 22 stand part of the Bill."

*The motion was adopted.*

*Clause 22 was added to the Bill.*

*Clauses 23 to 35 were added to the Bill.*

*Clause 36*

Appeals to the

High Court

SHRI G.M. BANATWALLA : I beg to move:

"Page 10,--

*after line 44, insertâ€”*

"Provided that the High Court may, for reasons adequate and appropriate, admit an appeal made after the date under this sub-section." (10)

MR. CHAIRMAN: I shall now put Amendment No.10 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendment No. 10 was put and negatived.*

MR. CHAIRMAN: The question is:

"That clause 36 stand part of the Bill."

*The motion was adopted.*

*Clause 36 was added to the Bill.*

*Clauses 37 to 43 were added to the Bill.*

Clause 44

Reciprocal arrangement  
With the United Kingdom and  
Other convention  
Countries or group of  
Countries or intergovernmental  
Organisation

SHRI G.M. BANATWALLA : I beg to move:

"Page 13, line 7,--

*for "priority to other applicants"*

*substitute "priority to such other applicants who may have made their application for registration after he had applied for protection in the United Kingdom or any such other convention countries or group of countries or countries which are members of inter-governmental organisations." (11)*

MR. CHAIRMAN: : I shall now put amendment No.11 moved by Shri G.M. Banatwalla to the vote of the House.

**The amendment No. 11 was put and negatived**

MR. CHAIRMAN: The question is:

"That Clause 44 stand part of the Bill."

*The motion was adopted.*

*Clause 44 was added to the Bill.*

*Clauses 45 to 48 were added to the Bill.*

Clause 1

Short title, extent  
And commencement

*Amendment made:*

Page 1, line 5,--

*for "1999"*

*substitute "2000" (2)*

(Dr. Raman)

MR. CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

Enacting Formula

*Amendment made:*

Page 1, line 1, --

for "Fiftieth Year"

*substitute* "Fifty-first Year" (1)

(Dr. Raman )

MR. CHAIRMAN: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

*The motion was adopted.*

*The Enacting Formula, as amended, was added to the Bill.*

*The title was added to the Bill*

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DR. RAMAN: I beg to move:

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

MR. CHAIRMAN: The question is:

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

*The motion was adopted.*