

Title: Combined discussion regarding disapproval of the Patents (Amendment) Ordinance, 1999 and passing of the Patents (Amendment) Bill, 1998. (Not Concluded)>

15.39 hrs

MR. CHAIRMAN : Now, the House shall take up item Nos. 11 and 12 together. The time allotted for this discussion is four hours.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Madam, I have given a notice, questioning the propriety and legality of introducing this Bill. That notice may kindly be taken up now. It is under the Rules and I have specified the Rule also, questioning the legality and the constitutionality.

MR. CHAIRMAN: Let me find out what happened to that notice.

SHRI VARKALA RADHAKRISHNAN : I will make my submission, Madam.

SHRI BASU DEB ACHARIA (BANKURA): Madam, this is a very important and a vital question, challenging the constitutionality and legality of its introduction. We have to dispose it of first.

MR. CHAIRMAN: No. Please take your seat. I will find out what happened to that notice and then you can speak.

Please take your seat. I shall tell you as to what happened to your notice. Meanwhile, we will take up Statutory Resolution. Let me find out about your notice.

SHRI VARKALA RADHAKRISHNAN : Before he speaks, I have the right to speak.

MR. CHAIRMAN : He is from your party.

SHRI VARKALA RADHAKRISHNAN : I wanted to speak at the outset opposing the Statutory Resolution.

MR. CHAIRMAN: Can you not be generous enough to let me take two or three minutes?

Meanwhile, Shri V.V. Raghavan may continue.

SHRI V.V. RAGHAVAN (TRICHUR): Madam, Chairperson, I beg to move:

"That this House disapproves of the Patents (Amendment) Ordinance, 1999 (No.3 of 1999) promulgated by the President on 8th January, 1999."

The second session of the Twelfth Lok Sabha will go down in the history as a session confronted with so many Ordinances. This is the fourth Ordinance that we are discussing in the span of three days. This Ordinance was promulgated for amending our model Patent Act to grant Exclusive Marketing Rights to the foreign companies involved in the production of pharmaceutical, drugs and agricultural chemicals. This amendment involves even the sovereignty of our country. The Executive knows that there exists a strong opposition in this country on this point. Many eminent scientists, economists, parliamentarians and many other organizations have expressed their opposition to the Government before promulgating this Ordinance.

Even among the ruling party, that is the BJP, there are people who do not want that these foreign companies should capture our markets as far as pharmaceutical products are concerned. I know that. Still, they may vote for it because of the whip. There are people in the ruling party itself, including the senior leaders of the BJP, who have expressed publicly their reservations about allowing Exclusive Marketing Rights. All these are not secret. When you promulgate an Ordinance allowing Exclusive Marketing Rights to the foreign companies, are you not bound to discuss that in Parliament? You have granted the EMR without the knowledge of this august House and

without the consent of this august House. To put it mildly this amounts to insulting the people who have elected this august House.

This is not an ordinary thing. Under the TRIPS Agreement, we are not bound to grant exclusive marketing rights to foreign companies. The only obligation on us, as per TRIPS, is that we have to allow patent applications through a mail box for patenting pharmaceutical products and agricultural chemicals. This is the only mandatory provision in the agreement, as far as we are concerned. We have ample time to examine and decide upon these applications. There are five more years to decide all these things. We have to scrutinize and act upon it considering our vital interest.

Madam, I am sorry to say that this Ordinance, granting exclusive marketing right, was promulgated under the pressure of the United States of America. Washington was very particular about this because they knew that they have a vast market here. So, this Ordinance was promulgated under the pressure of America. Without taking the House or the people into confidence the Government has granted them the exclusive marketing right. What right does America has to pressurise us? I do not know how far the Minister of Industry or the hon. Members are concerned about this? How could it happen? Senior Members of BJP are against it. A number of ruling party Members are against it. Known scientists, economists and the powerful trade unions are against it. Under this background, how could this happen?

There is a talk in the Lobby and in the Central Hall that everything originates from PMO. Nowadays, there is a talk that PMO is more powerful than the Prime Minister himself and all the policies originate from PMO. I would not say that they do not have a right but they cannot deny the right of the House to know it and to discuss the implication of such an amendment to the Patent Act. PMO cannot ignore or by-pass the House. We will not allow them to proceed like this.

Sir, as far as clauses of TRIPS are concerned, under the heading, 'Nature and Scope of Obligations', article 1 says:

"Members shall be free to determine the appropriate method of implementing the provisions of this agreement within their legal system and practices."

So, it is for us to decide considering how it will affect our country, people, pharmaceutical industry and the workers or how it will affect our existing laws. I would like to once again repeat article 1 of the TRIPS Agreement under the heading, 'Nature and Scope of Obligations', which says:

"Members shall be free to determine the appropriate method of implementing the provisions of this agreement within their legal system and practices."

Have you considered this? Are you not interested to consider these TRIPS clauses within this clause. At the end, article 7 says:

"That the protection and the enforcement of intellectual property rights should contribute to the promotion of technological innovation and to transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations."

Have you considered all these things? Have you considered these clauses? How can you grant exclusive marketing rights to the foreigners? We must use all these clauses. We should not succumb to the pressure. When America compels us to amend our Acts, what does America do? This is quite interesting to know. America has its own Acts. Considering the TRIPS Agreement, they have the protection in their Acts. The United States enacted a legislation on 8.2.1994 according to which no WTO clause is binding on them. They are protected within their own Legislation. One of their Legislations says:

"Wherever any conflict arises, the United States law will prevail. No provision of any of the Uruguay Round Agreement nor application of any such provision to any person or circumstances that is inconsistent with any

law of the United States shall have any effect."

That is the American Law. Do you know what is going on now? They have their Super 301 after by-passing all these clauses of the TRIPS and WTO. They are in confrontation even with the European Union. You can see it with your naked eyes. All these things are going on. The United States of America is not bound by any of these TRIPS and WTO clauses. They are guided by their own Acts. They are confronting with everybody. But they are imposing their will on other countries. I see no reason as to why should we succumb to this pressure. This is a large country. You can depend upon 99 crore people. You can fight them. Why are you succumbing like this? No other developing country has yielded like this to EMR. There are several developing countries together with us. Out of more than 100 and odd developing countries only Pakistan and two other small countries, have yielded to grant EMR to these multinational companies. That is the fact. Even Malaysia did not succumb to the pressure.

It is our neighbouring country. No other developing country has succumbed to the American pressure. When you allow Exclusive Marketing Rights, what will happen? There are people in Delhi. I know that. They are propagating that the EMR is a small thing; there will not be many drugs; we can face them and we can control them. So, they want us to pass this Ordinance in the House. There is propaganda going around. Even canvassing is going around. Members of Parliament are getting leaflets and letters requesting to pass this Ordinance into a law. They say that EMR is not so dangerous.

I know the people who have participated in the TRIPS discussions, the GATT discussions, the WTO discussions. They are very much interested in getting the legislation passed in the House. I do not want to make an allegation here. But it is a known truth that the retired officials now canvassing for getting this legislation passed here have got their kith and kin in key positions somewhere in the world. Are we to be cheated by them? Are we to be guided by them ?

The amendment promulgated through an Ordinance granting the EMR is unwanted. It is not at all obligatory. We have the right to assess it within our legislation, within our social context, within our social needs and within our requirements. We do not go as far as America has gone. But we have all the right to limit the TRIPS clauses to allow the other countries to patent their products. Let them put in their applications. Let us consider them taking into consideration the interest of our country. That is the only obligation we have under the TRIPS Agreement.

About the Intellectual Property Rights, we are not against it. There are people who say that we have so many prospects in patenting our agro-chemicals and pharmaceuticals. We do not forget for a while with whom we are confronting. We are confronted with the mighty multinational companies, specially the United States of America. By any means, by any way, they are out to capture our market. What will be the result? If the Exclusive Marketing Right goes on like this, the Government will have no means and no mechanism to scrutinise them because the Government says that as per the TRIPS clause, if a company has patented its products/produce in any other country of the WTO, it can get EMR in any other country and import those things here.

16.00 hrs.

How can we scrutinise them which are patented in other countries? They come with the right that it is patented in other countries. According to TRIPS processes, if certain drugs are patented in other countries, we are bound to give them the Exclusive Marketing Rights without any scrutiny, and without any control over them. That is the law. The Exclusive Marketing Rights means any country which have patented any drug in any of the WTO countries, have all the right to import it here and sell it. They decide whatever price they want to sell.

Can a sovereign country allow such things? Ours is a sovereign country and we are allowing foreigners to patent the things of any of the countries of the WTO to bring them here, import here and sell without any control, and without any scrutiny of our own. That is what is the EMR. That is why, other

countries have not granted the EMR. Patenting in India is something different and allowing EMR for drugs patented in other countries is something quite different.

I know, if the Bill was introduced here without the Ordinance, I am sure, those hon. Members in the Treasury Benches would have pondered over it a hundred times before they pass it. That is why, the Government brought the legislation through an Ordinance here fait accompli. It is imposed on us. It is imposed on the House. That is the meaning of the Ordinance. If you give free choice to the hon. Members to vote according to their conscience, I am sure you would not be able to get through this EMR. There are ample provisions; there are ample ways for us to go forward without allowing the EMR.

Madam, I do not want to take much time of the House. There are many experts who wanted to speak on this Patents Bill and the Ordinance. I have to do justice to them also.

My humble request, especially to the Treasury Benches, is that this kind of act by the Executive should not be allowed to go unchecked. They should think of our Nation before enacting such things by Ordinance. Think of us. Think of the House. How will they react? Is it right to allow the EMR without the consent of the House? The Executive has to think of it. Do not take us for granted. Do not take the House for granted. The PMO might be all powerful. But this House is more powerful than the PMO. Show the Executive if it goes in the wrong path. We will resist. We will not allow the Government to carry out such practices which are not at all good for the country. This is not good for the parliamentary democracy.

Considering just that, the Treasury Benches have to check their own Executive acts. Otherwise, I am afraid, they will take us to a very dangerous path.

I admit that our hon. Congress Members have a commitment. But things have changed very vastly. If you are true to Panchmarhi resolution, and if you are guided by the Panchmarhi resolution, you have to change the course of such things.

When the Congress Party was in power, they had promulgated Ordinances, but they had not issued Ordinances for giving Exclusive Marketing Rights. They had issued Ordinances only for allowing pharmaceutical and Agriculture Chemicals patentable. Our Patent Act did not allow pharmaceutical produce and agro-chemicals to be patented. The Congress Government made them patentable. That is all. They did not allow Exclusive Marketing Rights. Now, is the Congress Party in favour of allowing this Government to give Exclusive Marketing Rights. That is the crucial question before the Congress Party.

We have signed TRIPS and also the WTO Agreement. But it is not an obligation on us to grant Exclusive Marketing Rights. That is my point Exclusive Marketing Right is quite different. I think the House can reject this Ordinance and ask the Executive to come in the right way, bring the legislation and then let us think it over whether it is good or not. But this way of putting the legislation as a fait accompli is not to be encouraged. It has to be checked. So, I appeal to the House to disapprove this Ordinance.

MR. CHAIRMAN : Now, I would like to give a ruling with regard to Shri Varkala Radhakrishnan's notice.

SHRI S. JAIPAL REDDY (MAHABUBNAGAR): Madam, I would like to make a submission, if you permit me.

MR. CHAIRMAN: No; the ruling has already come.

SHRI S. JAIPAL REDDY : Madam, please hear me.

MR. CHAIRMAN: In that case, Shri Radhakrishnan would also like to speak.

SHRI SHARAD PAWAR (BARAMATI): Madam, please give him an opportunity and then give the ruling.

SHRI S. JAIPAL REDDY : Madam, Shri Radhakrishnan has objected to the consideration of the Bill on constitutional grounds. Therefore, he must be heard before the ruling is given and before the ruling is given, you may also like to listen to other Members on the constitutional validity of the Bill.

MR. CHAIRMAN: No; we cannot have a discussion on that.

SHRI S. JAIPAL REDDY : Why not? when it is an objection to the Bill on constitutional grounds, you should hear us before giving the ruling.

MR. CHAIRMAN: Shri Radhakrishnan does not need your help. He is quite competent himself to make his point.

SHRI S. JAIPAL REDDY: No; it is not a matter between the Member and the Chair. It is the matter of the House; it is the property of the House. Therefore, my humble submission is, kindly permit the Member to raise his objection, hear some of us and then give the ruling.

MR. CHAIRMAN: No; I will not hear others. You have not given a notice. So, you do not have a chance to speak.

SHRI RUPCHAND PAL (HOOGLY): Madam, this is an objection on the constitutional validity of the Bill. So, other Members should also be allowed to speak on this point.

MR. CHAIRMAN: No; there is no provision for that.

SHRI BASU DEB ACHARIA (BANKURA): Madam, we have certain points to make on the constitutional validity of the Bill.

MR. CHAIRMAN: No; Shri Basu Deb Acharia, you have always been very reasonable. It is only Shri Radhakrishnan who has given a notice.

SHRI BASU DEB ACHARIA : After you hear Shri Radhakrishnan, we should also be allowed to speak.

MR. CHAIRMAN: No.

SHRI BASU DEB ACHARIA : Why? Why are you always saying `no' `no'?

MR. CHAIRMAN: There is no provision to allow other Members. You have not given a notice. That is why you do not have a chance to speak.

... (Interruptions)

SHRI S. JAIPAL REDDY : Madam, we would like to see you in a more pleasant mood of saying `yes'.

MR. CHAIRMAN: Shri Radhakrishnan, there is a ruling with regard to your notice.

SHRI VARKALA RADHAKRISHNAN : Madam, I have not yet made my submission. How can you give the ruling without hearing me?

MR. CHAIRMAN: You have already written to the Chair.

SHRI VARKALA RADHAKRISHNAN : You can give the ruling after I make my submission.

MR. CHAIRMAN: In that case, please make a very brief submission.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : Let me make my submission first. How can you give the ruling without hearing me?(Interruptions)

MR. CHAIRMAN: I am sure Shri Radhakrishnan is very competent. He does not need your support. Let him make his submission.

SHRI VARKALA RADHAKRISHNAN : Let me have my say. Then you can give the ruling.

MR. CHAIRMAN: First you listen to the ruling.

SHRI VARKALA RADHAKRISHNAN : How can you give the ruling before hearing me?

MR. CHAIRMAN: All right. In that case, you first hear me and then make your submission.

SHRI SHARAD PAWAR : Madam, please hear him.

MR. CHAIRMAN: He has already written to the Chair.

SHRI SHARAD PAWAR : He has written, but he has not elaborated his point.

SHRI VARKALA RADHAKRISHNAN : No, I have not explained it. I have given it to you in writing. ...
(Interruptions)

SHRI S. JAIPAL REDDY : Madam, I am on a point of order.

MR. CHAIRMAN : Under which Rule?

... (Interruptions)

MR. CHAIRMAN: You must quote the Rule.

SHRI S. JAIPAL REDDY : Rule 376. Madam, no ruling can be given unless the House knows about the matter on which a ruling is given.

SHRI VARKALA RADHAKRISHNAN : No ruling can be given without hearing me.

SHRI S. JAIPAL REDDY : When the House does not know what the issue is, how can we have a ruling?

SHRI VARKALA RADHAKRISHNAN : It is true that I have given it in writing. But I have a right to submit it before the House. ... (Interruptions)

MR. CHAIRMAN: This is no point of order.

... (Interruptions)

MR. CHAIRMAN: You listen to me first.

SHRI BASU DEB ACHARIA : The House has a right to know. ... (Interruptions)

MR. CHAIRMAN: Your point of order is no point of order. As a special gesture to Shri Radhakrishnan, I will allow him a very very brief explanation. But there is no such provision. Please be brief.

>SHRI VARKALA RADHAKRISHNAN : Madam, I thank you for having given me an opportunity to express myself before your ruling is given. At least, you have shown that courtesy.

Now, I question the validity of this Ordinance. The Bill has been introduced to replace the Ordinance issued by the Government. I opposed this Ordinance for the simple reason that the Bill, subsequently introduced, will become a committed legislation which is an encroachment upon the rights and privileges of this House to make laws.

You know that there are Members in the other House who are opponents of Swadeshi. They too have some feelings. They have to express about the Bill with regard to their high ideals. But when there is a permitted legislation, they cannot express themselves. They have become bonded in the sense that they will have to vote as

per the provisions of the Ordinance. That is the procedure. That is why, at the outset, I have said that it becomes a committed legislation. If a legislation is to be free, if it is to be original and if it is to be imaginative, it should pass unfettered. But here it is a fettered legislation. ... (Interruptions)

MR. CHAIRMAN: Let him have his say.

... (Interruptions)

SHRI KHARABELA SWAIN (BALASORE): It is very surprising that he is saying that we are bonded.

SHRI VARKALA RADHAKRISHNAN : Now, I come to a certain point. ... (Interruptions) Please hear me. A legislation in the normal course will have to be got through the two Houses of Parliament.

MR. CHAIRMAN: Have they asked for your support?

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): No. Please hear me. Now, here is a case where an Ordinance is issued to meet a contingency or an emergency. When the House is not in session, the executive can use that in an emergent situation. Here is a case when the matter has been moved before the two Houses

of Parliament. And one House has definitely passed it. When the House is seized of the matter, is it permissible for the Government to issue an Ordinance on that basis?

SHRI BASU DEB ACHARIA : The Government cannot do it.

SHRI VARKALA RADHAKRISHNAN : The Rajya Sabha has already passed it. The Bill, that has been passed by the Rajya Sabha, is before us. The constitutional position is that now we are seized of the matter. When the Parliament is seized of a legislation, can it issue an Ordinance? I am on another question.

MR. CHAIRMAN: You have to make a brief submission. You must be brief.

SHRI VARKALA RADHAKRISHNAN : I am brief.

MR. CHAIRMAN: You are not brief.

... (Interruptions)

MR. CHAIRMAN: It is all right. Now, you listen to my ruling.

SHRI VARKALA RADHAKRISHNAN : I am very brief.

I am coming to the point.... (Interruptions)

MR. CHAIRMAN : Now, I will give my ruling.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : Now the question is this. One House has already approved the Bill. So, the first part is over. The Parliament is completely seized of the matter. (Interruptions)

MR. CHAIRMAN: The hon. Speaker has allowed only four hours for this Bill. How can it go on like this? This is enough. Please sit down.

... (Interruptions)

SHRI VARKALA RADHAKRISHNAN : Let me complete.

MR. CHAIRMAN: This is enough. Now, for once, you please hear me also.

SHRI VARKALA RADHAKRISHNAN : I am concluding. I am coming to the point. Supposing we discuss this Bill and get it passed, and if there is a lot of delay in getting the assent of the President, then what will happen? If even after passing this Bill, things go on like this, they will issue an Ordinance. Supposing the President makes some observations of dissent, it will be delayed further. Then, I am sure, they will issue an Ordinance.

MR. CHAIRMAN: You have made your point.

SHRI VARKALA RADHAKRISHNAN : If they issue an Ordinance at every stage, then what is the use of discussing it here now? I say that it is beyond the legislative competence of the Executive... (Interruptions)

MR. CHAIRMAN: Nothing will go on record.

(Interruptions)*

MR. CHAIRMAN: Now, you hear me. You cannot go on like this.

Hon. Shri Radhakrishnan has given his notice to oppose this Bill under Rule 72 (1). Under Rule 72(1), the Members have a right to oppose the introduction of a Bill.

The Patents (Amendment) Bill, 1998, as passed by Rajya Sabha, is listed for consideration. It is not for introduction. The Member has, therefore, no right to oppose. I do not give my permission to Shri Radhakrishnan now. Now, the Minister may please make his statement.

... (Interruptions)

SHRI PRITHVIRAJ D. CHAVAN (KARAD): Madam, what has happened to the Ordinance? We are passing the Bill, as passed by Rajya Sabha. What has the Government done with the Ordinance?

SHRI BASU DEB ACHARIA (BANKURA): Then, why was the Ordinance promulgated? What was the need for promulgation of an Ordinance?

MR. CHAIRMAN: Now, the Parliamentary Affairs Minister wants to say something.

THE MINISTER OF POWER, MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF NON-CONVENTIONAL ENERGY SOURCES (SHRI P.R. KUMARAMANGALAM): With due respect to you, Madam, and all the senior Members, I do believe that we need to get on with some work. I do believe that you are permitting the Minister concerned to make his presentation. If he misses out on an issue, you may kindly point it out at that stage. Let us move on. We have shortage of time. We will not be able to complete our normal business which we have to do. I plead with folded hands, please hear... (Interruptions)

*Not Recorded.

MR. CHAIRMAN: Now, the Minister.

SHRI RUPCHAND PAL (HOOGLY): Madam, I may be permitted to put forth my points of view. I have given a notice also. It is very much there in the list.

MR. CHAIRMAN: Shri V.V. Raghavan has already made his points. We cannot permit all the Members. Only one Member is allowed to speak. Only one Member has a right to say. Shri V.V. Raghavan has put beautifully your points of view also.

... (Interruptions)

SHRI RUPCHAND PAL : How do you know that he has put my viewpoint? You cannot draw such a conclusion.

MR. CHAIRMAN: You can have your say later on.

... (Interruptions)

SHRI RUPCHAND PAL : This is a very important Bill.

MR. CHAIRMAN: No. It is all right.

*Not Recorded.

SHRI RUPCHAND PAL : Why is there such a hurry?

SHRI SATYA PAL JAIN (CHANDIGARH): Even if five Members have given notice, only one is allowed to speak... (Interruptions)

SHRI RUPCHAND PAL (HOOGLY): Madam, there have been occasions in the past where on important ordinances, more Members have been allowed to speak... (Interruptions)

THE MINISTER OF STATE IN THE MINISTRY OF RAILWAYS, MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF PLANNING AND PROGRAMME IMPLEMENTATION (SHRI RAM NAIK): Madam, I am on the point of practice and procedure to be followed ... (Interruptions)

MR. CHAIRMAN : Yes, you please listen to the hon. Minister.

SHRI RAM NAIK: The practice and procedure which is being followed is... (Interruptions)

MR. CHAIRMAN: Please do not shout like this. Please listen to the hon. Minister.

... (Interruptions)

MR. CHAIRMAN: Nothing is going on record except what the hon. Minister says.

(Interruptions)*

SHRI RAM NAIK: The practice and the procedure which is being followed is that one Member who opposes the Ordinance speaks first, then the hon. Minister speaks and then afterwards those who want to oppose can have their say. That is the practice. How can they start a new practice?

MR. CHAIRMAN: Yes. Shri V.V. Raghavan has already spoken.

... (Interruptions)

MR. CHAIRMAN: No, I do not need your help.

SHRI BASU DEB ACHARIA (BANKURA): Madam, whenever an Ordinance is promulgated, the Statement of Objects and Reasons for promulgation of an ordinance is always given.

SHRI RAM NAIK: It has already been given.

SHRI P.R. KUMARAMANGALAM: It has already been tabled.

SHRI BASU DEB ACHARIA : No, it has not been given.

SHRI P.R. KUMARAMANGALAM: We have tabled the Ordinance... (Interruptions)

SHRI BASU DEB ACHARIA : Where is the Statement of Objects and Reasons?... (Interruptions)

SHRI P.R. KUMARAMANGALAM: I think, the senior Members have to suddenly start thinking. When the Ordinance is tabled, the Statement is also tabled along with that... (Interruptions) It has been circulated four days ago... (Interruptions)

SHRI BASU DEB ACHARIA : No, it has not been circulated.

MR. CHAIRMAN: You must go through the papers and find out.

*Not recorded.

SHRI BASU DEB ACHARIA : We have gone through the papers and it is not there... (Interruptions)

SHRI RUPCHAND PAL (HOOGLY): Madam, I am referring to the very special circumstances... (Interruptions)

MR. CHAIRMAN: No, this cannot be allowed.

... (Interruptions)

MR. CHAIRMAN: No, I cannot allow you. This cannot go on like this. Nothing is going on record.

(Interruptions)*

MR. CHAIRMAN: That is enough, please. Mr. Minister.

>THE MINISTER OF INDUSTRY (SHRI SIKANDER BAKHT): I beg to move:

"That the Bill further to amend the Patents Act, 1970, as passed by Rajya Sabha, be taken into consideration."

I am not making any speech now. Thank you very much.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Patents Act, 1970, as passed by Rajya Sabha, be taken into consideration."

*Not Recorded.

>SHRI PRITHVIRAJ D. CHAVAN (KARAD): Thank you, Madam Chairperson for permitting me to speak. The hon. Minister has decided not to say anything. Perhaps he does not have much to say.

Madam, I am in a unique position to speak on this Bill precisely, the same Bill, on which I spoke four years ago from that side. I am having a second chance to speak in this very House on exactly the same Bill nearly four years later.

I was very enthusiastic then and I thought that after India acceded to WTO as of 1 January 1995, India as a very responsible member of WTO and of GATT would abide by whatever it had committed. Therefore, when the Government brought a Bill to amend the Patents Law, most of the Members belonging to the Congress and I being one of the speakers from Congress side supported it enthusiastically.

We were briefed by the Government officials, by the hon. Minister then and we did not have much experience of the intellectual property aspect of the GATT Agreement. Intellectual Property area was a new area which was brought in in the Uruguay Round and till then the GATT only dealt with trade in goods. But after Uruguay

Round, whole lot of new areas were brought in. Intellectual Property Rights was one, and Investment measures, Agriculture and Textile, etc., many new things came in.

At the outset, let me say, Madam, while there have been very harsh views expressed on this whole subject of WTO, of Intellectual Property Rights, of TRIPS, there have even been suggestions both from the Treasury Benches and my friends on the Left that India should get out of WTO rather than accept the amendments to our Patent Law.

I do not subscribe to that view. WTO is the most democratic institution of all international institutions. All other economic institutions like the World Bank, IMF or the political institution, the Security Council, are not democratic; they are trying to be democratic. But, WTO, more than anybody else, more than any other international institution, is democratic so far. There are attempts to change it based on trade weight. I hope, we will oppose it but today, WTO is democratic. We have every right to fight against a very powerful nation. If you are right, win those cases; as it happened in our dispute against the United Nations in the title excluding devices case and we won that case. In this case, we were not successful. Therefore, we have to stay within WTO; fight within WTO; fight for our rights and, therefore, as a responsible member of WTO, we will have to abide by our obligations as they flow from various agreements.

Madam, we know that the TRIPS agreement was one of the 28 agreements which was signed and which came into force on the 1st January, 1995. The TRIPS agreement is just one of the 28 agreements. This is a part of the whole package. This is a part of give and take. There are certain positive features and certain negative features. We all know that the TRIPS package is a negative package for us. There are a lot of things we are giving in because hopefully we are gaining in other areas like textiles, agriculture and maybe in other areas, we do not know. Therefore, this agreement will have to be adhered to and the obligations under the TRIPS agreement will have to be conformed with. The date for conforming happens to be 19th April, 1999.

As we know, there are three distinct phases in the TRIPS agreement. The first phase is what we are supposed to do on the 1st January, 1995, the date when WTO came into existence. There were certain obligations on that day; certain more obligations fall due on the second phase, that is on the 1st January, 2000, by the end of this year and the third phase, the full scope will come into being five years later, that is on the 1st January, 2005.

India was not able to, for reasons we all know, fulfil her obligations as they fell due on the 1st January, 1995. America complained to WTO; European Union complained to WTO. We lost both those cases. We went in appeal against the US case and that appeal was also lost. As a result we have gained certain time and the time ends on the 19th April, 1999. All our efforts to dissuade WTO have failed and, therefore, the Government is coming forward in a great hurry, in a great panic I would say; it wants to enact this law before the 19th April. I think, to that extent, I support it; as a responsible member of WTO, after having exhausted all our avenues we will have to ultimately abide by the deadline of 19th April, 1999.

I have talked about three phases. What are the commitments of the first phase? The enactment that is before us today in the form of a Bill, which was passed by Rajya Sabha, requires us to do certain things. Madam, the Government will have to come forward with a much more comprehensive amendment to the Patent Law, which will have to be completed before the end of this year. Therefore, the process will have to start just now.

Given the Standing Committee, given the whole wrangle whether it is constitutional or not and given the majority in both the Houses, the Government will have to start right now. Only then, can the second phase of the Patent Amendment, the most comprehensive amendment, be completed. Therefore, I am speaking today with a heavy heart in the hope that whatever suggestions I am making, you will either accept them in this Bill or keep in view in the next comprehensive Amendment which should be coming now. Do not delay it. Let us have enough time to discuss that whole comprehensive Amendment. Do not surprise us in the last minute and ask us to pass it in the late night. Therefore, Madam, I hope the Government will take us into confidence when it takes up the comprehensive second stage wherein the major amendments to the Patent Act will be enacted.

Also, I feel very sad that the Minister failed to take all the parties into confidence so as to evolve a consensus on this very complicated and controversial issue. He has also failed to call a meeting of all the leaders and all the

Ministries involved. It is a very complex Bill although it is being piloted by the Minister of Industry because the patent area falls in the charge of Ministry of Industry. The Ministry of Industry is not the only Ministry which is concerned with this Bill. TRIP agreement affects the health security of the nation. It affects the food security of the nation. It affects our pharmaceutical industry. It affects our exports. Therefore, the Ministry of Health is involved because the cost of medicines is going to be increased. The Ministry of Agriculture is involved because agro-chemicals are involved. Food security is involved. The Ministry of Chemicals and Fertilizers is involved because the drug price control order is coming under this very Ministry. The National Authority on Pharmaceutical Pricing is also under that Ministry. The Ministry of Defence is involved because you have sought to delete Article 39 of the 1970 Act which has a great bearing on the national security. The Industrial Research Department is involved because the whole innovation system of this country, the whole public sector pharmaceutical labs are involved. Their competitiveness is involved. The Ministry of Biotechnology is involved because we are going to talk about patenting of life forms and genetically modified micro organisms. The environment issue also will be coming soon because of Biodiversity Act. Of course, the Ministry of Law is also involved because the legal interpretation of various complex cases are involved. We have before us today three WTO cases which I have mentioned just now.

16.32 hrs [Shri Khagapati Pradhani in the Chair]

Last but not least is the Ministry of Commerce. It is the Ministry which is in-charge of WTO. I would like to ask the Minister whether he had made an attempt to call all the leaders of the Opposition and all the Ministries involved to discuss threadbare. It is not the issue of only the Ministry of Industry. You did try to meet some of us. The officials tried to meet some of us. But only the Ministry of Industry met us. It is not limited to the Ministry of Industry.

Now I come to the strange behaviour of the Government. Mr. Chairman, Sir, I wonder why the Government was constrained to issue an Ordinance! The Rajya Sabha passed it. The Congress assured support to you only in the larger interest even though we had many objections. Many areas which we think could have been improved in the national interest. But we supported you. And, therefore, we would have supported you in Lok Sabha also. What was the hurry to promulgate an Ordinance which today you have forgotten? Is there a pressure? What was the pressure?

We all know that Sir Cyclos, the Chairman of the multinational company, Glaxo, was here when the law was being discussed. He was dangling a carrot before all of us. He was telling that if we passed the Patent Bill, a lot of investments would come in. He was also telling us that because of our 1970 law, the prices of drugs in India were one hundred times more than that were prevailing in America. He is on record having said that Indian drug prices for the same drugs are one hundred times more than what is being charged in America. There was some pressure. That can also be judged by the way the share prices of multinational pharmaceutical companies are zoomed ever since this Government decided to take upon itself to pass the Patent Bill under any circumstances, come what may. This behaviour surprises us. Today, you have forgotten the Ordinance. You are not conforming to the Ordinance because you will have to go to the other House again.

Again the hon. Minister has brought a Bill as passed by the Rajya Sabha. What was the need for the argument? I hoped that in his opening remarks he would give us the justification about the need for the Ordinance. He has not given us. That leads us to believe that there is some external pressure about which Shri Raghavan has spoken.

Coming to the Bill itself, what are the Phase-I amendments? The Phase-I amendments are very simple. The Patents Act, 1970 provides very comprehensive intellectual property protection in all areas of intellectual property. There are various laws, the copyright laws, the trade mark laws, we have got trade secret laws, we have geographical indications, integrated circuit design, we have got other laws which are coming in, all these we are conforming nationally.

In the Patents Act, 1970 also, no matter what others say, we are conforming to all international standards except in a very small area. We do not provide product protection to pharmaceuticals and agricultural chemicals. That is all. This is a very important area for multinationals. They want to make money from patented research, or

patented products. And they are afraid that the Indian pharmaceutical industry is now coming of age. It is exporting about Rs.121 crore worth of pharmaceuticals and basic chemicals and they are afraid. That is why the whole Intellectual Property Regime was smuggled in at the last minute in the Uruguay Round.

As the hon. Minister knows very well, initially it was trade in goods, counterfeit goods, and with the collapse of the Soviet Union, with the situation in the Third World, change of leadership in India, slowly the developed countries smuggled agricultural goods in this whole IPR and in the Uruguay Round and here we are, we have now to amend the patent law to give protection in product patent to agricultural chemicals and pharmaceuticals. And this very amendment is just for this limited purpose. It only deals with pharmaceuticals and agricultural chemicals. Nothing else.

Uruguay gave us five years to go back to this regime till 2000 AD. There is also an additional transition period provided. Our people think that we argued very heavily, we negotiated and we got these extra five years of transition period up to 2005 in exchange for some other concession somewhere. Supposedly we are given some concession in textile laws and we got this concession of additional five years for moving over to a complete product patent regime. But did we really get the full five years? No. We did not. When they agreed to give us a transition period of five years they got it by asking us to give us exclusive marketing rights earmarked. What we got with the right hand we gave back with the left hand. There was no doubt at all of the transition period and that is why we are assured of the exclusive marketing rights.

This amendment which the hon. Minister is enacting today will give exclusive marketing rights to foreign companies, to foreign multinationals to exclusively market their drugs, their agricultural chemicals in India for a period of five years after the right is granted.

The exclusive marketing rights are nothing but unfettered statutory import monopolies with no obligation for manufacture or any obligation for transfer of technology.

Let us look at the spirit of the TRIPs Agreement. Shri Raghavan read Articles 7 and 8 and Article 7 very specifically deals with -- I do not want to read it -- or talks about promoting transfer of technology, promoting dissemination of knowledge, balancing the rights and obligations. So, while you are granting EMRs, are we sure that we are balancing those rights? I am sorry, but those rights are not being balanced. There is also the controversy, there is also a discussion, whether India should at all go for this transition period of five years, whether India should go for this two stage approach of first giving the EMRs and then going in for the product patent regime in the year 2000 about which many of my friends will further argue, I am sure that India should go for a complete product patent rights in the year 2000.

It is assumed that EMRs are automatically lesser right than patents. It is true because patents give the patent holder the right to manufacture, sell and distribute. So, three rights are given while EMRs only give right to sell and distribute. Therefore, it would appear that EMRs are a lesser right. Therefore, by having EMRs for five years period and not having product patents, India is benefited. But while that is true, if EMRs are given automatically, if EMRs are given without proper examination, then the question arises: are patents given after thorough examination under Indian Patents Act of 1970 better or EMRs which are supposedly lesser rights given without proper examination under the Indian Patents Act of 1970 are better? I think, that is the question that we need to address today. I do not want to go into the conditions which are required for giving EMRs. The hon. Minister knows and I think, everybody knows the conditions. Three or four conditions are external to this country that the patent application is paid in a convention country outside, that the patent is granted in a convention country and that the marketing approval is granted in that country. All these three conditions are external to this country. These three things could be obtained in Burkina Faso, Tunisia, Zambia or even in America because America has a very liberal patent regime. There are hundreds of patents being given in America on Haldi. There are hundreds of patents being given in America on Neem. We are giving in India patents on way to make dosa, way to make idly. These patents have been given in India and they are given liberally. So, it is quite possible that fulfilling the first three conditions outside is not very difficult. What is the fourth condition? The fourth condition is that you will get a marketing approval in India. As we know, marketing approval is given by the health authorities and not by the patent authorities. So, I am afraid that giving of EMR would be an automatic process and we will not have a control. But you can have control, if you have written the

law properly. That is my worry that you have not given enough thought to it. You have gone beyond what was required as per TRIPs, as per WTO. When they ask you to bend, you are lying prostrated. That is my worry.

Therefore, now, I come to the specific provisions of the Bill. I know that one can go on and on, but I will just come to four specific provisions of the Bill. The first one is what I have just referred to about examination of an EMR application. You are not going to examine the EMR application, as per Chapter 4 and you are not going to permit the Indian citizens to oppose grant of EMRs under Chapter 5 of the Indian Patents Act, 1970. Why? Why are conditions for examining EMR applications being diluted only to Sections 3 and 4 of the Patents Act? That is nothing. It is only going to examine whether the product is moral or not. Does it hurt the morality? What does the drug got to do with it? Drug is a substance. You have got to examine an application from the three classic conditions against which a patentship is granted. Those three conditions whether it is novel, that the knowledge did not exist in the public domain, whether it is non-obvious that there is an inventive step involved or whether it has useful application.

Sir, we were told four years back and, I think, if you had made an intervention before that, you would also have said that why are you worrying. Nobody will apply for EMR because EMR can only be applied to new drugs which are applied after 1.1.95. It takes a long time to get a new drug and everybody quotes the American pharmaceutical Association's figures. It is true that it takes 10 to 12 years to get a new drug approved. So, it is a very long process. But what about formulations, what about combinations, what about different methods of use and different methods of application?

If you give a product patent, 250 mg. tablet is a product, 150 mg. is a different product, 20 mg. tablet is yet another product. The same product in a syrup form is another product, if it is injected, it is yet another product and if it is applied through some other modern method of implanting and all that, that is another product. That is how old patent expired drugs will be applied for new EMRs because you are not going to examine them, and that is the worry. Therefore, I request you to please include examination under Chapter IV and opposition of patent under Chapter V. As is applicable for patents, make it applicable to EMRs also. Then only EMRs will not be automatic. Otherwise EMRs will be automatic and that could be dangerous.

I now come to the next area and that is with regard to compulsory licensing. You have in your Bill provided for Section 24C which gives a right to Government to give a compulsory licence to somebody else to manufacture if that product, that drug, that chemical is not available freely. This comes out of the original 1970 Act. But what is the compulsory licence, compulsory right that you are giving under this proposed enactment? Under EMR, you are giving a right to sell or distribute only, while compulsory right under a patent is a right to manufacture, sell and distribute. So, if a drug is not available, Government can issue compulsory licence to do what? To sell and distribute, but not to manufacture. Another person in India can sell and distribute, but where will he get the substance from? You are not giving a compulsory licence to manufacture. What good is it? You are saying that he can sell and distribute, but where will the material come from? He is not allowed to manufacture. So, unless you include manufacture also in the compulsory licence, this is nothing but just a piece of paper. It has no meaning. It will give no protection to Indian citizens at all whatsoever.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): But it will give protection to foreign nationals.

SHRI PRITHVIRAJ D. CHAVAN : Yes, that is right.

Another important point that I want to make is that the whole crucial worry in this patent law was a very small thing which has escaped many people. The Minister has told that that importation will be the same as the working of the patent. The definition of the working of a patent meant originally that technology will be disseminated, that technology will be spread, that the society will give a monopoly right to our inventors, and in return for that, the inventor could sell the technology, make that technology available, give that knowledge to the society. That fine balance of rights and obligations is being vitiated when you say that importation will be the same as working of the patent. Yes, Chapter V of the TRIPs Agreement wants you to give this right. But why are you giving it today? This could have been delayed till 1st January, 2000. Why have you got this section 24(c)(i)? That is the crucial wording which MNCs want. They want an unfettered monopoly, without giving the transfer

of technology to Indian companies. Have you paid any attention to it? Please, even at this late stage, consider it. It was not necessary to give importation as working of patent today.

In the same way, I request you to please delete paragraph (d) of Section 24C which seeks to delete clauses (d) and (e) of Section 90 of the 1970 Act. Please consider this again. Importation is what they want. They want an unfettered right to import. We should insist on local working. We should insist that these drugs and chemicals should be left for our country, for our factories, for our low-cost labour. That you must insist. You are not insisting that. As a matter of fact, you are giving them almost one year ahead of time, the right to import.

Last but not least, I come to one other important point and that is about pricing. You have said in your enactment that the Government of India can control prices. In this country, we have the Drugs Prices Control Order which, as I said earlier, is controlled by the Ministry of Chemicals and Fertilisers. But the Drugs Prices Control Order can only be effective against local drugs, when they can get local manufacturing prices.

How can DPCO or any other equivalent order be applicable against imported drugs? You think that Burroughs Wellcome or Glaxo are going to give in and they are watching. Even if the Government says that it does not accept their ten dollar price and India will accept it for five dollars, they will say that if you do not want it at this price, do not take it. Where is the compulsion to manufacture? Therefore, unless you tell us about your very concrete plans, the Drugs Price Controlling Authority, I am afraid, the prices of drugs, not only patented drugs but everything else also, will skyrocket. That is why, the share prices of multinational pharmaceutical companies have skyrocketed just with his assurance that they are going to pass the Patents Bill.

Finally, I will come to the last point which I will not change and that is the amendment of section 39 of 1970 Act where you are seeking to delete a very important provision which was there in the 1970 Act. This provision relates to national defence. This provision relates to our space technologies, our strategic area technologies and that is why, in the Act of 1970, a provision was made that no Indian scientist can apply for a foreign patent without applying for Indian patent first. But in case he wants to apply for a foreign patent without applying for Indian patent, then, he must get permission of Controller of Patents and that permission will be given in 15 days. This provision was there in the 1970 Act only to make sure that no secret defence or space technology goes out of the country without the knowledge of the authorities, the Indian patent system.

In 1994, we agreed to this very amendment. There was a reason for that and it was that our scientists argued that 15 days' delay was too much with regard to patent, as every day counts. If they apply to the Controller of Patents and information goes out, then they could not get patent abroad and something else would apply for patent. Therefore, we supported this amendment.

But what is the position today? Have they taken us into confidence? Is it not a fact that last year, the Government of India acceded to the Paris Convention? What does Paris Convention give them? The Paris Convention makes this deletion totally unnecessary. The Paris Convention gives you the priority of right from the earliest date and 15-day period does not come in. Is it not a fact that the Ministry of Defence has opposed this deletion? Is it not a fact that the law of United States even today has this provision that no citizen of the US can apply for a foreign patent without informing the US authorities? Is it not a fact that as per the law of the United Kingdom, no citizen of the United Kingdom can apply for a foreign patent without telling the U.K. authorities? But they want to be so liberal. Where is the pressure coming from? Have they looked at it? Have they talked to scientists after accepting Paris Convention? Before Paris Convention, there was a point that this delay was not acceptable, but after signing Paris Convention last year, this is not necessary. I would request the hon. Minister to please do away with the whole business of deleting section 39. Therefore, he may please delete clauses 4,5,6 and 7 of the proposed Bill.(Interruptions) I will not say anything more on the Bill. I think, these four things are very crucial. If the hon. Minister pays attention to these things, I think that the interest of the Government of India and Indian citizens will be protected adequately and we will conform to our obligations under TRIPs.

I would request him not to go beyond what the TRIPs has asked. They are today going beyond what TRIPs has asked us to do. I think, a strategic view of what we want to do in the year 2000 or 2005 is required. I do not agree with some of my friends who want to bring forward the date of product patent to 2000. I do not think that it is correct, but at the same time, if they give automatic EMR without examination, then, there is a danger. They

may please look at it and tighten the compulsory licensing provisions. The hon. Minister may please explain to us how pricing authority is going to work and may take care of the provisions relating to defence also.

Before concluding, I just read out what Shri Raghavan alluded to. I have got the US law which was passed after the Uruguay Round Agreement Pact of 1994. Section 102 of the US Act says that no provision of any of the Uruguay Round Agreement that is inconsistent with any law of US shall have effect.

This is what the U.S. is saying on TRIPs. Section 102 (a) (2) of the U.S. law says, "Nothing in this Act shall be construed to limit any authority under Section 301 (1) of the Trade Act of 1974." The U.S. Government does not bother about TRIPs Agreement or WTO; they only bother about their own law. It goes on further to state that "the State law shall be valid". A point was raised whether this House has the competence to enact on a subject, which is a State subject. What does the American law say? The American law says, "No State law or the application of such a State law may be declared invalid on the ground that the provisions or application is inconsistent with the Uruguay Round Agreement." The United States Government is protecting the State laws against the Uruguay Round laws. What are we doing?

Now, the Uruguay Round Agreement, as applicable to foreign countries, says, "a foreign country may be determined to deny adequate and effective protection of intellectual property rights notwithstanding that a foreign country may be in compliance with the specific obligations of the TRIPs." This is what the U.S. law says. Look, how fast we are running! We are doing more than what the TRIPs Agreement has required us to do. TRIPs Agreement permits us to enact legislation consistent with the requirements of this country, consistent with the aspirations of the people of this country. Please do that.

Sir, I am sure, if the Minister accepts any of the amendments, then he will have to go back to Rajya Sabha and I can see that there is a problem in that.

SHRI S. JAIPAL REDDY (MAHABUBNAGAR): You are there.

SHRI PRITHVIRAJ D. CHAVAN : We are there. I think, the Minister can consider these amendments, which are very crucial. What you are saying, that is, it is automatic and there is nothing in it, is not true.

Unfortunately, you have not given us the case law. Shri Hegde was good enough, when I wrote to him, to send me a copy of the judgments and rulings in respect of WTO dispute settlements, final disputes, between India and USA, between European Union and India, and also on the appeal. When you go through that case law, you will find out the thinking of WTO, where we are inconsistent, where we are not inconsistent and how far we can go. You have not done that. I wish, you had taken us into confidence. I wish, you had a wide meeting with all the ministries involved.

In the next phase, there are very crucial issues like seed patenting, the Plant Variety Protection Act which is an essential Act, the Bio-diversity Act which has got to be done, and there is also the question of granting patents to micro organisms and genetically altered substances. We have different views on that. If this is the way you go, I think, it would be very difficult to get a national consensus on these issues. Please get us all together and work for a consensus. I know that you personally mean well. You have tried personally, but this is not enough.

उद्योग मंत्री (श्री सिकन्दर बख्त): सिर्फ एक बात के अलावा सब कुछ मंजूर है

You said that we did not bother to consult you. Who is at fault? You yourself can decide that.

SHRI PRITHVIRAJ D. CHAVAN : I said that as Industry Minister, you personally tried. It is your Bill. So, you personally tried and your officials came and visited some of us. But as I said in the beginning, it is not a Bill which is limited to Industry Ministry alone. It is a Bill in which nine different ministries are involved. There are differing views. The Minister of Defence has not agreed to delete section 39. But you had your way. That is why, please get everybody together -- all the leaders and the ministries -and let us have a consensus on it. I am sure, we must fight WTO together. Our legal education is inadequate. The way people fight these cases in WTO is

unbelievable. We have got anti-dumping problems, we have got all these WTO dispute settlement problems. We do not have enough international trade lawyers. We will have to consider that. We have to strengthen our anti-dumping directorate. Though it is not your Department, we have to do that. We have to have a comprehensive view of WTO. I hope, you will do that.

With these words, I hope that you will accept the suggestions which I have made, and the decision to support is being given by the Congress Party in the larger interest that our country will have to abide by our obligations under WTO before 19th April. Thank you.

>17.00 hrs.

SHRI KHARABELA SWAIN (BALASORE): Mr. Chairman, Sir, I rise to support the Patents (Amendment) Bill, 1998.

Sir, I was listening with rapt attention to hon. Shri Raghavan who opposed it. He is not present here now. He basically opposed it on the basis of three-four points. One of the points he made was that by passing this amendment we are going to compromise the sovereignty of the country. He has said that the United States of America is pressurising us to pass such a Bill and that it is an encroachment upon our sovereignty. He has even invoked the spectre of the mighty multinational companies swamping the Indian markets. Not only he, but the hon. Members from the Left who are opposing it, who will also speak after this, will also say that the multinational companies will come and swamp Indian bazaars, that the prices of pharmaceutical drugs will increase, that the foreigners will take away our haldi, that they will take away our neem, etc. They spoke about all these things in Rajya Sabha and they will speak about them here also.

I would say that most of these points, the foreign invasion, invasion of the multinational companies on Indian markets, etc., are the products of very fertile imagination. They ask as to what is the hurry and why we should go for this amendment now and if we could not have waited for some more time. I wanted to give a comprehensive reply but hon. Member Shri Prithviraj Chavan from the Congress has already mentioned all these things. Anyway, let me make my point clear.

On 31st December, 1994, an Ordinance was promulgated to amend the Patents Act. The agreement on patents-related aspects of intellectual property rights is a part of the agreement establishing the World Trade Organisation. India ratified the WTO agreement on 30th December, 1994. The agreement came into force on January 1, 1995. In order to fulfil its obligation under the agreement, India is required to make some changes in its law within the time schedule negotiated under the agreement. India, as a developing country, has a transition period of five years with effect from 1st January, 1995 till 1st January, 2000 to comply with the provisions of the agreement. An additional transition period of five years till January 1, 2005 is also available for extending product patent protection to areas of technology not protected so far. This would be mainly in the areas of pharmaceuticals and agricultural chemicals.

What I would like to say is that we do not have any option. As hon. Member Shri Chavan has already mentioned, the United States of America had filed a case against us. We fought the case and lost it. We went on appeal and the appeal also went against us. Ultimately, the disputes resolution body has stipulated that by 19th April, 1999 we will have to make necessary changes as per the obligation under the WTO agreement.

Already, there is a case which we have lost. Our hon. Members who opposed it may say: "So what, if we do not accede to that? So what, if we do not go for any promulgation of any ordinance?" But, Sir, if you go by that and if you do not do anything, then there is provision which says that there will be penalty. Article 22 of this Act provides for penalty. It says:

"If any country found to be in default by the Dispute Resolution Body, does not take the required step to conform to the Treaty provisions within the stipulated time, then there will be penalty."

What is the penalty? The country which files the complaint may take a series of retaliatory steps. Now, what is this retaliatory step? For this, let me take and give you an example. Suppose, the United States of America,

against whom we lost the case, goes on for any retaliatory measure. Suppose, the United States of America imposes a duty of 100 per cent on textile imports to that country. That means, we are exporting textile goods to America, and America now imposes 100 per cent duty on that. What will happen then? Then, the export will fall. The consequent result will be that the textile industries in India will lay off the workers. Our workers will be without any work. And again, the same hon. Members of the Left parties will start hue and cry that 'It is because of this Government, because of this inefficient Government, the people have lost their jobs.' ... (Interruptions)

Sir, there is a saying in English: 'Heads I win, Tails you lose.' So, whatever you do they are in the habit of just criticizing. If we promulgate this Ordinance, we are at fault! If we do not do it and if the workers lose their job, again we are at fault! And, they are always at the right.

... (Interruptions)

SHRI KHARABELA SWAIN : Now, let me come to a very pertinent question. It is about the hon. Members of the Left parties? Now, their last bastion, China, still remains as the last torchbearer of the proletariat, of the have-nots, which has fought American imperialism, American capitalism for a long time... (Interruptions)...Yes, they are still fighting.

What has China done? I will just now tell, what China has done. China has already adopted the new Patents Act in 1984... (Interruptions)

SHRI RUPCHAND PAL (HOOGLY): Is China a Member of the WTO?

SHRI KHARABELA SWAIN : I am not yielding... (Interruptions)

SHRI BASU DEB ACHARIA (BANKURA): China is not a Member of the WTO... (Interruptions)

SHRI KHARABELA SWAIN : Sir, I am not yielding... (Interruptions)

MR. CHAIRMAN : Please take your seats.

... (Interruptions)

MR. CHAIRMAN: Please allow him to speak.

SHRI SATYA PAL JAIN (CHANDIGARH): Why are they demanding China?... (Interruptions) ...Are they from Parliament of India or Parliament of China? ...(Interruptions)

SHRI SUNIL KHAN (DURGAPUR): There, every person has food, every person has housing but here we do not have food, we do not have housing... (Interruptions)

SHRI KHARABELA SWAIN (BALASORE): Mr. Chairman, Sir, I am not very much surprised to know about the reaction of the hon. Members from the Left because long back, just because of supporting China, they divided their own party, CPI and created Communist Party of India (Marxist). It was divided because of supporting China. So, I am not at all surprised that they have become so touchy about China. Whenever I talk about China, they become so touchy... (Interruptions)

SHRI BASU DEB ACHARIA : You do not know the history... (Interruptions)

SHRI KHARABELA SWAIN : They become so touchy and they become so jumpy. Sir, China is not a Member of the WTO, I agree. But what China has done.

It not only adopted the patent laws in 1984, but it also revised the law in 1992 just before we did and this law gets the patented protection far in excess of what even the Treaty of Intellectual Property Rights requires its members to ensure. I request hon. Members of the left parties to go through the Chinese Patents Act and what they have given. They have given them more than what we are just going to give. I am now going to tell you

what they have given. While TRIPs require these rights to be given by 2005, China had given them long back in 1992. The life of patents has been extended to 20 years. Product patents has been extended to all areas of technology. China has started giving it from 1984 and we started giving it from 1994.

SHRI BASU DEB ACHARIA : You talk about India.

SHRI KHARABELA SWAIN : I am referring to China because I just want to remind our hon. Members what their own leaders have done. Once upon a time, there was a saying that when it rains in China, the leftist people in India unfold their umbrellas. That is why, I am saying that they should now do what China has done so that they would later on not accuse us of what we are just going to do.

What China has done about the working of the patent is that importation is taken to be a novelty of the patents. Suppose in China, there is a patent and some foreign national or some multinational company imports certain thing, than that patent is working. But in India we have provided a safeguard that if some multinational company which is having a patent imports certain thing, we will consider it not to be working. That is the difference.

SHRI PRITHVIRAJ D. CHAVAN (KARAD): Where is it? If you look at Section 74 (3), you will find that we have deleted that. That is the point.

SHRI KHARABELA SWAIN : We have not deleted that. We have not deleted Item 7. I will come to that later.

In China, if there is a patent and if the firm merely imports an agricultural item from the factory, it is working. I am just giving you a comparative picture about what a country like China is doing. (Interruptions)

I will just mention a point. Shri Basu Deb Acharia and other hon. Members are very honourable and senior Members of this House. I am a very very new Member. I have come to the House for the first time. I do not expect this behaviour from them. Maybe they do not subscribe to my view. I am now the first speaker. They will speak later on. They will have enough opportunity to contradict me, but to oppose me at every stage and to get up and to shout at me is not proper. I just leave it to their conscience whether they should do it.

MR. CHAIRMAN : Please do not make running commentaries.

... (Interruptions)

SHRI KHARABELA SWAIN : Under Indian law, methods of agriculture and horticulture are not treated as inventions and so, no patents can be obtained for them.

We say that neem and haldi will be taken over. Sometimes, we say that out of ignorance. When I was not a Member of this House, I was also under such an impression. In my ignorance, in some political party meetings, I also spoke like this. But when I went through the Bill, when I talked to my senior hon. Members and officers, I came to know that this is not a fact. Actually, it is not a fact. We have given adequate safeguards in our Bill that agriculture and horticulture will not be treated as inventions. This is a very good safeguard that we have provided for in our Bill.

There is a basic problem in India, that is, with regard to writing and reading of the patents. There is a special skill involved in it. When you write a patent, it calls for a skill in the sense that you write certain things by which you tell people that you want a particular aspect of the patent to be safeguarded. But still you hide certain other things which others should not know. In a country like China, they are having five thousand institutions with experts in writing patents. About fifteen or twenty years ago, China knew far less about patenting than what it knows now. China has about sixty thousand to seventy thousand patent applications in a year whereas we are having only 2,005 applications per year. There are about 35 million to 40 million patents published in the world.

The hon. Member has said about Exclusive Marketing Rights. That was the basic point which Shri V.V. Raghavan also raised in the beginning. He said that it is a very serious offence to provide Exclusive Marketing Rights to the multinational companies. But let me say that not a single Exclusive Marketing Rights rights application has been received by India. The hon. Members of the

Left Parties are making a noise as if millions and millions of applications have swarmed the Indian markets and the Indian market is going to be swayed away.

Can you just say that these Exclusive Marketing Rights - I basically challenge this - or patent rights are fool-proof protection? We say that a multinational company or any company for that matter will get its patent rights for twenty years. This means, they will have Exclusive Marketing Rights for twenty years. But the technology is changing very fast. So, can any company wait for twenty long years with its old and outdated patent? If a company waits for twenty years, the technology could change thirteen times over. So, this is not a fool-proof protection. Maybe, in the initial stage, it gives some advantage for eighteen to twenty months or even two years, after which the company will have to change its technology.

It cannot wait for eternity. It simply is not possible. So, many of these companies do not find that it is a safeguard for them. They themselves say that the safeguard is continuous research and development. Through continuous research and development only, they can keep themselves competitive with other companies. Practically, that is the only way. I am being very pragmatic. I am just telling you, from a very practical point of view, that no company will wait for 20 years. Every one-and-a-half to two years positively they will go on changing the patents. Otherwise, other companies will catch up with them.

Take the example of India. How are most drugs manufactured? The drugs which are manufactured in India are not the best with regard to research, development and innovations. They get a drug from a multinational company or from a foreign company; they reverse engineer it; and they reach the same conclusion. They find out that there is another drug which is practically the same drug as was marketed by the multinational company or by the foreign company. So, ultimately it is only a process patent. Practically, it is the same drug, but since it has been reverse engineered, it has been found to be in a different form. In this way, thousands and thousands of drugs have been manufactured in India. Maybe, some of the companies in India may be put to some difficulties because they do not have originality and so, they just want to copy it from some other drugs which have been manufactured by a foreign company. So, they may be put to trouble. But have we thought that the original company, which has actually manufactured it, is not getting annoyed? Some other company has copied it, okay, but what will happen if we also do certain things like that? Suppose we manufacture certain drugs; some other company comes forward and copies it; will we not get annoyed? Naturally, we will get annoyed. This is actually what is happening in India.

Let me now come to the next point. How many exclusive rights to market a product in India, only in regard to inventions which have been patented after 1st January 1995 have been provided for in this Bill? The World Health organisation has listed about 250 drugs as being the ones that are commonly used as essential drugs in India. What is its meaning? That means that these drugs cannot be patented. This is the most important thing. Those 250 drugs in India which are considered to be commonly used cannot be patented by any other country. This is the provision. ... (Interruptions)

SHRI SATYA PAL JAIN : He has gone to the bath room. ... (Interruptions)

MR. CHAIRMAN : He will come within one minute.

...(Interruptions)

to this House. ... (Interruptions)

SHRI SATYA PAL JAIN : As the Chairman said, he has gone out to attend to a very important business, just for a minute. ... (Interruptions)

SHRI BASU DEB ACHARIA : Sir, since there is no Cabinet Minister as the Cabinet meeting is going on, you can adjourn the House.

MR. CHAIRMAN : The hon. Minister will be here within a minute.

... (Interruptions)

SHRI BASU DEB ACHARIA : At least one Cabinet Minister should be here.

MR. CHAIRMAN: He has taken permission to go to bath room.

... (Interruptions)

SHRI SATYA PAL JAIN : The hon. Minister has gone to bath room with the permission of the Chair. ... (Interruptions)

SHRI KHARABELA SWAIN : Out of these 250 drugs, only four were patented in 1994. These patents have already expired in 1994, 1995, 1996 and 1997. That means all these 250 drugs that are listed by the WTO cannot be patented by any other company. So, not one of them would be affected by the new law. No firm would be given the Exclusive Marketing Rights to any of these drugs in India. So, where is the objection? Almost all the 250 drugs are not going to be patented at all.

My next point is about the price. Many of the hon. Members alleged that the cost of the drugs would increase by leaps and bounds in India and they also gave some comparative figures. ... (Interruptions) They would get ample opportunity to speak. Kindly listen and you can reply when your turn comes.

MR. CHAIRMAN: Shri Swain, you please address the Chair.

... (Interruptions)

SHRI KHARABELA SWAIN : So, now it is the question of price. ... (Interruptions)

MR. CHAIRMAN: He is a new Member. Hon. Members, please cooperate. Why should you disturb him?

... (Interruptions)

SHRI KHARABELA SWAIN : Sir, I am very proud that the senior leaders do not consider me a new Member. They consider me their equal. So, I feel proud.

Sir, I was saying that it is the question of price. The hon. Members gave some comparative figures that the cost of a particular drug is this much in America and the cost of that drug in India is this much. I concede that cost of the drugs in America are sometimes four or five or six times higher than that of India. But why?

What is the reason for it? Why is the cost of drugs in America so high? Is it because of the patents? It is not because of patents. The prices of the drugs in America are more not because of the patent regime but because a large percentage of the population in America is covered by social security or medical insurance. So, the firms there can charge higher prices for different drugs as well as for medical services. This is the main reason. Since in America everybody is medically insured, the drug manufacturers demand high prices for various drugs. But, this is not so in India. We do not have medical insurance here. No insurance company has come forward with it.

The cost of a product is determined by the paying capacity of the people of this country. One should not take for granted that any price fixed for a drug by the multinational company will be agreed to by India. Take the example of television or the shoe manufacturers. Nowadays, we see the advertisement that if one buys a 21-inch Akai Television, he will get a 14-inch television free. What is the reason behind this? The reason is, the company had fixed the prices of its products thinking that since the Indians are very crazy about the foreign goods, they would buy their products as per the prices fixed by them. It is not so, Sir. Similarly, they had thought that even if they will fix higher prices for their drugs, the Indians will buy them. But, the paying capacity of the people of this country does not allow it. And, as the multinationals have reduced their prices for other goods, in the case of drugs also they will never be able to increase the prices. The people of India are not in a position to pay higher prices because financially they are not as well off as the Americans are.

I once again come to Section 24C which talks about the prices. In this case, we have a safeguard in the form of compulsory licence. It says that Chapter XVI of the Patents Act be applied to those firms also which are given exclusive right to sell and distribute products in India. If the reasonable requirements of the public are not being satisfied by the patentee at a reasonable price, the authority under Section 84 of the Act, that means the Government, would have the power to direct the firm to compulsorily give the marketing licence to another designated firm.

So, this is the safeguard. It is not that the multinational companies can fix any price they wish. We have provided adequate safeguard in the form of Section 24C so that any multinational company may not fix the price arbitrarily.

I now come to Section 24D(1) which says, if the Government is satisfied that it is necessary or expedient in the public interest to sell or distribute the product itself or through another, it would have the power to order accordingly. This is also another safeguard provided in the Patents (Amendment) Bill.

With regard to Section 24D(2), the Government can also fix the rate of drugs if it so desires or if it finds that a very high price has been fixed by the multinational company.

Now coming to another point which has already been replied to by the hon. Member, Shri P.D. Chavan. The Left Parties are also some times telling that we should get out of the WTO. But it is simply not possible. This is an obligation. Rightly or wrongly, it has already been signed. So, we cannot come out of this Agreement because this treaty is a statement of principles. There is hardly any country in this world who has not signed the WTO. Even the Pakistan who was with us, had signed it. If we do not sign and come out of WTO, we will be singled out. We will be the only country without any help. Moreover, how can we say that all the countries in the world are wrong and we are the only country which is right. So, there is absolutely nothing wrong in signing the WTO.

Now, I am coming to clause 1 which says:

"Members should be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system."

Sir, I hope we have already done it. Now, I am coming to Section 7. It says:

"The protection and the enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations."

Sir, you mark these words. This is for promotion of technological innovations, transfer and dissemination of technology to the mutual advantage of producers and users of technology. It further says that it should be done in a manner conducive to social and economic welfare. Is it going against us? Is it going to be an arbitrary Agreement which is being imposed on us by the imperialist United States of America?

Sir, about the exclusive marketing rights it says that if a patentee obtains from us, and to take an example, he uses to block the promotion of technological innovation and to the transfer and dissemination of technology can be transferred to another, it can even be revoked using our laws on the basis of the Article itself. This is also another protection. We have already provided another protection. We have already provided another safeguard in this Bill.

Now, I am coming to Section 8 which says:

"Members may in formulating or amending their laws adopt measures necessary to protect public health and nutrition and to promote public interest in sectors of vital importance to their social, economic and technological development provided that such measures are consistent with the provisions of this Agreement."

So, appropriate measures are provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by the right holders or the resort to practice which unreasonably restrain trade or adversely affect the intellectual transfer of technology.

MR. CHAIRMAN: Please conclude. You have already taken 40 minutes. There are six more speakers.

SHRI KHARABELA SWAIN : Sir, after giving some four or five suggestions, I will conclude. I want to say that already adequate provisions are there.

As the hon. Member Shri Prithviraj D. Chavan has made some suggestions, it is up to the hon. Minister to reply to it. He can just go through them. My feeling is that we will have adequate opportunity in future also to amend it and provide for things. If anybody suggests any such thing, the Government is quite capable of replying to it. It is empowered to reply to it and it should include all the amendments in future. I will just give two or three suggestions. I will just conclude. It will hardly take three or four minutes only.

MR. CHAIRMAN : You will not get three or four minutes. You will get only one or two minutes.

SHRI KHARABELA SWAIN : Sir, you should give me some time. The first point is that we should patent those drugs by the year 2005 which we feel will be swamped by the multinational companies. It should be patented. We should re-orient the drug-industries which actually depend upon the original research and not on reverse engineering.

MR. CHAIRMAN: Now, I am going to call the next speaker. Please conclude.

SHRI KHARABELA SWAIN : Please allow me another two minutes. I will just finish it...(Interruptions)

MR. CHAIRMAN: Already, you have taken forty minutes.

PROF. RITA VERMA (DHANBAD): Sir, he is the first speaker from our Party. He has all the time of our Party...(Interruptions)

SHRI KHARABELA SWAIN : Secondly, we have to set up institutes to train technologists, lawyers and the rest in reading and writing the patents. I have already told that we should have institutions, we should train our people and they should be able to read and write the patents perfectly so that we are not misled by any multinational companies. We should patent our original products also. It would not happen if we write it properly.

The third point is that as per our bio-heritage, Governments have been declaring for long that we will be taking plants altogether out of the Patents Act. Plants should be taken out of the Patents Act and that a separate law should be passed to grant them sui generis protection.

The Bill is already ready. I would request the hon. Minister that this should be enacted very quickly.

Now, I come to my last point. We should set up teams to work out how we can enlarge the apertures which the WTO Treaties contain and thereby further the Indian interests.

Last but not least, let us set up Appellate Courts with the specialist knowledge and the facilities which the Patents Act requires. The media should be used to propagate all these things because a very wrong message has gone to the country saying that if we pass this Patent Act, then the country will be swamped by the multinationals, the multinationals will come, the East-India Company will come and they will swamp us, they will kill us and they will strangle us. This wrong feeling should be done away with by a massive media planning and propagation.

With these few words, I conclude. I thank you very much for having given me the opportunity to speak.

>MR. CHAIRMAN : Shri Rupchand Pal to speak now. Shri Rupchand Pal, before you speak, I want to say something. There are six speakers and the time left is only 55 minutes. Kindly be brief.

... (Interruptions)

SHRI S. JAIPAL REDDY (MAHABUBNAGAR): The time must be extended because it is quite an important issue...(Interruptions)

1744 hours

SHRI RUPCHAND PAL (HOOGLY): Sir, we have our time. Anyhow, even at the outset, I would give a small suggestion to my young friend who spoke just now. He may not know the reason why he was picked up for speaking. If he goes through the debate of 20th March, 1995, he will come to know what the BJP stalwarts have been stating. For the benefit of the young Member, I am just quoting it.

It is Shri Guman Mal Lodha, one of the speakers, who said this: "It is a suicidal law."

Many from the BJP's side had spoken. I am only referring to one or two from the debate of the 20th March, 1995. They said that it is a suicidal law.

SHRI KHARABELA SWAIN : I also spoke the same thing in 1995.

SHRI RUPCHAND PAL : He says that he has also said the same thing. Now he has changed the position.

SHRI KHARABELA SWAIN (BALASORE): Because I now know as to what is the truth. At that time, I did not know. I agree. I concede. I told that I said the wrong thing in those days. I was not a Minister or an MP. But I was a member of the BJP and I told the same thing in the party.

SHRI RUPCHAND PAL : He also subscribed to that view. It is a plot to endanger our freedom. He should learn the lesson from the outcome of the Assembly elections at that time. The situation is reversed. Otherwise, the spell of the charm of the economic reforms will vanish. They said that this nation of Bhagat Singh, Raj Guru and Sukh Dev will not allow it. This is the stand of the BJP in regard to the Patents (Amendment) Bill.

SHRI INDRAJIT GUPTA (MIDNAPORE): At that time Shri G.L. Lodha is as ignorant as Shri Kharabela Swain.

SHRI RUPCHAND PAL : He was the Justice of the High Court. I can take any number of quotations from the stalwarts of the BJP and their allies.

SHRI SATYA PAL JAIN (CHANDIGARH): Now, you have started quoting the BJP.

SHRI RUPCHAND PAL : All right. You have changed your position and now you are a great advocate of the reforms and a supporter of the amendment.

DR. SUBRAMANIAN SWAMY (MADURAI): He wants the BJP in the opposition.

SHRI RUPCHAND PAL : Mr. Chairman, Sir, at the very outset, I shall refer to a news item that has come out only today - the 9th March. I seek your indulgence to read out only a portion:

"The 15 nation European Union has taken the US to the World Trades Organisation Dispute Settlement Board stating that the imposition of Super 301 is not in line with the WTO Rules."

This is in regard to the banana controversy that has come up. This is the position today and the same is being discussed. I am just quoting a reference. Immediately after the GATT Accord was finalised, the Americans dropped the bombshell.

The United States Trade Representative, Mr. Micky Kantor said:

"Let it be known that irrespective of the GATT and its mandate for fostering free and free trade, the U.S. intended to continue the use of US Trade Special 301 to penalise the countries. They would use their own instrument to ensure that they get what they thought were legitimate American dues."

In fact, in those days, they were continuing. And now the very dispute, the charges made by the European Union on the banana controversy, only proves once again that the America to whom we have given the undertaking that before 19th of April as our cause in the Dispute Settlement Forum were turned down, we shall make necessary changes in our Indian Patents Act. The country which does not believe in multilateralism, there are umpteen number of examples, not just the European Union, there are so many countries and there is a demand that when the review will be taken up in 1999, which is due, the whole WTO issue will have to be discussed.

Those who are subscribing to it earlier, they also need to reform themselves. This is not the plea of only India. This is the plea of so many countries, cutting across alliances, political alignments etc., because the economic interests of so many nations are involved and they are saying that they should have a very comprehensive review of the WTO. There is a scope to do that. But the opportunity, strangely, is not being used appropriately, as it should have been, by the Government of India. Why am I saying this? I am saying this because our concerns and the concerns of many other countries who belong to the developing world are similar and there had been occasions when India had taken up issues on behalf of them. For example, we are told that at different levels of discussions that had taken place with Pakistan, one aspect which was discussed was that at the WTO deliberations, India and Pakistan should collaborate and consult each other. Such a step could have been taken earlier and there are complaints from many developing countries that India have ignored them, although the position was similar in the case of interests being jeopardised at different levels in the deliberations.

Sir, I shall confine myself only to the TRIP because there are no less than 28 agreements in the WTO. Now, we are concerned with the changes that are proposed with regard to the TRIP and particularly the areas where, as a signatory to WTO Agreement, we are supposed to enact after the undertaking we had given at the dispute settlement level. The issue is whether we should opt for the product patent directly or we should use the transitional phase to go through the EMR route. This was the debate which was going on all the time and it is conceded by very eminent people, jurists, experts, economists and social scientists that the EMR route is worse than the product patent route. At least in the product patent route, we could have got another five years, upto 2004. There is a period granted for compulsory licensing and all these facilities. We could have availed of many more opportunities, including facilities like infrastructure. As you are aware, when the Standing Committee had taken up this Bill for scrutiny, this is one area where they had emphasised unanimously about the inadequate infrastructural facilities in India which will immensely harm the national interests if we just decide to go for the product patent or, for that matter, the EMR transitional route without building up our infrastructure.

Now, what is provided in the Exclusive Marketing Right? Will they produce it in our country? The answer is a specific 'no', although the hon. Member from that side was trying to say that there is no such provision that importation will be considered as manufacturing. It is a specific one and a person who is having that EMR may withhold that right and may not make available a particular drug or a particular formulation or a particular molecule if it does not serve his financial purpose.

This Parliament will be a silent onlooker without any right after this EMR is given. It will be a monopoly for them. How are we going to give it? Is it after a thorough examination? No. There is a reference to an examination but the examination as per the comprehensive provisions of the Indian Patents Act is not there because whether it is patentable or not will have to be examined. Is this novel or not or are they trying to push through whole formulations, whole molecules or whole dosages with certain cosmetic changes?

May I draw the attention of the young Member as to how many applications have come up this time? There are 3,000. On an average, how many original formulations are available internationally? Some people say: 18 to 20. You can at best take it to '40'. For five years, '40' multiplied by '5' comes to 200. As a grace, you can call it '250'. But the number of applications already submitted is 3,000. What does it signify? There are areas of public

domain because we do not have adequate protection through a biodiversity law and because our examination system is inadequate.

I am just referring to a deposition by a very very important personality who is President of the Organisation of Pharmaceutical Producers of India. In his submission before the Department-related Parliamentary Standing Committee, 1993-94, that is, the Gujral Committee, he has stated:

"May I point out that no more than 18-20 molecules are introduced each year internationally. In view of this, it is difficult to comprehend as to how such a large number of applications - over 3,000 in number - have been filed for grant of patent when the scenario of new products developed is so low."

He continues:

"The Government of India could even consider preliminary examination of these applications to find out whether they relate to such products which have already fallen into public domain for which there is no obligation under Article 70.3 to provide for protection."

Through you, I shall try to draw the attention of the hon. Minister to this part. He must be aware of it. He says:

"Maybe these applications mostly relate to dosage form, usage form and new combinations and even herbal remedies based on Haldi, Neem and other known herbal products which, on their merit, cannot be treated as inventions..."

So, what I want to emphasise is whether there will be a provision for comprehensive examination whether this is patentable or not. This is a basic question. I want an answer from the hon. Minister whether the proposed arrangement is in the Bill or not. Will it be possible to scrutinise the patentability of the application if we do not go for a comprehensive provision as it is existing in the Indian Patents Act, 1970?

Apart from this EMR examination, of course, mailbox may be permitted. But ultimately, will the patent offices in our country be in a position to examine the applications that will be coming through the mailboxes? A study has come out by one Shri Ganguli or someone else from the Hindustan Lever. He has made a very good study about our infrastructure and about the annual reports of our Controller of Patents, the personnel, the number of experts and the legal position.

18.00 hrs.

MR. CHAIRMAN : Shri Rupchand Pal, please take your seat. Now, the time is going to be 6 o'clock. Is it the pleasure of the House to extend the time?

SOME HON. MEMBERS: No. Let us continue tomorrow.

MR. CHAIRMAN : I have been informed that the Business Advisory Committee had decided that the House will sit up to 8 o'clock.

DR. SUBRAMANIAN SWAMY : The sense of the House here is important. The decision of the Business Advisory Committee is recommendatory.

SHRI KHARABELA SWAIN : Sir, this is a very important Bill.

THE MINISTER OF INDUSTRY (SHRI SIKANDER BAKHT): I have been given to understand that the decision taken was that the House would sit till the Bill is passed.

MR. CHAIRMAN: Hon. Minister, what is your reaction?

श्री राजो सिंह (बेगूसराय): सभापति जी, हम आठ बजे तक नहीं बैठ सकते हैं। ... (व्यवधान)

सूचना और प्रसारण मंत्रालय में राज्य मंत्री और संसदीय कार्य मंत्रालय में राज्य मंत्री (श्री मुख्तार नक्वी): सभापति जी, बिजनेस एडवाइजरी कमेटी में हाउस को आठ बजे तक बढ़ाने का डिसाइड हुआ है।

... (व्यवधान)

SHRI A.C.JOS (MUKUNDAPURAM): The House may now adjourn and meet at 11 a.m. tomorrow.

MR. CHAIRMAN: There are many hon. Members who want to speak on this Bill.

... (Interruptions)

श्री मुख्तार नक्वी : आप हाउस को आठ बजे तक बढ़ा दीजिए।

... (व्यवधान)

सभापति महोदय : उसके लिए तो मैंने बोला है लेकिन वे लोग इसके लिए राजी नहीं हो रहे हैं।

... (व्यवधान)

SOME HON. MEMBERS: Let us take it up tomorrow.

MR. CHAIRMAN: Hon. Members, please take your seats.

SHRI A.C. JOS : We will sit tomorrow.

श्री राजवीर सिंह (आंवला): सभापति जी, बिजनेस एडवाइजरी कमेटी की रिपोर्ट को हाउस ने सर्वसम्मति से स्वीकार किया है।

... (व्यवधान)

जब सर्वसम्मति से स्वीकार किया जा चुका है, तो आप इस पर आपत्ति क्यों कर रहे हैं ?

... (व्यवधान)

जब तक बिल पास न हो तब तक के लिए आप हाउस को बढ़ा दीजिए।

... (व्यवधान)

MR. CHAIRMAN: Let us extend the time, at least, by one hour.

श्री रघुवंश प्रसाद सिंह (वैशाली): सभापति जी, जब सभा की सहमति हो तभी आप हाउस को बढ़ाइये।

... (व्यवधान)

MR. CHAIRMAN: Let us extend the time of the House till 8 o'clock.

... (Interruptions)

SHRI SHARAD PAWAR (BARAMATI): Let us sit, at least, for one hour more.

MR. CHAIRMAN: Is it the sense of the House to extend the time? Let us sit up to 8 o'clock.

SOME HON. MEMBERS: No.

SHRI SHARAD PAWAR : I can understand that the Members are sitting since morning. But it is also factually correct that the Business Advisory Committee had taken a decision that the House would sit up to 8 o'clock. That proposal has been put before the House today and has been approved by the House unanimously. That is why we are supposed to sit till 8 o'clock. I can understand the feelings of the hon. Members also. Anyway, we can sit up to 7 o'clock.

MR. CHAIRMAN: All right. We can sit, at least, up to 7 o'clock. So, the time of the House has been extended up to 7 o'clock.

... (Interruptions)

श्री राजवीर सिंह : अगर जल्दी घर जाना है तो यहां बहस मत कराइए।

... (व्यवधान)

श्री रूपचन्द पाल (हुगली) : जल्दी घर नहीं जाना है।

... (व्यवधान)

यहां चर्चा करना भी जरूरी है।

... (व्यवधान)

Now, Sir I am coming to the examination issue.

SHRI A.C. JOS : Sir, what is the decision?

MR. CHAIRMAN : The House has been extended up to 7 o'clock, for one hour.

SHRI A.C. JOS : Only for one hour.

MR. CHAIRMAN: At present, only for one hour.

... (Interruptions)

SHRI RUPCHAND PAL (HOOGLY): Sir, I can continue up to 7 p.m., no problem.

SHRI A.C. JOS: We have agreed to the suggestion of the Leader of the Opposition. So, it is extended up to 7 o'clock... (Interruptions)

श्री रघुवंश प्रसाद सिंह (वैशाली): हम लीडर ऑफ ओपोज़ीशन की बात से सहमत हैं। हाउस सात बजे तक चलाया जाए।

SHRI P.C. CHACKO (IDUKKI): Mr. Chairman Sir, we should not create a wrong precedence. Whatever decision the Business Advisory Committee is taking, the extension of the House is the prerogative of the House. Please understand that the Business Advisory Committee can make the list of the topics to be discussed. It can decide all those things, but the extension of the House is the exclusive preserve of this House... (Interruptions) This cannot be violated.

Now, the Leader of the Opposition has made a suggestion and if the Ruling Party agrees that it is only for one hour then we agree, otherwise we will not agree... (Interruptions)

MR. CHAIRMAN: The decision of the Business Advisory Committee was accepted by the House.

... (Interruptions)

DR. SUBRAMANIAN SWAMY (MADURAI): But it can be reviewed... (Interruptions)

SHRI A.C. JOS : Sir, you have given your ruling that the time of the House is extended up to 7 o'clock... (Interruptions)

THE MINISTER OF POWER, MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF NON-CONVENTIONAL ENERGY SOURCES (SHRI P.R. KUMARAMANGALAM): Mr. Chairman Sir, may I be recognised? ... (Interruptions)

SHRI P.C. CHACKO (IDUKKI): Sir, his Deputy has made the point... (Interruptions)

SHRI P.R. KUMARAMANGALAM: Sir, may I be heard?... (Interruptions) May I seek your protection Sir? Now-a-days, I have been seeing that I need their permission to speak. So, please give me a few minutes.

MR. CHAIRMAN: Yes, certainly.

SHRI P.R. KUMARAMANGALAM: If I may submit, 7 o'clock is the time that the Chairman has ruled, I understand that, on the suggestion of the Leader of the Opposition. But we have one problem which I must place openly before all of you for consideration. We have a lot of business which is pending. We had originally worked it out that we would try and complete the whole pending Ordinances by yesterday. Now, we have this one Ordinance, that is, the Patents one and another the Central Vigilance Commission Ordinance. We have two with us. In addition to this... (Interruptions)

SHRI S. JAIPAL REDDY (MAHABUBNAGAR): Sir, he is forgetting the Prasar Bharati Ordinance.

SHRI P.R. KUMARAMANGALAM: No, I said at the moment we have two. I know that this is also pending... (Interruptions)

SHRI P.R. KUMARAMANGALAM: Please. We need to understand that in addition to this, we have got the debate on the Motion of Thanks to the President's Address to be completed; we have got the General Budget and the Railway Budget and all this by the 18th. All of us conclusively feel that we do not want to sit on 13th, Saturday or extend the House. So, I would request and implore upon all of you that please let us then restrict ourselves within the time that we have got and complete the Business; otherwise, we will either have to extend the House or sit on Saturday. This is the plea that I want to make.

I appreciate the views of the Members, especially the views expressed by Shri Chacko. I have no problem on his views. But I must place the position before the House. I think, let us now sit till 7 o'clock as the Chair has ruled, but I would request you to consider all these options because then tomorrow they cannot blame us. If somebody says that the Parliament could not complete its business, it is not going to be alone my fault... (Interruptions)

SHRI P.C. CHACKO : The hon. Minister has not made any new point. His Deputy has already made these points that the House should discuss all these issues listed in the List of Business... (Interruptions)

MR. CHAIRMAN: Shri Rupchand Pal.

SHRI RUPCHAND PAL (HOOGLY): Sir, I now coming to the examination question. As it has been restricted in the present Bill to sections 3 and 4 of the Patent Act, I would request the hon. Minister to see that a comprehensive and appropriate procedure provided in the Patent Act, 1930 in Chapters IV and V would be taken into consideration.

Now, this examination has become more complicated after you have joined the Paris Convention. The countries belonging to the Paris Convention will be entitled of the patent if they have got it in any of the countries, who have subscribed to that particular Convention. So, not only the infrastructure but adequate time is also required to check up throughout the global patent regimes whether this particular application, how and when it originated; the novelty and invention angle should be ensured. But this is not there in the hastily drafted Bill. Although the Government has got a lot of time but they did not just apply its mind. It is ad hocism. This has happened with

our representatives working at that level also. They were speaking more in the interest of multi-national companies. ... (Interruptions)

SHRI AJIT KUMAR PANJA (CALCUTTA NORTH-EAST): Just like Marxism. ... (Interruptions)

SHRI RUPCHAND PAL : Actually the problem with this particular MP from Calcutta is that he sometimes speaks on the subject which he does not understand. ... (Interruptions)

SHRI AJIT KUMAR PANJA : I have got a name ... (Interruptions)

SHRI RUPCHAND PAL : The beauty of his personality is that sometimes he revels in his ignorance.

Sir, I am coming to the process patent itself. There is an argument about the killing threat and all these things, reverse engineering. But when our eminent leaders have been writing on Japan, how they exposed before themselves; they learnt the intricacies of machines and other things and ultimately became the leader.

1813 hours (Shri Raghuvansh Prasad Singh in the Chair)

Sir, with your indulgence I am reading a quotation. At the end I shall only refer to whom I am referring to. This is in reply to the philosophy of patenting. I will tell the name as to whom I am referring to later on. It says:

"We know that knowledge including scientific knowledge and even technology pass from Asia, China and India and the Arab world to the industrialist western countries of today. It was not only in the remote past, even in the recent times this has taken place. In fact, even today in the form of brain drain from the so-called Third world there is significant scientific technological knowledge going from East to West."

Can you guess whom I am quoting, Sir? This is Mr. K.R. Narayanan, hon. President of India speaking at the Third World Patent Convention organised by the National Working Group on Patent Laws in 1990. ...

(Interruptions) I shall give you that. Why are you wasting your time in that party? You should use your time by coming to us and reading all these things. I shall give you that. ... (Interruptions)

श्री चेतन चौहान (अमरोहा) : सभापति जी, एक मैम्बर को ४५ मिनट से ज्यादा हो गये, आप कुछ करिये।

... (व्यवधान)

SHRI RUPCHAND PAL : Sir, he has some difficulty with his watch!

Then, I shall come to the licence of right. As you know, the availability and also cheaper price in India is possible because of the immense progress that we have made in the pharmaceutical industry.

Our small scale industries are producing very good quality medicines. They have a good export market also. If we have to reach our goal of health for all by 2000 AD - I do not know whether they subscribe to that - we have to encourage the small scale industries. I do not know because these days they do not care to refer to all these things.

SHRI AJIT KUMAR PANJA : You have to de-recognise Calcutta Medical College once for all for your party in action.

SHRI RUPCHAND PAL : This is the problem with these people. They always try to derail themselves and they believe that others will also be derailed as desired by them. I am not going to be derailed.

I will come to the licence of right. In the Indian Patent Act, there should be a restructuring provision. For example, after having the exclusive marketing right, someone has come but he does not produce anything in the country. He only imports. If any Indian producer, according to the WTO provision, applies saying that I am paying you four per cent royalty, you allow me to produce, will it not be done? This licence of right is urgently

required and should be considered. Such provisions should be included in the Bill. Not only that four per cent of royalty, but also why should they not transfer this technology? Wherefrom did they get this technology? It is from our own people, our own scientists who are working over there in the Western countries, in U.S.A, U.K and in many other countries. They are learning from us. As I quoted the observation made by the hon. President in his speech in the National Patents Convention, they have learnt many things from us, and, now they want to monopolize their knowledge. In a knowledgeable society, India should not subscribe to this view. This philosophy of monopolizing knowledge is not good.

सभापति महोदय : संक्षिप्त भाषण ज्यादा असरदार होता है। सूची में काफी सदस्यों के नाम हैं।

SHRI RUPCHAND PAL : Brevity is the soul of wit. But my problem is that they understand when I only elaborate before them. If I am brief, they will not understand. So I have to elaborate certain things. I am coming to the other things.

Mr. Chairman, Sir, I had spoken about the WTO provisions in this unequal world. When the Government of India signed that Treaty, they did not care for this. They say that signing international treaty is the exclusive jurisdiction of the Executive. But how can it be that the constitutional right of this Parliament will henceforth be ignored? After passing this Bill, the exclusive marketing rights would be enjoyed by them. The situation will be monopolized by them. The Indian people will be deprived of the minimum medicare facilities in terms of availability of medicines, etc. This Parliament will not have any power at all to intervene. I would just like to put a question to the hon. Minister. Could you please explain to this Parliament that in such a situation, how the Parliament will be able to intervene to protect the national interest? Secondly, what will happen to our small industries? It is because when this Indian Patent Act, 1970 came, after a long period of time and long discussion, the consensus were reached. I think the Minister will agree with this. Throughout the developing world, the 1970 Act was considered to be a model Act and we were proud that Indian Patent Act, 1970 is strengthening our ways of self-reliance. I am putting a question to the Minister directly. Will this particular Bill not erode our self-reliance? I want to know this. This Parliament has a right to know. How are you going to protect our pharmaceutical industry, small industries and our national interest?

I will come to chemicals and agriculture later. I am confining myself to pharmaceuticals. Does the hon. Minister know why? There is a reference by my esteemed colleague from here. This Government was waxing eloquent that immediately after the Budget the share market is increasing. The index is rising, rising and rising. It happened with only five issues, only five scrips. Pharma, IT, Hindustan Lever and two or three others, two banks, perhaps. What has happened to Ranbaxy, Glaxo, Pfizer, and Hoechst? Has the hon. Minister gone through the deliberations of their Board meetings? Why is there an impact of the Pharma scrips in the stock market of Mumbai? Only because they have come to the conclusion that some changes will be brought about in the patent regime, in the Indian Patent Act by this Government. And so, there is a surge in the index, particularly in the Pharma companies, the multinationals. They may be happy.

Does the hon. Minister know the profit of Glaxo, the profit of Pfizer, the profit of Hoechst and certain other multinational companies? Many friends of that side might have passed through the complex of Glaxo, some might have examined the balance sheets of those companies. The publicity expenses of one company are more than one year's Plan expenditure of a large State of India for one year! The total expenses are equivalent to the publicity or the advertisement costs.

These multinationals rule the world. Whether some Government will be there or not will be decided by them, not by making donations during the elections. Who will be the Prime Minister or the Health Minister, that is decided by these pharmaceutical majors. This has happened, many books have been written about Latin American countries and African countries. The Government must know it.

What will happen to the pharmaceutical industry and our self-reliance? My hon. friend argued about agro-chemicals. During the last 50 years, if we have made any progress in any sphere, it is in Agriculture. I have no hesitation in agreeing. I have no hesitation. But for a country like India which is dependant on its Agriculture where the GDP is primarily accounted for our success in Agriculture, what is going to happen by this

agricultural thing? If the Government allows these multinational companies in a manner it proposes to go through the Bill, it will be disastrous for our agriculture, disastrous for our economy and disastrous for our self-reliance.

I may make a mention about the plant varieties. I was assured, when I had raised it in the past that a different Bill, the Plant Varieties Bill would come to take care of the question of the seeds even when we were considering the TRIPs issue. (Interruptions)

I am mentally disturbed because of the question whether the discussion would continue beyond six o'clock and I was derailed.

SHRI A.C. JOS (MUKUNDAPURAM): You got more time by that.

SHRI RUPCHAND PAL : I did not get more time; I need your time.

I am coming to bio-diversity. The life-form should never be allowed to be patented. Never. Of course, human cloning and animal cloning are coming.

It is again a question of biological warfare, gene therapy and so on. I am not going into many more questions, I am not going into the details. The Government of India should be very very not only careful, but it should very specific in this regard on this question of bio-diversity whether we really should bring out general protection. ... (Interruptions)

SHRIMATI GEETA MUKHERJEE (PANSKURA): Already 26 varieties have been patented. (Interruptions).

SHRI RUPCHAND PAL : Shrimati Geeta Mukherjee is right that the callous Government is ready to serve the multinational companies as asked by the IMF, World Bank because after the Pokhran, we are ready to surrender. When they are asked to sit down, this Government is ready to crawl. This Parliament is kept in the dark on many major things. I believe, at the WTO, there is still an opportunity. There is still an opportunity to demand a review and only after the review -- that will be done very soon -- appropriate decisions can be taken and neither the product patent nor the EMR growth will serve our purpose. It would be disastrous and it would be mortgaging our economic sovereignty. This is very worse. The BJP people had used it in 1995. But, unfortunately, they have subjugated themselves to the pressures of U.S., the multinational companies and others.

I oppose the Bill and I shall continue to oppose the Bill which is detrimental to our national interests.

Thank you.

>DR. SUBRAMANIAN SWAMY (MADURAI): Mr. Chairman. Sir, this Bill is a small part of the agreed obligation of the Governments of the past. There is the larger question that whether now we have a choice or not. But it has to be recognised here that in 1986 when Shri V.P. Singh represented the then Congress Government in Uruguay, he had agreed to what was not originally agreed to, namely, that there will be a comprehensive review of our laws and even matters concerned with services would be brought under the GATT. That is the commitment I have seen when I was the Minister of Commerce and represented the country in the final Uruguay Round in Brussels. In 1989, the then Commerce Minister, Shri Dinesh Singh, agreed that we would abide by an agreement on TRIPs and that was in Geneva as a part of our written agreement. In 1994, Shri Pranab Mukherjee was the Minister of Commerce. I, of course, at that time, was heading a Commission of that Government on the GATT question. We signed the new GATT agreement with all its provisions. We did not express any minute of dissent or any reservation. So, therefore, today, as the Statement of Objects and Reasons mentioned in the Bill, we are committed not only as part of the original agreement but also as a judgment of the disputes settlement machinery of the W.T.O. which has fixed the 19th of April this year as the final date by which we have to make the amendment. But the question now is: Will this Bill passed by the Parliament satisfy the WTO?

What we have brought here, has the Government done the home work on that? Judging by what they did on Bihar, I would not be surprised if on this issue also they have not done their home work. I checked up and found

that on two issues the WTO is not going to accept this Bill. So, should this Parliament pass a Bill which is not going to be treated as compliance of our commitment? First is, according to the opinion today in the WTO, this Bill, by incorporating the compulsory obligation, violates article 70.9 of the TRIPs and, therefore, is not acceptable, and the second is that on the exclusive marketing rights, the application would be reviewed by the Patents Examiner in India. Both these are outside the provisions of the TRIPs and, therefore, this Bill is infructuous in the sense that we will pass it but we will have the same problem. Maybe they will come back again and bring out another Ordinance or maybe they will make some other amends, I do not know, but this Parliament is wasting its time in considering this Bill. We need to consider the larger question. I think this is an issue on which the Minister must take the House into confidence and tell us whether it is not a fact that already to this Government these objections have been conveyed.

The Attorney General of this Government had given certain assurances to the Supreme Court in November, 1998 that they will bring a series of legislations within the Winter Session of Parliament itself - now we are into the Budget Session - on the question of plant protection, bio-diversity, etc. None of these have come. I do not know how the Attorney General would be able to face the Supreme Court if the matter was raised again in the Supreme Court. But I would like to know whether today we can discuss this fundamental question because there is a division of opinion. Do we have a choice? Can we get out of the international trading system? Or is there a scope within this international system itself to get a better deal than we have got so far? According to me, the GATT provisions are such that if we have really good lawyers in Geneva, we cannot put our case strongly. And I am afraid, we do not have good lawyers there. In fact, it is one of the tragedies that all the officers who work in our Ministries here, sooner or later they go and start working in the WTO on huge salaries, and that is a very dangerous sign. This means that while they are working here, they would obviously not be working against the interests of the developed world. Otherwise they would be taken into such high positions. We will have to examine this question whether in this dispute settlement machinery's hearings, the case for India is being put effectively or not. But I would say that the GATT Agreement itself has a clause for level playing field. Why is it that we do not put our case on the issues on which we are very strong? The United States wants free flow of capital into India but it is not permitting free flow of labour into their country. They have surplus of capital that can come here but we have surplus of labour that is blocked by immigration laws. If the Indians can go freely to developed countries, if Indian companies can take labour freely to these countries and bid for projects there because our labour is much cheaper, we will win every project there and be able to strike a lot of good business, just as multinationals coming to our country get loans from their own country at two per cent interest rate or three per cent interest rate while our industry is asked to compete against these multinationals by taking loans at 18 per cent interest rate.

Sometimes, they do not get even that unless they pay some bribe. Therefore, this level playing field has to be agitated all the time before the WTO and Indian Government has not done that according to my information. On no issue of vital interest to India, we have pressed the point. We have not invoked the national security clause where we should. So, in effect, what I am saying Mr. Chairman is that it is no use blaming this international system. If you do not know how to use it, then why should you blame the international system? There is a plenty of scope in the new GATT agreement to get the Indian interest secured, but that is not being done because we do not have either the necessary intellectual infrastructure today or the honesty to do it. This Bill is doomed, but I think that the time has come for this Parliament to have a special Session to discuss this entire matter.

After all, there are 28 agreements and there is so much confusion as to what we are obligated to do and what we are not obligated to do. After all, this Bill has come. It is a very small part. It is not an amendment of the Patent Act. It is a very small adjustment for having failed to win an argument in the WTO. Here is a piecemeal matter. But we need to discuss in this House this matter because we do need a patent law. We are not going to be a permanently copying country. We are now producing software which needs to be protected. We are producing a variety of other things on which protection is necessary. Even our agriculture products need protection. Therefore, I would say that they have to pass the Bill. I am also committed to passing of this Bill because I am a part of the past along with them.(Interruptions)

SHRI A.C. JOS : Is he a part of that regime now?

DR. SUBRAMANIAN SWAMY : The question is that I have to decide on the Bill.

SHRI A.C. JOS : You are sitting on the front.

DR. SUBRAMANIAN SWAMY (MADURAI): I am not sitting. I am sitting with them. They are supporting the Bill. Are they not supporting the Bill?(Interruptions) He does not know. Their whip may please inform him.

PROF. P.J. KURIEN (MAVELIKARA): He will not divulge the secrets to him.

DR. SUBRAMANIAN SWAMY : So, it is a secret whether they are going to support it. It has already been announced publicly that they are supporting the Bill and it is a secret for him.

PROF. P.J. KURIEN : He will see at that time.

DR. SUBRAMANIAN SWAMY : They will do another somersault. Is it?

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): They have already announced that they will support the Bill.(Interruptions) They will change their stand. As they have done it in the case of Bihar, they will do it this time also.

DR. SUBRAMANIAN SWAMY : Yes, they will change their stand because they were saying like that in the case of Bihar also.

Now, the issue is that this is a part of our obligation. I do not think that this Bill is going to come back, they are going to come back to us again with a different thing because, as I told you, on two clauses, the WTO has already taken written objections. I do not know why they are going through with the formality of passing this Bill unless they want to use this as an excuse to get more extension of time. This Bill certainly is not going to solve the problems for us in the WTO, but we do need a full-fledged special Session of Parliament to discuss this matter in full detail so that we know exactly what we have to do. If we are to get out of the international system saying that we do not accept the discipline of the WTO because it is dominated by developed countries, then, we should prepare the country for it. Or, if we want to utilise the system to get maximum advantage, the country must know about it. This half way here and there, being neither here nor there will ultimately be like a chicken on the middle of the road and it will get run over by the vehicle that comes on the road.

Mr. Chairman, therefore, I am, as I say, obligated to support this Bill because this has been a part of our commitment. I certainly believe that the international system, the new GATT agreement has enough scope for India to get maximum advantage if we argue our case properly. Therefore, I would not like to advocate that we should get out of the international system. I would like to inform those who are advocating it that China - if I may quote the example of China, a country with which I am very friendly - is standing in the queue. Everyday, they are giving explanations as to why they should be taken into the WTO.

There is a long queue of 24 countries who want to get into the WTO. We are founder-members of the GATT. We were the first 23 countries who joined GATT in 1948. Today, we need not go out of the way and be the singleton out of it. This system should be managed by us. We should get the maximum advantage. The Government has not done this because they have not done their home-work. They have not done their home-work on any issue. Therefore, they have come and wasted the time of the House with this Bill. But I do hope that they will hold a Special Session so that the country knows where we exactly stand. Thank you.

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श्री शैलेन्द्र कुमार (चायल) : माननीय सभापति महोदय, आपने मुझे पेटेंट बिल पर बोलने का मौका दिया, उसके लिये आपका धन्यवाद।

पेटेंट का मतलब यह होता है कि हमने अमुक चीज का आविष्कार किया है और एक निश्चित अवधि तक उस वस्तु का दोहन करके उसका लाभ उठाये। वर्तमान में इस कानून में पांच वर्ष तक के लिये दोहन की व्यवस्था की गई है। सन् १९५९ में न्यायाधीश आयंगर की एक रिपोर्ट छपी थी जिस पर काफी हो-हल्ला हुआ था। १९६७ में पहली बार संसद में पेटेंट का यह बिल आया जिस पर जबरदस्त बहस हुई थी। १९७० का यह भारतीय पेटेंट कानून अब तक जारी है। १९७० के पेटेंट कानून में १९९४ में हम लोगों ने संशोधन किया है। यह संशोधन इसलिये किया था ताकि बहुराष्ट्रीय कम्पनियों के बढ़ते दबाव को रोका जा सके। इसी प्रकार वर्तमान पेटेंट अधिनियम में दवा, कृषि और रासायनिक क्षेत्रों में इन चीजों के पेटेंट करने के लिये जो अध्यादेश आप लाये हैं, उससे लगता है कि यह सरकार फ

वदेशी कम्पनियों के दबाव में है। विशेषज्ञों का यह मानना है कि इससे दवा उद्योग बुरी तरह से तबाह होगा, दवा के दाम बढ़ेंगे और हमारे स्वास्थ्य का मूल्य और ज्यादा महंगा हो जायेगा। आज विश्व के अंदर भारतवर्ष में सबसे सस्ती दवा मिल रही है। अब सामान्य गरीब आदमी को अपने स्वास्थ्य की देखरेख में बहुत कठिनाई होगी। इस विधेयक द्वारा बहुराष्ट्रीय कम्पनियों को पांच वर्ष के लिये विपणन दिये जाने का कार्य किया जा रहा है। इस से दवाओं के दाम आसमान छूयेंगे जिससे भारतीय दवा उद्योग बुरी तरह से तबाह होगा। सरकार सारे देश को तबाही के रास्ते पर ले जा रही है। इसलिये हमें इस बात को गंभीरता से सोचना होगा। इस कानून से भारतीय अर्थ-व्यवस्था में आर्थिक असंतुलन रहेगा जिससे देश के विकास पर बुरा असर पड़ने वाला है। इससे भविष्य में विदेशी हस्तक्षेप उतरोत्तर बढ़ने में मददगार होगा। जिस भारतवर्ष के बारे में कहा गया है कि यह वेदों और ऋषियों का देश है, वहां अमरीकी सैनिक अड्डा बनकर रहेगा, इस विधेयक से तो यही प्रतीत होता है। इस देश के ४० करोड़ किसान गुलामी में चले जायेंगे, यह बात किसी से छुपी नहीं है। अमरीका हमारे कृषि उद्योग पर कब्जा करना चाहता है। यदि हम तमाम पेटेंट कानून से संबंधित अन्य विषयों पर सोचें तो यह बात गंभीरता से सामने आती है। हमारी आबादी का २/३ भाग कृषि पर आधारित है जिससे हमारा कृषि क्षेत्र आत्मनिर्भर है और अपना विकास कर रहा है। कृषि क्षेत्र को पेटेंट से अलग करना होगा चाहे अन्य चीजों की उसमें व्यवस्था कर दें अन्यथा कृषि क्षेत्र में बहुत बड़ी तबाही होगी।

इससे आवश्यक वस्तुओं के दाम बढ़ेंगे, किसानों पर इसका सीधा बुरा असर पड़ेगा, जैसे कि बीजों और उर्वरकों के दाम बढ़ने पर और पेटेंट होने पर किसान केवल एक ही बीज और उर्वरक पर निर्भर रहेगा। अभी तक आपने बासमती चावल को पेटेंट किया है। यदि इसे पेटेंट न किया जाता तो बासमती चावल को हम बेच भी नहीं सकते थे। इसी प्रकार से आपने हल्दी, इमली, नीम, सरसों आदि को भी पेटेंट करने का इरादा बनाया है जिससे बहुत बड़ी तबाही पूरे देश के किसानों की होगी। अक्सर टर्मिनेटर जीन्स के बारे में बात होती है। टर्मिनेटर जीन्स के बारे में कहा जाता है कि अगर किसी भी देश के बीज को हम पेटेंट करेंगे, अगर किसान उस बीज को बोयेगा और उसके बाद उस बीज को बचाकर दूसरी फसल में बोएगा तो वह बीज अधिक उत्पादन नहीं करेगा। ऐसा सुनने में आया है कि वह बीज नपुंसक होगा, उसमें जान नहीं होगी। जैसा कि आपने देखा है कि पूरे देश के किसान १० प्रतिशत बीज खुद बचाकर रखते थे और खुले मार्केट में ९० प्रतिशत बीज मिलते थे। टर्मिनेटर का विपणन एकाधिकार भारत के लिए खोल दिया गया है जो पूरे देश के लिए अहितकर और हानिकारक होगा। पेटेंट कानून पर हमें बीज लेने के लिए अमेरिका की ओर देखना पड़ेगा या किसी भी देश के बीज का पेटेंट करेंगे तो जब वह हमें बीज देंगे, उस समय हम बो पाएंगे। इसलिए बीज की उपलब्धता न होने के कारण किसान पूरी तरह से तबाही के कगार पर पहुंचेगा। दो वर्ष के लिए आपने टर्मिनेटर जीन्स पर रोक लगाई है लेकिन उसके बाद क्या होगा, इसके लिए भी सरकार को सोचना पड़ेगा।

भारतीय किसान सदियों से बीज बचाकर बोता आया है, यह किसी से छिपा नहीं है। समय-समय पर मौसम के बदले रूप को देखते हुए किसान अच्छे बीज भी बोता है और उससे कम अच्छे बीज भी बोता है। यहां के किसान कुछ सीमान्त किसान हैं, कुछ बड़े खेतिहर मजदूर हैं, कुछ बड़े कार्तकार हैं जो अच्छे और उससे कम अच्छे बीजों की समय-समय पर खेती करके अपना जीवन-यापन या व्यवसाय करते हैं। भारत व्यापार के मामले में पहले ही विदेशियों के चंगुल में फंस चुका है, यह किसी से छिपा नहीं है। आपने देखा होगा कि पूरे भारत में ४५००० किस्म के पौधे हैं और ७५,००० पशुओं की प्रजातियां हैं जिससे इस देश में चाहे वह कृषि का क्षेत्र हो, चाहे दूसरा क्षेत्र हो, उसमें हम अधिक उत्पादन करके आत्मनिर्भर हो सकते हैं। इसके लिए हमें सोचना होगा कि हम बहुराष्ट्रीय कंपनियों, विदेशी कंपनियों या निजी कंपनियों के मकड़जाल में न फंसें, इस ओर हमें गंभीरता से सोचना होगा।

अनुसंधान, इनफ्रास्ट्रक्चर के क्षेत्र में विश्व में दूसरा स्थान भारत का है। २९ कृषि विश्वविद्यालय हमारे देश में हैं और ८१ राष्ट्रीय कृषि संस्थान हैं। आज अगर इतने बड़े भारतीय इनफ्रास्ट्रक्चर को निजी क्षेत्रों के हवाले कर देंगे तो हम कितने आत्मनिर्भर हो पाएंगे यह किसी से छिपा नहीं है। हमें सोचना होगा और विचार करना होगा अपने देश के किसानों के बारे में। जो ४० करोड़ किसान हैं, वह तबाह होंगे, उनका भविष्य अंधकारमय होगा। सन् १९९९-२००० में पेटेंट लागू होने पर हम बहुराष्ट्रीय कंपनियों और निजी कंपनियों के हाथों में गुलाम बनेंगे, यह किसी से छिपा नहीं है। मैं इस अवसर पर ज्यादा न कहते हुए इतना ही कहना चाहूंगा कि इस पेटेंट कानून से पूरे देश के किसानों की बहुत बड़ी तबाही होगी और जो भारतवर्ष खाद्यान्न के मामले में आत्मनिर्भर था, वह पूरे तरीके से बहुराष्ट्रीय कंपनियों, विदेशी और निजी कंपनियों के हाथों में गुलाम होगा।

सभापति महोदय, मैं ज्यादा न कहते हुए माननीय मंत्री जी से निवेदन करूंगा कि इस पर विचार करें और इस पर सोचें कि देश को हम गुलामी की ओर ले जा रहे हैं या देश को विकास की ओर ले जा रहे हैं। इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

>SHRIMATI GEETA MUKHERJEE (PANSKURA): Hon. Chairman, Sir, I am opposing the Patents (Amendment) Ordinance, 1999 (No.3 of 1999) promulgated by the President on 8th January, 1999 not only because we are generally opposed to Ordinances but also because I also oppose the Patents (Amendment) Bill 1998 moved by the Minister of Industries.

It is well-known that our party was against India signing the TRIPS Agreement, and it still remains in the same position.

Unfortunately, the Government of India have already made our country a Member of the WTO and have signed the TRIPS Agreement, particularly -- WTO, they went much earlier -- which among other things, want us to patent products in the areas of pharmaceuticals and agricultural chemicals. As a result of the signing of the TRIPS Agreement, the Government issued the Patent Amendment Ordinance in a great hurry and have now tabled the Patents (Amendment) Bill, 1998. I have already stated that I oppose the Bill.

Every sovereign welfare country must have a policy of its own to provide the necessary commodities and goods, such as medicines at a price affordable by the poor. It is more essential in case of those developing countries like India where a very large population lives below poverty line.

THE MINISTER OF POWER, MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF NON-CONVENTIONAL ENERGY SOURCES (SHRI P.R. KUMARAMANGALAM): Mr. Chairman, Sir, through you, I appeal to hon. Shrimati Geeta Mukherjee to yield for a minute. I want to make one small request.

SHRIMATI GEETA MUKHERJEE (PANSKURA): Yes, please

SHRI P.R. KUMARAMANGALAM: We had originally planned to have this passed yesterday but then, the overall consensus seems to be that today everybody is tired because yesterday also we had sat quite late. Today also it is becoming late.

SHRI BHUBANESWAR KALITA (GUWAHATI): How many speakers are still there?

SHRI P.R. KUMARAMANGALAM: There are about eight speakers. With the withdrawals from both the sides, still eight Members are there.

Sir, we would like to have the reply tomorrow from the hon. Minister for Industries at 4 o'clock and voting after that. Therefore, after Geetaji's speech, at 7 o'clock we will adjourn the House. We will have tomorrow this as the first item and at 4 o'clock, whoever is speaking, we will close the debate and ask the final speaker to reply, that is, the hon. Minister of Industries, and then put it to vote. There are a lot of amendments. So, voting will also take a reasonable time.

So, I would request all the hon. Members that 4 o'clock tomorrow, at any cost, is going to be the time for reply. And today, we will adjourn the House at Seven. Thank you.

SHRI FRANCISCO SARDINHA (MARMAGOA): What about the Goa Budget?

SHRI P.R. KUMARAMANGALAM: About the Goa Budget, we shall inform you tomorrow morning after discussing everything.

SHRI FRANCISCO SARDINHA : Every time, it is going on like this.

SHRI P.R. KUMARAMANGALAM: I have to discuss something with the Deputy-Speaker. He is a senior advocate. I am only junior to him.

MR. CHAIRMAN : Shrimati Geetaji, please.

SHRIMATI GEETA MUKHERJEE (PANSKURA): This is the broad back-drop in which we should judge the present Bill.

Before going for that, I would like to quote Mr. James Enyart of Monsanto Company of USA, who was in the Intellectual Property Committee(IPC) of USA and represented their interest in Geneva Meeting of GATT, to show how the Transnational Corporations ensured their monopolistic right fully to further their World-wide interest. What he said in a booklet named "A GATT Intellectual Property Code", I quote. It says:

"We went to Geneva where we presented our document to the staff of GATT Secretariat. Industry has identified a major problem in international trade. It crafted a solution, reduced it to a concrete proposal and sold it to our own and other Governments. The industries and traders of world commerce have played simultaneously the role of patient, the diagnostician and the prescribing physician."

This is what Monsanto Company had negotiated with the GATT.

Therefore, it is clear whose interest WTO is trying to serve through agreements like TRIPs. It is quite clear that they are functioning in the interest of multinationals and particularly those of USA. This is not my saying. It is their own saying for the whole world to know. We should understand this clearly.

18.55 hrs [Dr. Laxminarayan Pandey in the Chair.]

I have already said earlier that unfortunately India till now was following the Patent Act of 1970 where the process patent was provided for and due to this, the drug prices were among the lowest in the world. In that Act, we also kept pharmaceuticals and chemicals out of the pale of patenting.

But now according to this Bill as presented in this House, we are faced with a peculiar situation where we were told by TRIPs agreement to choose between two evils.

MR. CHAIRMAN : Please conclude.

SHRIMATI GEETA MUKHERJEE : If you don't mind, I will not speak for a long time. I am about to finish my speech. It is not yet 7 o'clock.

MR. CHAIRMAN : I have to call Shri Raghuvansh Prasad Singh for a few minutes. Please conclude.

SHRIMATI GEETA MUKHERJEE : Let me finish. It is not a long one. I do not believe in long speeches, as you know.

One evil is to change our earlier Patent Law so that from process patent, we come to product patent.

The second evil is we ought to grant the Exclusive Marketing Right to companies applying for product patents.

These obligations have to be complied with between 19th April, 99 and the year, 2005.

I have already said that we are positively against this Patent (Amendment) Bill, 1998. But even then we shall briefly discuss the implications of these two evils referred to earlier. The first one is, product patents allow the patent holder to price their product more liberally as they know it is tougher to circumvent their product by the copycat industries and thus it provides more security to their innovations and, on the other hand, it encourages the patent holders to go for more R&D. But this can result in overpricing for the poor, the lower middle classes of developing countries like India. Drug prices in countries allowing product patent are many times more than the countries following process patents. It has been already told by me that now drug price is the lowest in India.

About Exclusive Marketing Rights, certain protocols under TRIPs have to be satisfied.

19.00 hrs.

Its implication is that MNCs having a product patent in any signatory country of WTO will have to be granted EMR for application in India, without any examination.

सभापति महोदय : सात बजने वाले हैं, यदि सदन की सहमति हो तो श्रीमती मुखर्जी की स्पीच खत्म होने दें।

... (व्यवधान)

श्री पृथ्वीराज दा. चव्हाण (कराड़) : ठीक है, आप इन्हें अपनी स्पीच खत्म करने दीजिए।

... (व्यवधान)

SOME HON. MEMBERS: Let her finish her speech.

MR. CHAIRMAN: If the House agrees, it is all right.

SHRIMATI GEETA MUKHERJEE : In any case, I will finish within five minutes. ... (Interruptions) Repeated disturbances make it even worse. ... (Interruptions)

Regarding EMR, certain protocols under TRIPs are to be satisfied, the implications being that MNCs having a product patent in any signatory country of the WTO will have to be granted EMR on application in India,

without any examination of the actual validity of the original patent, for five years. This means, if they do the patenting in any market, we must give them EMR here. This means, those companies would enjoy the facility of EMR for five years without facing the examination process. ... (Interruptions)

As far as agreeing to EMR is concerned, it will give all MNCs, the right to sell their products in our country at any fancy price they like. Therefore, like some other developing countries, India should opt for the lesser evil, that is, product patent. At least, this option will give India some scope to examine the applications. So, though we are against this Bill, we are discussing it with the fear that the Government will go in for this. So, at least among the two evils, I wanted to state which will be the lesser evil.

I want to raise another point related to this question, that is, the question of protecting the traditional knowledge regarding many products in various fields in our country. We want to know what the Government is thinking about the protection of our traditional knowledge. We want to know whether this will also be covered. We also want to know about the stand on bio-diversity. We want to know how we shall protect the traditional knowledge of ours about which he referred. ... (Interruptions)

Knowing the attitude of the Government to pass the Patents (Amendment) Bill, 1998, I have discussed about the two evils and pointed out which is the evil which will be somewhat less harmful. We do not want the Government to go in for any of these evils at all. We demand that the Government refuse to act according to the TRIPs agreement and fight against it along with other developing countries which are still refusing to implement the obligations of the TRIPs agreement and thereby create a big united front of developing countries to fight the multinationals and fight all the machinations of the WTO.

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श्री रघुवंश प्रसाद सिंह (वैशाली): सभापति जी, हिन्दुस्तान का पेटेंट कानून दुनिया का सबसे अच्छा पेटेंट कानून है।

सभापति महोदय : श्री रघुवंश प्रसाद जी, आप अपना भाषण कल जारी रखिये।

The House now stands adjourned to meet again at 11 a.m. tomorrow, the 10th March, 1999.

19.04 hrs

The Lok Sabha then adjourned till Eleven of the Clock on

Wednesday, March 10, 1999/Phalgun 19, 1920 (Saka).