

retirement are calculated on the basis of basic salary and D.A. I mean to say that in calculation of terminal benefits and retirement benefits only basic salary and DA is considered while at the time of calculating income tax we are saying that-

[English]

Since D.A., C.C.A. and HRA are given as part of the salary, same are taxable in the hands of the employees.

[Translation]

Therefore, through you I would like to tell the hon. Minister that gratuity is calculated on basic salary and DA only in the same way tax should not be calculated on CCA and HRA. Will the Government propose to do so? Sir, It is an important question.

[English]

SHRI KADAMBUR M.R. JANARTHANAN : Sir, he is asking about the retired officers' pension. But this question is not connected with this.

SHRI CHETAN CHAUHAN : Sir, I am talking about the tax. The benefits are given only on the basic salary. That is the definition of salary.

✓ MR. SPEAKER : He is giving the reply.

[Translation]

SHRI YASHWANT SINHA : Mr. Speaker, Sir, in the context of the question raised by the hon. Member I would like to say something. The Minister of State has given information in this House that allowances are considered in the category of personal expenses and thus considered as part of the salary for the purpose of income tax. The question raised by the hon. Members is that only DA is added in basic salary for calculation of gratuity and not other allowances. The reason is that these allowances are given as personal expenses. After retirement the person is ceased to be a government officer and thus city compensatory-Allowance is not added. Income tax laws and other laws have different viewpoint and objectives which are taken into account. This is the position with regard to income tax.

SHRI RAJO SINGH : Mr. Speaker, Sir, there are two categories of government employees in our country - the state government employees and Central government employees. Till date, the recovery of income tax is being done at both the sources. I would like to know from the hon. Minister how much amount has been given to state governments as their income out of the total tax collected by the government?

SHRI YASHWANT SINHA : Mr. Speaker, Sir, though this question is not directly connected to the original

question but I would like to reply to it. Perhaps you may be aware that the money collected under Income Tax Divisible Pool is divided between the centre and the state governments. 77.5 percent of the total funds is given to the state governments. Therefore, the funds collected from income tax does not remain with the central government only but its major share, about 2/3rd part is given to states.

[English]

Patent of Flora and Fauna

*244. SHRI K. YERRANNAIDU : Will the Minister of INDUSTRY be pleased to state the steps proposed to codify and patent the flora and fauna of the country and all traditional forms of knowledge as embodied in Ayurveda and Unani to avoid Basmati type controversies?

THE MINISTER OF INDUSTRY (SHRI SIKANDER BAKHT) : A Statement is laid on the Table of the House.

Statement

The Botanical Survey of India and Geological Survey of India are responsible for survey and inventorisation of the plants and animal species of the country. According to the information available, approximately 70% of the geographical area of the country has been surveyed so far by these organizations. Based on these surveys over 46,000 species of plants and 81,000 species of animals have been recorded.

The work of compilation of literary information in respect of flora and fauna pertaining to Indian System of Medicines has been assigned to Central Council for Research in Ayurveda and Siddha and the Central Council for Research in Unani Medicines. As most of this information exists in the public domain, including the classical texts, nowhere in the world can patents be granted for such products. In order to be patentable, the subject of invention has to satisfy the conditions of patentability, namely, novelty, non-obviousness and industrial applicability.

Patents are granted by respective governments under their patent laws. Whenever information is received about patents being taken on certain products which are not considered patentable, steps are taken to assess whether grant of patent can be challenged. When sufficient material is gathered, steps are taken for filing a petition for re-examination and ultimate revocation of the patent in that country.

SHRI K. YERRANNAIDU : Sir, this is the most important question regarding patent laws. We have faced problems in the past when U.S.A. patented our neem and turmeric. The CSIR had to fight it out in the Court and

ultimately we won the case. Again, U.S.A. patented the basmati rice. We had discussed this case in the House also. Now, we are fighting it in the international forum. In India, we have 46,000 plants and 81,000 animal species. The Western countries are attracted to Indian alternative medicines. So, I would like to know what precautionary steps are being taken to patent all our Ayurvedic plants and to ensure that our plants are not smuggled out of India.

SHRI SIKANDER BAKHT : According to the patent law as we have in the country, the Ayurvedic drugs, etc. and things connected with plants are not patentable in our country.

SHRI K. YERRANNAIDU : Mr. Speaker, Sir, but once they patent them then we try to fight them in the court.

The second question is : What steps are being taken to further amend the Indian Patent Act, 1970 so as to include all our plants and animal species in the Patent Act to avoid further problems ? Otherwise, we will have to face them every time in the International forum after they patent a particular plant.

SHRI SIKANDER BAKHT : In other countries, the patents are granted according to the law of that particular country itself. We have been fighting cases about turmeric, and we are also preparing to challenge for reexamination the attempt of patent which has been done in the case of Basmati rice.

SHRIMATI GEETA MUKHERJEE : In the reply, the hon. Minister said that so many things have been found and nowhere in the world can patents be granted for such products. My friend, Shri Yerrannaaidu has rightly pointed out the case of *neem* . The Ministers that "In order to be patentable, the subject of invention has to satisfy the conditions of patentability, namely, novelty, non-obviousness and industrial applicability." As far as this is concerned, amongst so many species, how do you know that there is not even a few species which can come under this industrial applicability? Have you even examined it? If not, please do examine it. If you think that any change is to be done, then that also should be done in the patent law so that we can protect all these very important medicinal plants.

SHRI SIKANDER BAKHT : Primarily, flora and fauna come under the public domain which is governed by the existing information, including the classical texts, that we have in our country. Some countries do make an attempt on it, but we have been contesting successfully any overtures like this. As I said just now, about turmeric, we went and challenged the grant of a patent in the U.S.A. We had to file a challenge for reexamination in that

country itself and we succeeded. We have constituted a very high-level committee which is looking into the question of whether we can improve or amend our patent law, in case there are some lacunae in our present law, so that we can cover the flora and fauna and the species too.

SHRIMATI GEETA MUKHERJEE : When will they complete this exercise?

SHRI SIKANDER BAKHT : It is a long exercise.

SHRI PRITHVIRAJ D. CHAVAN : The reply given to this question, which is a very important question, asked by a former Minister is highly unsatisfactory. The question is very simple. The questioner wants to know as to what steps this Government is taking to patent the flora and fauna. The answer expected was whether you are going to amend the patent law to include flora and fauna or not. That was the gist of the question. You have only given a catalogue of what is going to happen. The Minister knows it very well that under the WTO, India is required to change its patent law. We went in appeal in the Disputes Settlement Mechanism and we have lost the appeal. The Government of India has been given a period of 15 months from January 1998 to amend their patent law.

Now, the basic question is whether this Government is going to amend the patent law. What are you going to do about plant variety protection? What are you going to do about bio-diversity Bill and Geographical Appellation Bill? The question has got a connection with all these things. The Minister has not told anything about that. I specifically want to know whether this Government is going to amend the patent law to include life forms and micro organisms as mandated or *per se* mandated, I do not know how you interpret it, by the WTO under the Disputes Settlement Mechanism case which we have lost in Geneva. So, what is the position? Please tell us whether you are going to amend the patent law or not.

MR. SPEAKER : It is a good question.

SHRI SIKANDER BAKHT : India has signed the agreement establishing the World Trade Organization. The WTO agreement, *inter alia*, contains an agreement on trade-related aspects and intellectual properties. India is required to align its law and practices on IPRs in accordance with its obligations in the TRIPS Agreement. However, it has time till January 2,000 to make the changes, and further time till January 2005 to introduce product patent protection in areas of technology not protected so far - mainly in the areas of pharmaceuticals and in the areas of agro-chemicals.

SHRI PRITHVIRAJ D. CHAVAN : What are you going to do as a result of the case that we lost in Geneva about which the 15 months time is going to end in April next?

SHRI SIKANDER BAKHT : The date that I have given is right. I have again stated that on our own, we are trying to see what amendments can be brought on our patents. For that purpose, a very high level committee of scientists has been constituted to look into the question ...*(Interruptions)*

SHRI PRITHVIRAJ D. CHAVAN : We have the time-limit up to next month.

[Translation]

DR. BIZAY SONKAR SHASTRI : Mr. Speaker, Sir, the issue of patents has been debated throughout the country. Here in this House also this issue is being debated on the basis of supplementary questions but the situation is quite serious and we should think over it as a separate subject. We are debating the issue of patenting flora and fauna which are pertaining to Indian system of medicine-Ayurveda. There are several such flora and fauna and know-how in Ayurveda and we should also pay attention towards it. It is a part of Ayurveda and thus is a serious matter. There are a total of 1153 branches of Vedas including four main branches. All these branches are full of knowledge and know-how. ...*(Interruptions)*

Sir, my point is that our problem relating to patents can be solved permanently if we get the Vedas patented which are full of knowledge and know-how. I want to know whether the Government propose to proceed in this direction, if not, what are the reasons therefor?

SHRI SIKANDER BAKHT : The government is considering all the aspects of this problem. The government can work only as per the present laws of the land. Efforts are being made for making amendments in the laws. A committee has been set up for this purpose.

[English]

SHRI AJIT KUMAR PANJA : The answer shows that there is some misunderstanding in the Department itself regarding patentability of flora and fauna. There are two parts to it. One is, patentability of flora and fauna and the other is about medicines. Our good doctors like Sushruta, some thousand years ago, found out various types of Ayurvedic and Unani medicines which are indigenously Indian. That is why, the two parts are separated by the hon. Minister. I understand that this is not correct. No where in the world patents can be granted for such products. Generally, there may be difficulty about flora and fauna.

I would like to know whether the Department is going to enlist the medicines taken out by our great Ayurvedic doctors starting from Sushruta and make a caveat to all the developed countries who are having an eye over our country, because of the various difficulties and side effects being faced in the Allopathic system of medicine. That is

the reason why the United States wanted to patent the turmeric. Kindly list out all the medicines coming out of this product and have a caveat in the International Court and other places. Why I say so is because I have seen that India fought and won the case. Why should it be defensive? After the patent is granted, we go there. The Minister says that we have to go through the process of re-examination and ultimately revocation. No, we can make a caveat. By caveat, the court is bound to inform India that as this application has been made, what have you got to say? Kindly do that. These are the two points I want to make.

One more point is ...*(Interruptions)*

MR. SPEAKER : Only one supplementary is allowed

SHRI AJIT KUMAR PANJA : I want to say that 70 per cent of flora and fauna has been identified and 30 per cent is remaining. Only 46,000 species have been identified in our country. There are lakhs and lakhs of species. My suggestion is to enlist those also immediately otherwise, these developed countries will jump on it and take it away in view of globalisation policy.

SHRI SIKANDER BAKHT : Sir, the activity of survey as well as codification of all these things that the hon. Member has mentioned, is a continuous process. It is going on. There are organisations like the Botanical Survey of India and Geological Survey of India which have undertaken the process of survey of all these entire things. As the hon. Member has rightly said, they have already surveyed about 70 per cent of the geographical areas of the country. 46,000 species of plants and 81,000 species of animals have already been recorded.

Similarly, there are two organisations, the Central Council for Research in Aurveda and Siddha and Central Council for Research in Unani Medicines, who are preparing their own lists of information which exist with us.

But unfortunately, patents in other countries are granted according to the law of those countries. Now, there is no synchronisation between the law of our country and that of other countries which have their own patent laws. Therefore, the difficulty arises. But our challenging has proved to be successful. For the re-examination, we have succeeded and those are the grounds, on the basis of which, we can defend our own rights.

SHRI AJIT KUMAR PANJA : Why do you not file caveat now? ...*(Interruptions)*

MR. SPEAKER : Prof. Kurien, please take your seat. It is Question Hour. It is not the Zero Hour.

PROF. P.J. KURIEN : Sir, it is a question of caveat. That is what I am saying ...*(Interruptions)*

SHRI SIKANDER BAKHT : Sir, I do not have anything to say about caveat.

SHRI BALRAM JAKHAR : I would like to ask the hon. Minister some very important points. What has happened to the earlier report which was prepared and a Committee which we have formed? What about the *Sui generis* law which we are trying to create? It was our own thing. What has happened to that? Why did we not do that? It is going to affect so many areas? It is going to affect our agriculture. It is going to affect our seed generation and seed producers. Everything depends upon that. We should be very worried about it because we did it with the cotton and we got it.

What has happened to Basmati? So, we must be worried and we must be active enough to foresee all these things which are going to face us. This is something which you are trying to usurp from us just like Basmati and Turmeric. Naturally, we must be very careful about it. Otherwise, either you will go to US Convention or the other world. So, you have to decide differently. You have to take decisive action without any delay on all these things.

SHRI SIKANDER BAKHT : Sir, we have already adopted the *sui generis* route. I will give you the information.

SHRI BALRAM JAKHAR : You can take time and give this information later on.

SHRI SIKANDER BAKHT : Just now, I will give you the required information.

The *sui generis* legislation on plants is handled by the Ministry of Agriculture. But it does not matter. We have already undertaken the *sui generis* route with regard to our problems in this regard.

SHRI RUPCHAND PAL : There is a lot of confusion about the Basmati, Neem and Turmeric. Actually, there are different problems. I would like to tell to the hon. Minister that a lot of valuable work has already been done by our eminent scientists like Dr. Asima Chatterjee and that valuable work is still continuing in several laboratories of India about the medicinal properties of a good number of plants and herbs. But these scientists do not have the financial capability to patent them on the global area. What is happening Now? These eminent scientists, who have invented all these things, are being approached by certain middlemen, who are working on behalf of multinational companies, to sell their knowledge. So, may I know from the Government whether they are ready to set up some specific fund for these scientists who have already reached some conclusive evidence about the medicinal properties of the plants and herbs of India.

SHRI SIKANDER BAKHT : The suggestion has been noted. That is all I can say about this. It is true that

we are doing everything to ensure and protect our own species.

✓ MR. SPEAKER : Question No.245, Shri Ravindra Kumar Pandey.

(Interruptions)

✓ MR. SPEAKER : I have already called upon Shri Ravindra Kumar Pandey to put Question No.245.

(Interruptions)

SHRI PRITHVIRAJ D. CHAVAN : In reply to Question No.248 the Commerce Minister has given a totally different answer. He says:

"India has agreed to discharge its transitional obligations under Articles 70.8 and 70.9 of the TRIPS Agreement by 19th April, 1999".

Two Ministers are giving two different answers. They have not come prepared. ... (Interruptions) He has misled the House.

✓ MR. SPEAKER : Please take your seat. I will ask the Minister. Would the Minister like to respond?

(Interruptions)

✓ MR. SPEAKER : Question No. 246, Shri P. Upendra.

(Interruptions)

✓ MR. SPEAKER : Dr. Sonkar Shastri, please take your seat.

(Interruptions)

✓ MR. SPEAKER : Question No. 247, Shrimati Jayanti Patnaik.

[Translation]

SHRI CHANDRASHEKHAR SAHU : Mr. Speaker, Sir, I seek your protection in this matter. In this House I have presented a bill on Patent law ... (Interruptions) Please allow a half an hour discussion on it ... (Interruptions)

[English]

✓ MR. SPEAKER : Question No. 247, Shri K.L. Sharma.

Impact of Nuclear Test on Trade Relations

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*247. SHRI KRISHAN LAL SHARMA:
SHRIMATI JAYANTI PATNAIK:

Will the Minister of COMMERCE be pleased to state:

(a) whether the sanctions imposed on India by some countries following the nuclear test has adversely affected the trade relation of India with developed countries;