

This is a Bill with a limited objective. Now, issues with regard to the World Trade Organisation, issues of sovereignty and all those issues have been debated.

Let me say that this Government is as sincere in its desire to protect India's economic sovereignty as any other Party. In fact, whatever we have done in the last four years has raised India's prestige abroad. India today makes news in every corner of the world. India is respected and as far as the membership of the World Trade Organisation is concerned, why is it that no country in the world wants to remain outside the World Trade Organisation? Why are the Chinese, for example, wanting the Americans to help them to get into World Trade Organisation?

I would, therefore, respectfully submit that in this increasingly inter-dependent world that we live in, India cannot prosper unless India exports more and India cannot export more unless Indian industry is competitive. What we have done in the last four years has greatly strengthened India's competitiveness. Our exports last year increased in dollar terms at 20 per cent. This year, they are increasing at the rate of 17 per cent. We have reduced India's external debt. We have strengthened India's balance of payment. Employment, production and everything is growing and, therefore, I would respectfully submit to this House that we can debate all those remaining issues when it comes to the issues of the Budget. Let us unanimously pass this simple Bill which has a limited objective to protect India's industry and to protect India's workers against unfair competition from abroad.

With these words, I request the hon. Members to withdraw their Resolution and support the Bill.

SHRI JITENDRA NATH DAS (Jalpaiguri): This Bill, I think will not be able to protect the interests of the basic technology of our country. That is number one.

Number two is according to the Finance Minister, Dr. Manmohan Singh, this Bill has got limited objectives.

But, I think, it has got a big and bigger background. The Bill fails to protect the interests of the small-scale industries and the manufacturers of consumer goods. This Bill is the child of GATT. Sir, you know about it. So, under these circumstances, I am not withdrawing my Statutory Resolution.

MR. CHAIRMAN: Now, I shall put the Statutory Resolution moved by Shri Jitendra Nath Das to the vote of the House.

The question is:

"That this House disapproves of the Customs Tariff (Amendment) Ordinance, 1994 (No. 14 of 1994) promulgated by the President on December 31, 1994."

*The motion was negatived.*

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Customs Tariff Act, 1975, be taken into consideration."

*The motion was adopted.*

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

The question is:

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

*The motion was adopted.*

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

MR. CHAIRMAN: The question is:

"That clause 1, the Enacting Formula and the long Title Stand Part of the Bill"

*The motion was adopted.*

*Clause 1, the Enacting Formula and the Long Title were added to the Bill.*

SHRI MANMOHAN SINGH: Sir I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted.*

15.27 hrs.

[English]

STATUTORY RESOLUTION RE: DISAPPROVAL OF THE PATENTS (AMENDMENT) ORDINANCE, AND PATENTS (AMENDMENT) BILL

SHRI TARIT BARAN TOPDAR (Barrackpore): Sir, I beg to move:

"That this House disapproves of the Patents (Amendment) Ordinance, 1994 (No. 13 of 1994) promulgated by the President of December 31, 1994."

Sir in the course of moving the Statutory Resolution, first of all, I want to mention that the Government has issued a statement in this regard. I read out a part of that statement.

"India has signed the agreement for the establishment of World Trade Organisation including the Agreement on Trade Related Aspects of Intellectual Property Rights etc. etc. With a view to meeting India's obligations under the TRIPS Agreement, it has become necessary to amend the Patents Act, 1970 in conformity with the obligations under the Agreement."

Further, it has also been stated that one of the obligations under the TRIPS Agreement is for Member-countries to provide, with effect from 1st January 1995, means of filling of applications for patents in the areas of pharmaceuticals and agricultural chemicals and, on fulfilling certain conditions by such applicants, granting exclusive marketing rights till the expiry of a period of five years or until the patent is granted or rejected, whichever is earlier. This is one point which necessitated the promulgation of this Ordinance and subsequently to bring forward this Bill.

Another point is that since the Patents Act, 1970 does not provide for product patents for these items and a transition period is available to mark provisions in this regard, arrangement were to be made to provide for grant of exclusive marketing rights in these areas in order to assume obligation with effect from 1st January, 1995.

There are other reasons also, but I stop here.

The second point that I want to reiterate is this. What the Government says is, since the Patents Act, 1970 does not provide for product patents for these items, a transition

period is available to make the provision in this regard. A transition period of ten years is there. Even in the GATT Agreement, it is supposed to be the pipeline production in the Agreement. Even without taking advantage of the pipeline production, the Government in a hurry considered it imperative to promulgate this Ordinance to this effect in order to make provisions in this regard. Arrangements were to be made to provide for exclusive marketing right. Before the patenting procedure is finalised, an interim arrangement has to be made by making certain changes in the Act of 1972 in order to give exclusive marketing rights in the areas of these products. This is the background on which this Bill has been introduced.

Section 5 of this Act says that in case of invention, a claiming substance intended for use or capable of being used as food or medicine or drug or relating to substances prepared or produced by chemical processes including alloy, optical glasses, semi-conductors etc., no patent shall be granted in respect of claims for substances themselves but claims for the methods or processes of manufacture shall be patented.

The Bill seeks to include another Clause which actually is not an inclusion or a clause. Actually, it is to nullify this Clause. Here, it is clearly said that the claim or methods or processes of manufacture shall be patented not the goods or the product. Keeping it as Clause 1, Clause 2 is sought to be included in it. It says:

"Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IV A."

Chapter IVA deals with exclusive marketing rights where so many provisions have been included, which actually means product-patent. In order to grant product-patent, sufficient changes in the Patents Act have not yet been made. This is very apparent from the statement submitted by the Government which I have read. They will be made in course of time.

An amendment to the Act for the time being has been brought before finalisation of a total change of the Patents Act itself in conformity with the requirements of the multinationals, imperialist countries, developed countries and the requirement of G-7 etc. Till such period, this interim arrangement will go as an amendment to the Patents Act, 1970 in Chapter IVA which actually means that before the product-patent is taken up and enacted in that manner, exclusive marketing right for those goods will be given to those countries, companies or individuals.

Now, Sir, I would like to place a new point. Scientific inventions are not patentable. These has been the international norm and the international contract only a few days ago. Last year, on 15th April, an Agreement was signed and the idea and the concept of unpatentability of scientific invention has been thrown to the winds. Technology is patentable, not science. If a molecule is discovered, that is science. But how the molecule is

discovered, how that molecule is being utilized in different spheres of life, different spheres of society, different sphere of production, different spheres of technology and all that, that is a technological matter. That is always patentable.

Now take the basic concept of logic, the basic concept on which the human society has developed, the basic concept on which the society has developed up to this stage. The people who are asking for this patentability and other things, have also developed a knowledge.

They have also developed their knowledge to this level on the basics of the accumulated knowledge of the mankind, the accumulated knowledge of all the scientists, the accumulated knowledge of all the technologists, the accumulated knowledge of all the people who have worked for the society, for the cause of science, for the cause of technology and other things.

Every generation is the natural heir of the total accumulated knowledge of the previous generation. This cannot be prohibited. This is the natural law. By enactment in any part of the world this process cannot be stopped. Therefore I understand that what is being done is totally against the law of nature itself. Still I understand that the parts of technology devices and methods are all patentable things. These are related to commerce, but knowledge is never a commercial product. Knowledge cannot be patented. On the basis of knowledge on a certain piece of science, technology is patented. That is way in our 1970 enactment it was very correctly enshrined that product is not patentable, the process is patentable. Despite certain weaknesses even in the 1970 Act regarding this point which I have mentioned just now, by and large this Act has helped India to be self-reliant in some of the aspects. I can give a few examples to this effect.

Before going into that, I would like to mention another point as to how this 1970 Act has helped us. I will give a few illustrations only. Before going into that, I would like to point out the political part in this regard. (*Interruptions*)  
15.44 hrs.

*At this stage, some slogans from the Visitors' Gallery were heard*

MR. CHAIRMAN: Please proceed.

SHRI TARIT BARAN TOPDAR: Now, the Standing committees are functioning. The Standing Committees have started functioning in order to give effective shape to the opinion of Parliamentarians.

MR. CHAIRMAN: We have got only three hours for both these things. Please go ahead faster.

SHRI TARIT BARAN TOPDAR: The Standing Committee on commerce, after elaborate discussion and after examining witnesses from different sections of the people; business houses and people working in this field came to certain conclusions, some of which are relevant here.

The Committee opined that the 'Indian Patent Law has been rightly emphasising patenting of processes and not the products. This should be maintained. This is the clear opinion of the Committee. I want the Minister to respond to

this point in the course of his reply on how he has denied the proposition of the Standing Committee which has been submitted before the Lok Sabha. The proposed extension of 20 years actually discourages research and development and should not be conceded. India should insist on grant of automatic licensing in certain circumstances. Micro-organisms and biological processes should be kept out of patent regime. These are the suggestions which are relevant here.

The Government, in this case I understand, undemocratically, without showing any respect to the Parliamentary process and procedure without coming to the Parliament beforehand, during Winter Session or Monsoon Session—it was in the offing, they knew all these things—without coming to the Parliament with the proposition how they are going to tackle the situation and what are the views they have taken on the suggestions of the Standing Committee on this subject, without any discussion, without coming to the Parliament, without reference to the Parliament, they waited upto 31st December only to promulgate the Ordinance. Now, the Government wants this Bill to be passed in place of that Ordinance.

Twenty-fourth is the last date for that, which we all know. So, in a hurry this has to be passed by the Parliament. This is the method which the Government has adopted in such a serious matter which concerns not only the industrial foundations of our country in regard to chemicals, pharmaceuticals, drugs, etc., but also concerns, to a great extent, the self-reliance and sovereignty of our country.

The study of the research Group on Price Escalation aspect has found out that 42 per cent of the anti-biotics, 98 per cent of the anti-bacterials, 70 per cent of the anti-leproses, 66 per cent of the anti-tuberculoses, 51 per cent of the cardiovasculars and 89 per cent of the contraceptive hormones sold in Indian market will attract American patent, if product patent is accepted or if the compulsory or exclusive marketing right is granted. That is, if product patent is accepted or if exclusive marketing right is granted, then, 42 per cent of the antibiotics, 98 per cent of the antibacterials, etc., etc., will attract either American patent or the exclusive marketing rights by the American holdings.

Section 5(1) is there; Section 5(2) which is being inserted will operate according to the inclusion that is being sought in Chapter IV-A in the form of Article 24(a), 24(b), 24(c) and 24(d) which actually boils down to one single point, that is, science is going to be patented which is contrary to the laws of development of nature, society and knowledge of society.

I want to say that in the case of Intellectual Property Rights, it is a prelude on the part of the Government. In the TRIPs Agreement, many things will follow. I only want to refer it because the other points are not included in this Patents (Amendment) Bill. I am not going to elaborate it. But from this Bill, it is apparent that one after another, the things will come either as an interim arrangement or in totality. The total pattern will be changed according to the

TRIPs Agreement wherein only certain biological processes are unpatentable and all other things in the world will be patentable. Therefore, it is very dangerous not only for marketing but also for price rise which will definitely follow. Pakistan is an example. We do not know whether we are moving towards Pakistan or Mexico. The Government will answer whether we are nearing Pakistan on the economic side or we are going nearer to Mexico.

MR. CHAIRMAN: Please conclude. You have taken half-an-hour.

SHRI TARIT BARAN TOPDAR: It is not only against the economy of our country but it is also totally against the natural laws of social development. Therefore, I oppose this Bill and request the House to reject it altogether.

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRY (DEPARTMENT OF SMALL SCALE INDUSTRIES AND AGRO AND RURAL INDUSTRIES (SHRI M. ARUNACHALAM): Sir, I beg to move:

"That the Bill further to amend the Patents Act, 1970, be taken into consideration."

This Bill, already introduced to replace the Patents Ordinance, 1994, was promulgated on 31st December, 1994 giving effect to our obligations under the Trade Related Aspects of Intellectual Property Rights Agreement of the World Trade Organisation with our interest simultaneously being duly safeguarded. India is a Member of the World Trade Organisation.

The World Trade Organisation Agreement has come into effect from 1st January, 1995. One of the obligations under the Agreement is to provide with effect from 1.1.1995 means for filing of applications for patents in the areas of pharmaceuticals and agricultural chemicals and on fulfillment of certain conditions, grant of exclusive marketing rights for a period of five years or until the patent is granted or rejected, whichever is earlier.

The Patents Act, 1970 does not provide for grant of product patent in the above-mentioned areas, that is, pharmaceuticals and agricultural chemicals. As per the TRIPs Agreement, we have to amend the Act for grant of such patents by 2005 AD. The arrangement referred to above has to be made in the intervening period.

The Patents Ordinance, 1994, promulgated on 31st December, 1994, gives effect to this arrangement in the field of pharmaceuticals and agro-chemicals. This Bill has been introduced to replace the Ordinance. The Amendment also provides for grant of exclusive marketing right after certain conditions have been fulfilled as specified in the Bill.

16.00 hrs.

Sir, by way of amending the Patents Act, 1970, the measures have been incorporated to ensure the Government's ability to intervene in the public interest.

(a) Before grant of exclusive marketing rights (which provides for exclusive rights for 'sale' and 'distribution' of the product) the application will be examined to see if there is any 'prima facie' violation of existing provisions of the Patents Act.

(b) For inventions made in India, the applicant is not

required to obtain a patent in some other country. The applicant need only to obtain a process patent in India which could be the basis of the Exclusive Marketing Right.

(c) In the public interest, the Government could, either on its own, or through any authorised person, assume the marketing rights. Also in the public interest, the Government would have powers to fix the price for the items for which Exclusive Marketing Rights are granted.

(d) The provisions of compulsory licensing have been extended to Exclusive Marketing Rights. The right holder would maintain adequate supplies of the substance for which the rights have been granted and in the event of his failure to do so, the Government could grant a compulsory licence for the same.

(e) Further, as a measure to provide facility for inventions made in India, Section 39 of the Patents Act, which placed restrictions on applications has been deleted.

Therefore, I would urge upon the hon. Members to extend their support to pass the Bill.

MR. CHAIRMAN: Motions moved:

"That this House disapproves of the Patents (Amendment) Ordinance, 1994 (No. 13 of 1994) promulgated by the President on December 31, 1994."

"That the Bill further to amend the Patents Act, 1970, be taken into consideration."

The House will discuss Items No. 13 and 14 together. Time allotted is three hours. Shri Ram Kapse.

[SHRI PETER G. MARBANIANG in the chair]

1602 hrs.

SHRI RAM KAPSE (Thane): Honourable Chairman Sir, I stand to oppose this Ordinance and the Bill. I initially request the Government to withdraw the Bill. It is better to do so in the interest of the Government also. If it is not feasible, then the total Opposition and some Members of the Congress party themselves will defeat this Bill because you have lost the mandate of the people.

1603 hrs.

[SHRI PETER G. MARBANIANG in the chair]

What do you intend to do! In substance, the multinationals will have or would be able to have patents of agricultural chemicals even outside India and pharmaceutical products would now acquire exclusive marketing rights to the detriment of the Indian counterpart. What protection have you given to us? Here, the first casualty will be the farming section. The indigenous products, the appropriate machinery, will not act and firstly, the opposition is coming from the farming section and that opposition will ultimately see that the Congress is defeated in the next Parliamentary elections or even on this issue, the Parliament is in a mood to defeat you. We have been, for years, telling you to take the Parliament into confidence as far as GATT is concerned. Did you ever do it? Have you got the sanction of this Parliament? Is the real consensus on this matter arrived at? The national consensus on this matter was definitely required. You never got it. And this is the New Year gift to the nation! On

31st December last year, you introduced the Ordinance and you said that Parliament was not in session. We were here for the Winter Session. You never took us into confidence.

You never wanted to face the Parliament because of the defeat in Karnataka and Andhra. Now, after Maharashtra and Gujarat, still you come here with this Bill and ask us to vote for you without the consensus, with the interest of the industry here and without knowing the effects of this Act itself. See any financial newspaper today, and you will find that there are units after units for sale because of the competition with the multinationals and you are now concerned about it. You will go ahead. The multinationals will be benefited and the multinationals will be benefited at the cost of the industries here.

There are so many instances which are telling in themselves. A professor from the Institute of Management who is aiding the codification of Indian Systems of Medicines approaching the US Patent Office for patenting local medicines, is a shame to this Government itself. He said in so many words that 'because of the corruption in your patenting office and your patenting machinery the way it is behaving', he had to opt for USA. This happened here and even then you say that 'we are going to protect our industry, our research and our farmers'. At least, do not tell us that you are doing all these things in the name of farmers or researchers. As it is, today only 15 per cent of the people are using medicines. You have declared ... (Interruptions)

SHRI RAM KAPSE : You have decided that the Year 2000 will be the Year : 'Health for all'.

SHRI SAIFUDDIN CHOUDHURY (Katwa) : It is Hell for all!

SHRI HANNAN MOLLAH (Uluberia) : It is Death for all.

SHRI A. CHARLES (Trivandrum) : This is only in West Bengal.

SHRI RAM KAPSE : They have declared 'Health for all'. I will go ahead. In a hurry Maharashtra Government which was the Congress Government then, declared that 1990 will be the Year 'Health for all' and between 1990 and 1994 they saw to it that hundreds of Adivasis, the persons belonging to Scheduled Tribes succumbed to death in Amravati District, in Thane District and in Dhulia District. You were not ashamed of it. And the people voted against you thinking that you are murderers and even now you are going ahead with this Bill and your officers, your Secretary has assured the Medical Industry, the Pharmaceutical Industry that more realistic and flexible price control mechanism to cover the rising cost of manufacturing ensuring comfortable returns of their investments would be taken into consideration in the new Drug Policy. You intend to do this. But with the new Act, with the new amendment what will be the position? In the USA the position is like this that brand name drugs cost 250 times more than their generic cousins and with this increase in the drug prices, our drug prices will be at least 900 per cent more and even in some cases it will be 3000 per cent more.

So, viewed in the context of today's prices, the Government's Drug Policy, the prices of branded material in USA, the prices which are likely to be quoted after the entry of the multinationals, the Declaration 'Health for All' will ultimately lead to, as an hon. Member said, 'death for all'. But the people will see to it that the designs and the wishes of the Government are not fulfilled. As far as GATT is concerned, they acted in a hurry. There was no national consensus on the matter. Our opposition to it was not taken into account. Initially the Government was thinking of having patents as far as the processing was concerned, but all other countries opposed it. But in regards to 'products' you accepted the other nation's insistence and signed the agreement. Ultimately, whether it is process or product patent—you have agreed and acted under pressure from the countries of the world. But the Opposition will oppose it, your own Members will oppose it and there are people at large who will oppose it and see to it that your purpose is defeated. In a way you are a caretaker Government after losing the mandate. So, I sincerely suggest you not to be in a hurry; and pass such a Bill which will affected the interest of the whole country for years to come. So, I again request you to withdraw the Bill.

SHRI PRITHVIRAJ D. CHAVAN (Karad): Mr. Chairman, I stand to support the Patents (Amendment) Bill, 1995.

SHRI RAM KAPSE: You come to Maharashtra and say this.

SHRI PRITHVIRAJ D. CHAVAN: I have been saying that in Maharashtra and I will say it here.

SHRI RAM KAPSE: So you have suffered!

SHRI PRITHVIRAJ D. CHAVAN: Sir, the Bill is a very straightforward one. It has two aspects. First is the political aspect which has been highlighted by my colleagues who spoke earlier: my friend who has moved the Resolution opposing the Bill and Shri Ram Kapse.

Sir, the political arguments for and against the entire Uruguay Round of GATT has been going on in the country for the last three years, both within the Parliament and outside. The GATT accord was discussed threadbare on a number of occasions in this House. A Parliamentary Standing Committee went into the details of it, took evidence of eminent scholars, experts, Trade Organisations, retired bureaucrats and after considering all the opinions, submitted a report which essentially said that the country had to remain within the GATT framework of its successor organisation—the World Trade Organisation. The politico-economic situation in the world today makes it very clear that this country cannot remain an isolated economic island. The country of India's size, a continental economy, has to join the world mainstream. It has to globalise its economy. After careful consideration and having discussed the issue in the Parliament, the Government decided to accept the Uruguay round of GATT talks.

At Marrakesh we signed the agreement on 15th April, 1994. But after that within the Government, within the

Executive there was a detailed scrutiny of what the agreement entails us to do or what more the obligations under the GATT or WTO Treaty and its various sub-parts like TRIPS agreement, etc. The Government did not ratify the treaty till the very last moment. The Cabinet ratified GATT Agreement only on 30th December, 1994. As you know, the GATT Accord or the new WTO Agreement had to come into being from 1st January, 1995. The Government waited till the last minute and on the 30th December, the GATT Accord was ratified by the Cabinet. What did the GATT Accord oblige us to do?

The TRIPS Agreement imposes certain conditions on all the contracting parties of the GATT or the Member countries of the WTO Agreement. On the area of intellectual property rights, there was certain things expected of all the Members of WTO. The Member countries were expected to do certain things and some of those things were to become effective on the day the GATT ended and WTO came into being, that is on the 1st January, 1995. Therefore, it was obligatory on the part of India, as one of the signatories to the WTO Accord, to make certain changes in the Patents Act of 1970 because those provisions had to come into being from the 1st January, 1995. Therefore, Sir, on 31st December an Ordinance was promulgated. There was nothing secretive or nothing done behind the back of anybody. It was very clear the day we signed the GATT Accord at Marrakesh that we are going to do these very things on the 1st January, 1995. So, we did it on 31st December. Parliament was then not in Session. An Ordinance was promulgated and now we have come to the House to pass the Bill.

The WTO and the TRIPS part of it has got three important deadlines. The first deadline, as I said, is the 1st January, 1995, that is the day when WTO came into existence. The second major deadline will be five years hence, that is the 1st January, 2000 and certain things will have to be done by that time as we are committed to do them. The third deadline, is a special case for certain developing countries which do not have product patent for some product categories. Thus we will have to do certain more things by the 1st January, 2004. These are the three main deadlines which are clearly spelt out in the Dunkel Draft or the final Act or the WTO Agreement.

The first phase has been enacted. We have promulgated the Ordinance which is now before the House. What does it do? It does two main things. It allows anyone to file an application for a product patent in India beginning 1st January, 1995 for certain categories which were earlier prohibited for product patent category. The second thing that it does is, it allows exclusive marketing rights for those drugs for which product patents have now been applied for. These are the only two things which are required to be done under the WTO Accord on 1st January, 1995 and which were done. There is nothing further. Certain other steps will be required to be taken after five years. For example, extending the term of patent from the present seven or fourteen years to twenty years so that there is a uniform term of patent. We will have to take a decision on microorganism patenting. We will have

to take a decision about the working of a patent; whether importation constitutes working of patent or not. All this is required to be done in the next five years.

Now, we are required to do two main things, that is extending the product patenting in certain categories which were earlier excluded and giving exclusive marketing right for a period of five years. What do these two things really imply and what do they really mean for the pharmaceutical industry, agriculture, chemical industry or for the health care? We will have to come to these aspects.

Sir, let us first consider the fact that before the Ordinance we had the Patents Act of 1970 which has been praised by everyone as one of the most revolutionary pieces of legislation in the third world. It definitely afforded a protection to a developing country like India which did not have a very well-established system of scientific laboratories and network of scientists. It allowed us not to re-invent the wheel and at times copy certain patented medicines and offer them at a very low cost in India. That was good for a developing country like India. But, this is specifically what the western world has objected to. They termed it as theft of intellectual property. This is what the TRIPS agreement was all about. The technologically advanced developing countries like India were said to be stealing, robbing the West of their intellectual property. Scientists in India did not really object in totality to the product patenting or moving over to a product patenting system, as has been alleged by some friends that the entire scientific community is against it. All that Scientists wanted was a certain time period, a certain transition period so that the scientific community in India working in the area of pharmaceuticals and drugs got enough time to set up in-house R&D facilities. This is all they asked. After long and protracted negotiations in Geneva, at Marrakech and elsewhere, a transition period of five years was given. Though we wanted 15 years, a five year period was agreed. A ten year period was allowed for moving over to the system of product patenting.

Sir, if you look at the entire industrial production of the country, take aircraft industry, take automobile industry, take machine tools industry, take electronics, take information technology, take software, the entire industrial sector in the country is covered both by product patent and process patent. The 1970 Act allows us to take product patent or process patent for almost the entire industrial production in the country but for certain exceptions which were introduced in the Act. These were chemical substances, food products and agricultural chemicals. If you take the total industrial output, the output which is restricted out of the scope of product patent was only the drugs, pharmaceuticals and agricultural chemicals. Now, this Act is trying to bring these substances which were earlier excluded from the product patent regime into the fold of product patent and some time has been provided for it. It is not as if the whole world is falling apart. We have accepted the entire intellectual properties rights system. Sir, if you look at the

total gamut of the intellectual property rights, it consists of copy rights, it consists of trade marks, it consists of proprietary industrial information, it consists of industrial designs, it consists of electronic integrated circuits. It also consists of geographical indications and it consists of patents. There are seven different categories which constitute the area of intellectual property rights. In everything excepting patents, India is at par with the world. We are members of the WIPO, the World Intellectual Property Organisation. In every single aspect, be it copy rights or trade marks, we are at par with the world. There is no argument about it. Only in the case of patents for certain chemicals substances like pharmaceuticals, drugs and agricultural chemicals India differs from some of the western countries. That is what we are trying to do now. We are accepting these things now. There is time for it. "So, What will really happen?" Sir, we are not saying that we will grant product patents for chemicals today. We have said that we will accept product patent applications from 1.1.95 for certain categories of chemicals, pharmaceuticals and agricultural chemicals. We do not have to grant a patent. We only have to accept applications. This is being done because in case we allow product patents in future, which we are going to allow after some time, the priority or the date of filing a patent, which is very crucial, is given to the person who files the patent first. That is what is being done.

The second is, as you know, patents afford certain rights to a patentee. These are exclusive rights of using, making, selling or distributing a product or a substance. What is being sought to be done now is that we are distinguishing between making and using versus selling and distribution. We will bifurcate the rights. We are giving selling and distributing rights. We are not talking about using or making, because that would be like granting the patent itself. We are distinguishing between manufacturing and making of a new item as against selling and distributing of a new item. This particular Bill gives exclusive right of marketing, selling and distributing of a product which is under patent. This is what is being done. Now, what will happen? The friend who moved the Resolution to oppose the Bill had sought to give some figures that certain chemicals will become more expensive. Prof. Kapse has said that certain chemicals will become nine-times more expensive and certain drugs will become thirty-times more expensive. It is not like that at all. They have not understood the provisions of this Bill at all. Sir, whatever is going on today in the country, whether we are copying or stealing or pirating, whether we are selling the products cheap because it is an intellectual theft, whatever may be the term, nothing is going to change at all. No price of a drug need to be changed by even a paisa because of this Bill. When this Bill becomes an Act, it will only be applicable to products or substances which are filed for the patent after 1.1.95. What was covered by patents earlier in other countries is not affected by this Bill at all. So, what does that mean? When a new chemical molecule is discovered and an

inventor goes to our Patent Office to file a product patent his application will be accepted. But what is the process of discovering a drug? When you file for a new molecule to be used as a drug, it takes a very long time for it to become a product, before it is sold in the market and profit is earned.

Figures have been quoted that in the United States, that it takes something like Rs. 200 crore to Rs. 300 crore worth of research and clinical trials, both animal and human, before a drug can be approved for marketing. Sir, the concept of marketing approval is very important in case of drugs and pharmaceuticals. Filing a patent does not give you any right at all. Filing a patent only gives a priority date that in case a patent is granted, it will be treated retrospectively from that date. But, you, still have to prove to the FDA, the drug controlling authorities of each country, that this drug is safe; that it indeed does what it says it will do; that it will cure this disease with the particular dose and so on. This process takes anything from 7 to 15 years. Unless this whole process is gone through, not a single rupee profit can be earned, not a single rupee worth of drug can be sold in the market. So, what we are saying is that if you apply for a patent today, that product will not come into the market for the next five to ten years. There is no question of any MNC trying to dump anything here because whatever was happening before, will continue to happen. There will be no change at all in pricing. What we are trying to do is that we are trying to come to the level of International Intellectual Property Protection System and in future, say, within a period of ten years—as is agreed by the scientific community—if some time is given they will compete with the world. Our scientists are no less than anybody else, only that we are not investing in R&D. Because it is so easy to copy the drugs which are invented abroad and make huge profits here, our pharmaceutical industries did not invest in R&D. Now, this new amendment will force our Indian pharmaceutical industrial to invest in R&D in times to come. As the R&D cost is very low in India, we will be able to compete with the world; We can be the Leaders in this technology. We will not be a copier or a thief of a technology but we will be the provider of technology. This will give indigenous industries the strength to move ahead because the owners, the businessmen and the entrepreneurs who up till now were not interested in R&D, who were not investing any money in Research and Development, will have to start investing. Because, they will not have access to free technology from outside which was earlier copied and sold at a huge profit. Now, they will have to pay the royalty on the intellectual property which is either designed by Indian laboratories, viz., the CSIR system or the private laboratories in India or they are free to buy the technology from abroad.

But they have to pay for it. Once they know the value of technology they will invest in India because it will be far cheaper to do research and development here in India. A lot has been said about this Bill. This is a fairly innocuous Bill. The issues have been debated for the last three years. We know what was going to be done. There is nothing secret about it. There is nothing surprising in it. Nothing

has been done at the last minute. On the other hand, the Government of India has tried to protect the interests of the country to the maximum extent possible. For getting the exclusive marketing rights, one has to file an application in India which will be accepted after this amendment; one has also got to file an application abroad. That application has to be converted into a patent. That means one has to get the product patent in any one of the convention countries. Convention countries are those which have ratified the WTO accord. There are 78 convention countries today as notified under the Patent Act. In one of these countries one has to apply for the patent and get the patent. That itself takes about eighteen to twenty four months. If one gets the patent, then he will be considered for exclusive marketing rights here. The third condition is that he has to get marketing approval for the drug or for that pharmaceutical product in that convention country. The first thing is filing an application; the second thing is to get the patent and the third thing is to get marketing approval from the controlling authority which controls the health care system in that particular country. They have to approve the product as being safe and of stated therapeutic value and that no false claim was being made. That is a very very lengthy process. It takes ten to twelve years. In this country also one has to seek marketing approvals from our health authorities in India. It is a very long process. It will not happen tomorrow; it will not happen next year; it will not happen for another ten years. There are enough safeguards. Within that time it is expected that we will start filing patent applications in India for drugs and pharmaceuticals in a large number. We will start competing globally.

Sir, fear genuine, fears are expressed that when this system comes into being after ten or twelve years, somebody will exploit this situation of exclusive marketing rights and charge exorbitant prices for drugs which are life-saving. Can that happen; That cannot happen because there are provisions in our Act as it is being enacted today which enables the Government of India to intervene if somebody tries to take undue advantage of this protection given to them. The Government of India by means of Drug Price Control Order or similar such rules can enforce that certain drugs should be sold at particular price and no exorbitant price should be charged. There is also a provision of compulsory licensing. If somebody does not sell a product in enough quantity after getting the exclusive marketing rights, the Government of India can intervene and grant a compulsory licence. There are enough safeguards.

So, my humble plea to this House would be that let us not oppose this Bill on some politically pre-conceived notions for getting some votes outside. Sir, the country has endorsed the new economic policy. We are going to globalise, we are going to empower our engineers, our scientists, our agriculturists, our workers to join the world economy because they are second to none. We have to give them the enabling infrastructure. We have to force the industrialist, the businessmen, who uptill now made huge

profits by copying technology, by stealing technology from outside, to make proper investment so that our scientists, our research laboratories can produce results better than the rest of the world. I think through this Bill, the barriers to the international trade, so international technology will be eliminated gradually and there will be adequate and effective protection for Intellectual Property Rights in India.

And when there will be an adequate and effective protection for Intellectual Property Rights in India there will be substantial investment in research and development flows into India not only from within India but also from foreign countries, and our scientists and engineers will get the infrastructure to compete in the world. It would be clear that there are no immediate effects or ill-effects of this amendment; only the fact that Indian companies and foreign companies, who are based in India, will now be allowed to apply for product patents. And this will ultimately lead to a very healthy and vibrant R&D effort in the area of pharmaceuticals and drugs in India.

Section 5 of the Bill does an important thing that it repeals Section 39 of the Indian Patent Act of 1970. This Section earlier had actually put a certain restrictions on Indian citizens when they applied for a patent in foreign countries. What was that restriction? The restriction was that you could not apply for patent abroad—an Indian citizen, an Indian corporation or an Indian R&D institution could not apply for a patent outside without seeking the permission of the Controller of Patents in India. We had to first apply for permission. If the permission was not given within a period of six weeks, then you could not apply; that meant, there is a delay of six weeks.

Now in patenting, every hour counts, every day counts. Here was a major hindrance, a major impediment for the Indian citizens and Indian corporate bodies when they went abroad to apply for patents. Now the entire Section 39 has been deleted so that now the Indian citizens, the Indian corporate bodies can go and apply for patents internationally without coming to the Government of India. This provision helps the Indian industry to compete globally. But I have one reservation. I request the Government to study it carefully. Today, if there is an innovation, not in the area of drugs and pharmaceuticals about which this Bill is concerned, but say in the defence, about space, about nuclear energy. As per the provision before the Ordinance, a citizen of India had to come to the Controller of Patents and tell him that he wants to file an application abroad. The Government could say "No." We knew that this particular patent was to be applied abroad and the Controller of the Patents had the option of applying a secrecy clause and tell the inventor that he cannot disclose it because patenting means making the information public, disclosing the information. Today, we have no such protection. A person in any R&D Laboratory, in the private or public laboratory can straightway go and apply for a patent in London or New York. The Government of India would not know about it. We have to seriously consider the implications of deletion. The Industry Ministry has done it with an intention to help us to compete globally. But there are

certain side-effects which need to be studied very carefully.

Chapter 4(a) deals with exclusive marketing rights. Section 24(b) of the new chapter refers to convention countries. Convention countries are those countries which have ratified the WTO Accord, those who have signed the Marrakesh Agreement but have also ratified that Accord.

Now the ratification of an accord and amending the patent laws are two different things. You could sign an agreement to accept the WTO, but you still may take time to amend the Patent Law as we did on the 31st December. But some countries could take more time. There is a category of countries which have ratified the WTO Accord but have not changed the Patent Law. There may be a few countries. I request the Minister and the Government to see if there is a distinction. It is an important distinction whether an Indian inventor who will apply for his patent could be hurt by this provision.

This Bill has been controversial because the whole Uruguay-Round-of GATT Accord has been very controversial. The Dunkel Draft was controversial. But you cannot accuse the Government that the Government did not discuss it; it was discussed threadbare in the House; on three-four occasions, it was discussed in the Standing Committee; it was discussed outside; there were public meetings both for and against the Bill. But much criticism was unfounded because the whole thing was very complex. Let us not undermine its complexity. The criticism was misdirected, but when the people were informed about the correct position, by and large, appeal supported the GATT accord and India's decision to join the World Trade Organisation.

This particular Bill comes out of that. This had to be done by 1st January 1995. We have done it. There is nothing secret and nothing hidden.

My hope is that this Bill and the Bills which will follow in the next five years to change the Indian Patent Act will empower the scientific community to really compete globally on equal footing and equal level. Therefore, I request the Mover of the Resolution to withdraw the Resolution and urge the House to support this Bill wholeheartedly.

MR. CHAIRMAN: I think, this morning when Mr. Speaker was in the Chair, we agreed that only one Member from each party will speak because these ordinances will have to be passed. This Bill has to be passed in this House and sent to the other House...*(Interruptions)*

MR. CHAIRMAN: He took the sense of the House...*(Interruptions)*

SHRI GUMAN MAL LODHA: There was no agreement.

*[Translation]*

DR. LAXMINARAYAN PANDEYA: Sir, this suggestion was made from the Chair and we agreed to it but it is not so that we will do that only...*(Interruptions)* It will be better if it could be done.



[English]

MR. CHAIRMAN: You see, we have less time.

DR. ASIM BALA (Nabadwip): You should give more time to this Bill, Sir, (Interruptions)

[Translation]

DR. LAXMINARAYAN PANDEYA: We are taking a very little time.

SHRI GUMAN MAL LODHA: Hon. Mr. Chairman, Sir, just now while supporting this Bill. A member of Parliament from Maharashtra has told that main Global trade treaties or other international agreements which finalised recently, which are known as GATT and Dunkel proposals in India and have got unanimous support throughout the country. I would like to say that people of Maharashtra have rejected it. Elections were held in Maharashtra recently and Congress was badly defeated in those elections which reveals that the agreement was rejected in Maharashtra, Gujarat, Karnataka and Andhra Pradesh. I am surprised to know that even then hon. Member says that public has supported it.

[English]

People's mandate is against it.

[Translation]

I was of the opinion that at least Finance Minister would accept the people's mandate against GATT, Dunkel proposals and other international agreements on trade which has been revealed in defeat of Congress in these four states. But it is very sad that he outrightly rejected it. He has brought the Bill for enacting law which is an insult to the injury done to the Indian trade and industry.

[English]

It is an insult and injury to the Indian trade and industry.

[Translation]

I, therefore oppose it.

Mr. chairman, Sir, it is very sad that just now it was being said that the medicines or agricultural products of our country will get the right of patents which was not there earlier. I would like to say that now we are bringing subordinate legislation. Legislation on international level through World Trade Organisation, Dunkel and GATT. Now we are enacting subordinate legislation. Our Finance Minister has totally surrendered to World Bank, Trade World organisation, Dunkel and GATT and now he is enacting subordinate and delegated legislation with their permission. We are going to lose our supremacy, existence and sovereignty of our Constitution and we have already murdered these values. Now we have no right to enact such legislation because it is our fait accompli that we have signed the agreement and by signing the agreement on World Trade Organisation we have killed our self-respect and dignity. Today we are helpless and this ordinance was brought because you already knew that the House will strongly oppose it. The whole country strongly opposes it and public has refused to accept it. Our farmers do not want patents for their products because under this agreement farmer will not be able to sell the seed of rice

produced by him with hard labour if some foreign company gets its patent. In this way our farmer will become dependent on foreign companies and the farmers will have to pay whatever they asked by the company to pay. I would like the Minister of Finance to read out the portion of World Trade Agreement which says that the farmers will not have to pay anything. The statement of objects clearly says it and there is no scope for any doubt:—

[English]

"One of the obligations, under the TRIPs Agreement, of the member countries is to provide, with effect from the first January, 1995, means for filling of applications for patents in the areas of pharmaceuticals and agricultural chemicals."

[Translation]

Thus it is a compulsion therefore it has been stated there:—

[English]

Thus it is a compulsion therefore it has been stated there:—

[English]

"India has signed the agreement for establishment of World Trade Organisation."

[Translation]

So the legislation being enacted here is a subordinate Legislation. It is written there that:—

[English]

".....including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)."

[Translation]

The Agreement writes about the Intellectual property Rights mentioned here that:—

[English]

"The W.T.O Agreement has come into force on first January 1995, with a view to meeting India's applications under TRIPs Agreement, it became necessary to amend the Patents Act, 1970."

[Translation]

Sir, this legislation is not being enacted for the benefit of our farmer because if it had been the case then they could have enacted this legislation earlier as this Government has been in powers since several years barring only 2½ years. No body has stopped them to enact such a law to benefit farmers or introduce the Patents Act? Since it was suicidal and fatal that is why it had not been introduced earlier. Today we are forced to make this law that is why we are leading the public up the garden path. The Minister of Finance is talking about new economic policy, liberalisation, new financial policy and the new economic philosophy but the people of our country rejected these things. The party has never seen such failure before that. Today 2/3 of Gujarat public have gone against you and in Maharashtra, the Chief Minister has been defeated badly in elections. It used to be said about him that nobody can defeat him by any means.

Mr Chairman, Sir, the Indian public is being

suppressed under this new economic policy. Our farmers, trade, industries, domestic industries, cottage industries are also being suppressed, that is why the public of Maharashtra, which is also the birth place of Chhatrapathi Shivaji, have given verdict that they would not let their Country's self-respect be sold out that is why they defeated Sharad Pawar and his people. Sir, the mandate is against them, that is why I would like to say that mandate should be respected. If they do not do so then what has recently happened in Bombay, Gandhi Nagar, Karnataka, the Prime Minister's Constituency, Andhra Pradesh, would be repeated at other places also. The public of the constituency of the Prime Minister voted against him and shown him whether they are in favour or against these policies. That is why I would like to submit that mandate should be respected and the 'Substitute Legislation' should not be introduced. We should see to it that we do not become bonded labour, We are not enslaved, and Lord Clive is not given a new life and do not repeat the history of East India Company Clive is dead but Dunkel has taken his place in India. This is the mandate of the people of India given on the economic policy. Therefore, it should be rejected, it is not so clear and simple as it appears to be.

[English]

MR. CHAIRMAN: Please conclude. It is Bill. Please conclude because we have your friends also to speak.

[Translation]

SHRI GUMAN MAL LODHA: My submission is that the prices of drug will increase three or four hundred fold. It is not only my opinion. If allowed, I am ready to read it out to all hon. Members. I have an article, certain dates prepared by scientists which I want to read out to you all. They themselves tell that it will lead to competition but what kind of the competitiveness there will be? Since a company at Newyork will have patents of neem, seeds it will charge arbitrary amount from our traders and the latter would have to pay it quite politely. It would be a gross injustice against our farmers. It is thus our suicidal law. It is a plot to endanger our freedom. The arrow shot by Shri Manmohan Singh is not an ordinary one. I, therefor, have termed it —

"Satsaiyya Ke Dohre Jyon Navik Ke Teer.  
Dekhan Main Seedhe Lage. Ghao Kare Gambhir".

Therefore, Shri Manmohan Singhji, be careful, you should learn a lesson from the outcome of Assembly elections in four States. Otherwise, the spell of the charm of the economic reform will vanish soon. This action will not allow to put its self-respect at Stake. This nation of Bhagat Singh, Rajguru and Sukhdeo will not allow it. Your party has been voted out by the people in elections. Therefore, you should take a cue from it and reject it.

[English]

SHRI RUPCHAND PAL (Hooghly): Mr. Chairman, it was on a August midnight in 1947 that this nation had won its independence from foreign domination. And it was again on another December midnight that our independence was havily compromised.

MR. CHAIRMAN: Please come to the subject of the Bill.

SHRI RUPCHAND PAL: Our independence was compromised ironically by the same party whose leader at that time had spoken about the nation's tryst with destiny.

Dark deeds are better done in the dark and it was a dark deed that was committed by this Government which has already lost the mandate of the people. An ordinance was promulgated by the President. It was a new Years gift!

In this Parliament we had made a demand that this Parliament should have the right to discuss the GATT Treaty. In other countries the Parliaments are discussing; and we who describe ourselves as the largest democracy, do not have any right to discuss the implications of the GATT Treaty. But important change is being brought about by this Government. It would have serious consequences on the lives of the people. Particularly the poorer sections of the people will be very severely affected.

A large number of Member of Parliament from both the Houses had made a representation to the hon. President, that he should not sign any such ordinance, which — they were afraid — was coming. Eminent scientists, economists, statesmen and political parties had made similar representations to the hon. President not to promulgate any such ordinance because it erodes the authority of this Parliament. In other countries the parliaments had given their veto. The other day we had seen that on a particular aspect regarding TRIPS the European Parliament has vetoed the issue on life form. Then again, the American Senate continued to have their own pernicious laws like the Special 301 and the Super 301. They had not brought about any changes. Many others are yet to take any measures to conform to the demands of the WTO which they have by this time joined.

What was the reason for such haste? Passing of ordinances as such has been severely criticised by so many presiding officers since the days of the Great Mavaiankar. It is a denial of the rights of Parliament. But today we see that it has become an Ordinance-Raj. Between two sessions of parliament Ordinances are coming which effect radical changes, which affect even the basic tenets of our Constitution, the basic goals of the nation.

17.00 hrs.

Here is one such piece, Major change is being brought about in our Indian Patents Act, was this Act a sudden discovery by the nation? 'No'. It was the offshoot of our goal of self-reliance. In 1948, the Tek Chand Committee was constituted and subsequently in conformity with our Industrial Policy Resolution of 1948...

SHRI DILEEP BHAI SANGHANI (Amreli): Sir, I am on a point of order. There is no quorum in the House.

MR. CHAIRMAN: The bell is being rung.

Now there is quorum. The hon. Member, Shri Rupchand Pal may continue.

SHRI RUPCHAND PAL: It was in conformity with our Industrial Policy Resolution of 1948 and also subsequently in 1956-57, another Committee was set up and that Committee strongly recommended in favour of a new policy formulation and the result was this Indian Patents

Act, 1970. It was very much in conformity with our goal of self-reliance. It had been aptly praised by so many countries of the world as a model for developing countries and today we want to bring about such changes in the Act which will virtually be a barrier to our self-reliance in respect of research and development, in respect of our pharmaceutical industries, its potential for growth and also the access for the people of this country to the essential medicine which they need. Even today only 15 per cent or even less than that of Indian population have an access to the life saving drugs which they need and the situation will be worsened further as a result of the changes being brought about.

What was the hurry behind it? As I have stated, the Government of India could have waited. But we have been noticing that when this Government has been asked to kneel down, they have been stretching themselves at the feet of those who put pressures.

The pressures are coming particularly from countries like U.S.A. and some of their cohorts who want to dominate this world after the changes that have taken place the world over.

Now, what is there in the Bill? It is being said that it is the first phase of the changes and that they are not considering certain other changes that they are required to incorporate to conform to the needs of our joining WTO and that again we shall get another five years to bring about certain other changes. It is being made out as if it is to protect the Indian interests that such changes have been brought about. No. What is being done had started long back. At the initial stage of the Uruguay Round, India had taken a positive stand not to allow these to be incorporated. But after the changes that have taken place in some other countries, particularly the debacle — although a temporary set back — in the socialist word, the Government has taken a 'U' turn. They started, even before being asked, conforming to certain changes which affect our self-reliance in a big way.

I am now coming to the changes being proposed. One is about the exclusive marketing rights. Is it any different from the monopoly rights? There are so many grey areas in the Agreement. It may be because of the translation or it may be as a result of the need to bring about a compromise. Different interpretations are being made by different countries of the "grey areas" I shall give you two or three examples. One is the stand taken by some countries — I am not going into the details about that — about this exclusive right. For how many days will it be there? Will it be limited to five years only or will it go beyond that, or will it be that with a second patent demand, it will roll over? It is being said that it will not take place at all. It is being said that they have just made the provision that the party seeking patent will have to make the application in some Convention country. Earlier, there was a feeling that only major countries like the U.K. were the Convention countries but here I find that immediately

after this 31st December Ordinance, on 3rd of January, in a Government notification, the Convention countries included almost all the major countries like U.S.A., U.K. and Sweden. Today, U.S.A. is the major manufacturer or producer. In respect of research also they are quite ahead of many other. In our country, more than seventy per cent of the medicines that are being marketed under one brand or the other, are from U.S. multinational companies. It has been said in the Bill:

"where an invention has been manufactured, whether in India or in a country other than India, and before filing such a claim, filed an application for the same invention claiming identical article or substance in a Convention country".

These are the Convention countries. As per the notification of 3rd January, I find that the total number is 72. It will be disastrous for us.

Then there is the point about the concept of novelty. For an invention to be recognised as an invention, it will first have to be novel. We have seen in so many cases where the American patent offices are making *mala fide* applications and *mala fide* moves. Is there any arrangement in our country to face the situation because in the world today the patent regime is very very strong? They have the infrastructure, computerisation, information network etc. Where are we in comparison to that? I am telling that only in Germany there are 2,000 patents examined. How many are examined in India? The number is only 37. What is the infrastructure today? We can go to our patent office in Delhi, which is in Karol Bagh or nearby area. You do not find anything. There is no infrastructure at all. In other countries they are highly computerised and they are having information from their Missions making their claims.

Then again, there is aspect of litigation that will come in. Have we that money? Who will provide the money? For years together different patent offices at different patent centres have been clashing as regards interpretation and as regards novelty. Have we provided any protection for that? Even in the case of pharmaceuticals, drugs, medicines etc. Which are in Public domains, in some developed countries, they will claim a patent here. How to just protect our interest in such a situation?

This is about the infrastructure. I shall come to that later on. Firstly, let me speak about the provisions about compulsory licensing for non-commercial use in public interest. Has the Government of India any such money? What is the Budget being provided for non-commercial use? Then, what about the private parties, who want patent in public interest or for that matter, who have been applying for a patent and the patentee is not allowing them to have that right? In such a situation, we have a model here. We are being repeatedly told here by the Government that if China can do it why cannot we in India do it. Why cannot we follow the example of China? What has China done? In

China, even before joining the GATT — and now the W.T.O. which they want to join and obstacles are being created in their joining W.T.O. in various ways — they had an excellent piece of model legislation to protect their own country as regards compulsory licensing. But we are not doing it here. We are keeping it open. We cannot protect our industry; we cannot protect our people.

Then again, something is being said about the inventions. In Chapter-II of the original Act, they have stated about the inventions in public domain and all these things. I shall read them out: I shall come to that.

MR. CHAIRMAN: Leave something for your friends also.

(Interruptions)

SHRI RUPCHAND PAL : Sir, it is about inventions what are inventions and what are not inventions. We know about *maia fide* applications made by certain countries, particularly the U.S. and others.

17.14 hrs.

[SHRI TARA SINGH *in the Chair*]

This was found long back, 20 years ago. In the mean time many changes have taken place as regards technology, as regards formulations, as regards use and many other things. We have not amended it and now in the light of the changes that have taken place changes must be made in section (3) of the Indian Patents Act.

In our own interest such modification of this section can be made. What is invention and what is not invention? Twenty years ago, the concept was different and now changes have taken place in such a big way that we need to overhaul this Section (3). The Government could have protected the nation by only amending the rules, keeping it intact without making any change in the Sections. But the Government has not done it. We are opposed to this Government bringing out any change in our Patent Law. It is being said: It is *fait accompli*: They are saying that they have already signed. But even those who have signed are not changing their laws. They are taking their own interpretation about the grey areas.

Sir, we could have waited because other nations have not brought out any changes. This Parliament should have been allowed to discuss these matters. It is not that they could have acted only negatively. They could have made very valid contribution. What is the Government's predicament after joining the WTO and other pillars of world domination? Is the Government so helpless? Can we not send signal to the outside world? This Parliament cannot be taken for granted. The Parliament will help the Government, it will strengthen the Government's hands. They are saying what can we do? It is a changed world and we cannot be isolated. The Government is making such a plea that it is not possible to go in for bilateral negotiation and only multilateral negotiations will help. There is no multilateralism in the world. Everybody is doing their own job through blocs even in the first phase, if you can send this signal to those who want to pressurize us that this Parliament cannot be taken for granted it will be better for us. This is happening in many other countries.

Even before joining it China had done it in an excellent way. I am reading two or three articles on how they had exploited the patent. It says:

"Where a national emergency or any extra-ordinary state of affairs occurs or where the public interest so requires, the patent office may grant a compulsory licence to exploit the patent for invention or utility model.

Where the invention or utility model was granted is technically more advanced than another invention or utility model for such a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the patent office may, upon the request of the later patentee, grant a compulsory licence to exploit the earlier invention or utility model."

What are we demanding for our scientists and for our researchers? Then again, in the matter of disputes, article 57 says:

"The entity or individual that is granted a compulsory licence for exploitation shall pay to the patentee a reasonable exploitation fees, the amount of which shall be fixed by both parties in consultations. Where the parties fail to reach an agreement, the patent office shall adjudicate."

They are holding the rights. We are not holding them. It is in fact known that the Indian patents can have it—earlier there was a difficulty for having them.

THE MINISTER OF STATE OF THE MINISTRY OF COMMERCE (SHRI P CHIDAMBARAM): All these provisions are there in our Law.

SHRI RUPCHAND PAL : When you reply, you can convince us of that.

SHRI P. CHIDAMBARAM: Not in the Amending Bill but it is there in the parent Act.

SHRI RUPCHAND PAL : The parent Act will be interpreted differently because of Section 3. As I have said, so many changes have taken place and our concept of novelty has changed. So, my suggestion had been—why not bring about the amendment in the rules only keeping it intact and wait and see what changes are being brought about by the other countries, so that we can have ample ways of manoeuvring to suit our own interests in a changed world set up? That is my point.

Sir, I have some suggestions to make in this regard. Even in a bad situation or worse situation, it is our duty as members of Parliament, as representatives of the people to protect the nation even while they are out to compromise. What is that, Sir? Our scientists, our private entrepreneurs and others should be given the necessary impetus and financial help to continue their research, particularly, in the second phase and third phase many dangerous things would be coming. It is about the patenting of the gene. Because, as you know, in our country some scientists have made a considerable progress in the matter of gene therapy, with regard to epilepsy and many such gene disorders and the experts have voiced their concern about

the gene patenting. Indian scientists and others have been making demands against gene patenting, which will be the future medicine. What did the European patent office say? They say that DNA is not live and can be patented. What will happen? This has got three dangers inherent in it. One is that a country like ours will be deprived of a real medicine of the future, that is, gene therapy. The second is that it will be used. As you know, 5000 odd genetic orders and practices are being just set aside for gene therapy. Gene is being mapped; and this mapping is called Human Genome Project. Here we find with the multinational companies in the developed countries, with the patent authority.....(*Interruptions*) will control the world. They will not only control the market, exploit the market but it also has got the inherent other dangers of manipulating human beings. We are opposed to patenting live forms That is very much there and European Parliament and others have done it and we are also doing. But this interpretation of the European Union Patent Office about DNA—will not the Parliament have the right to discuss all such important things?

We have not only been subjugated physically and economically, but we are going to be subjugated mentally also. Such a far-reaching change is being brought about and it is being said that it is the first phase only. But even in the first phase the signal should go and the world, the West, the imperialists and the cohorts, should know that the Indian Parliament cannot be taken for granted. We oppose it tooth and nail and the nation will continue its fight for its Independence and self-reliance.

MR. CHAIRMAN:

Shri Vasant Pawar	—	Not Present
Shri Sribaliav Panigrahi	—	Not Present
Shrimati Malini Bhattacharya	—	Not Present
Shrimati Sumitra Mahajan	—	Not Present
Dr. Laxminarayan Pandeya	—	Not Present

All right, the Minister may reply now.

(*Interruptions*)

SHRI PRATAP SINGH (Banka): Sir, nobody has spoken on behalf of my Party. And my name is also there in the list.

MR. CHAIRMAN: Okay. Mr. Pratap Singh.

SHRI PRATAP SINGH: Thank you, Mr. Chairman, Sir. I do not wish to take too much time of the House. All the things have been very adequately presented by Shri Rupchand Pal, my esteemed colleague and expert on the subject; my colleague, Shri Prithviraj D. Chavan, has pointed out the viewpoint of Congress on this particular subject.

Of course, I rise to oppose any such Patents Bill which is sought to be brought about. My basic objection is that this interferes with the sovereignty of our nation. We have been asked by the hon. Finance Minister to find a consensus with regard to passing this Bill. It is quite funny to see how frequently they seek consensus from time to time and how they went behind the back of Parliament to Uruguay and other places and have concluded matters without the say-so or the knowledge of Parliament. This

certainly is not in the highest traditions of Parliament democracy. How did you get the right to make these decisions while Parliament was still in existence? It could easily be summoned and matters could have been discussed and put to the vote. It was not done. This is our first charge against the Government sitting on the Treasury Benches there. My colleague, Shri Chavan, suggested that there are various safeguards with regard to these patent laws. There is a big time gap with regard to an item which is patented and before it could come into commercial use; sometimes it is up to 15 years sometimes it is less. There is a process of approval within our country, but the final say-so and the okay is going to come from outside our borders. I would like to remind the Treasury Benches that in international dealings there are certain norms of reciprocity which must be accepted at all times. If they are going to vet our patents there and then give us permission to bring it out commercially, are we going to be doing the same thing when they send their goods here? Shall we put them to similar test in our country? If you have done that, we would certainly have said that you have done something at least to safeguard our sovereignty.

For this and for many other reasons, there is no need for me to say anything more. And the matter has been very well put by my colleague here and also by some of our colleagues from other parties on this side.

With these words, I would request the Government to think it over again and not to play with the sovereignty of this nation. Be very careful about it. Recently, you have paid the price for dabbling in such affairs and very soon when the forthcoming Lok Sabha elections are going to show up, you will find a worse situation confronting you.

With these words I conclude.

(*Translation*.)

SHRI VIJOY KUMAR YADAV (Nalanda): Mr. Chairman, Sir, on behalf of my party I oppose this Bill. A lot has been discussed here. But it is distressing that the Government of India has reached an agreement with foreign countries and it is ready to accept all the obligations mentioned in the agreement. But the Government is least concerned about the obligations enshrined in the constitution. It did not bother to take Parliament into confidence before taking such a major step. That is why such an important issue is raised through an Ordinance and helplessness is shown in Parliament and then its passage is solicited here. That is why we all Opposition leaders oppose the manner of introducing Bills.

There is an idiom that at the advent of any adversary first a man loses his wits. It is happening with the Congress Government itself now. This is why that the Government is taking steps after steps which are anti people, against the expectations and aspiration of people. But the Government is under the impression that it will benefit the country.

The same was the case with the Soviet Union. When Mikhail Gorbachev presented the outline of reforms there, the leaders of the ruling Communist party of the country welcomed it in general. They continued their support till the

Soviet Union was disintegrated completely. All the members of the ruling party are supporting the present Government in the country. Even if some of them have any note of dissent in their mind, they cannot oppose it out of fear of breach of discipline.

The proposed amendment in the Patent it is likely to have very adverse affects. This amendment will cause the indigenous drug industries or agriculture industries to forsake the line of self-reliance and entrust these two industries to foreign hands. The manner the foreigners are being given rights, all the developed countries, especially the multinational companies, America and all those countries above members of the World Bank will create problems for us. We remember it that with the introduction of the Patent Act in 1970 the drugs for the diseases like TB had gone beyond the access of common people. That time one capsule of the drug was purchased for Rs. 150 or 200. But when this industry was set up through Patent Act in our country the price of this drug was reduced to Rs. 1.25. Today it is discussed that the prices will be increased 100 times, or 1000 times. Our hon. Ministers and Congress Members say that they will exercise their control over them. This is not possible at all. The progress of our country and the life of our people depend on these two national industries. If we hand them over to foreigners, India will suffer a great loss. The prices of drugs are the lowest in our country as compared to those prevalent in any other part of the world. Only ten or fifteen per cent people are able to purchase drugs with their income limit. It is very difficult to predict as to how poor people will be able to manage to purchase drugs if their prices are raised by 200 or 300 times. Similarly, the farmers will be at receiving end and the foreign countries will have monopoly on seeds. The traditional system of agriculture is likely to suffer a severe setback. I, therefore, submit that the Government should ponder over it taking all these things into consideration. On behalf of my party, I oppose it and request the hon. Minister to withdraw it.

PROF. RASA SINGH RAWAT (Ajmer): Mr. Chairman, Sir, in a sequence to what I have already stated about the earlier Bill, through you I would again like to caution this Government that it should desist from framing such important laws by promulgating Ordinances time and again which have bearing on future and economy of this country because such attempts are in fact undemocratic and unconstitutional, though there is a provision in the constitution for issuing Ordinances. The former Lok Sabha Speaker Shri Maolankar had enumerated the circumstances which required promulgation of an Ordinance. He had explicit told and Mr. Nehru also had assured that Ordinances will be resorted to only in exceptional circumstances. It seems that the Government has signed it under the pressure of Dunkel, the GATT and the World Trade Organisation. I do not know what has blunted the wits of the Government that it has issued an Ordinance regarding Patent ignoring the interest of the people. It reads:

"India is a signatory to the agreement on setting of the World Trade Organisation which aims at

reducing the discrepancies in international trade and promoting the effective and adequate patronage of intellectual property rights, which includes contracts pertaining to the aspects related to trade of intellectual property rights"

Its objectives have been stated as follows:

"It has been signed with a view to promote public interest in socio-economic and industrial development of sectors of essential and of wider importance for the maintenance of public health and nutrition".

The phraseology of the draft is very high-sounding, but an objective analysis will make everything clear. Even since the proposal to amend patent act rented in air, and the Government signed it on the 1st January, 1995, the prices of life saving drugs and other essential drugs are rising. In the name of patentization we would have to bow before to the world. Earlier, the formula of manufacturing process and producing process used to be prepared in America and our doctors used to formulate drugs on basis thereof. Those drugs were cheaper. Now we will be entrapped by America. We will fall in the American trap by using their pharmaceutical formula. First they used to manufacture drugs on the line of their formulae. Now they cannot do so because of the patentisation and by the foreign companies who would now demand millions and crores of rupees, therefor. If the drugs become costlier by levelling taxes; the country will be in a pitiable condition. Through you, therefore I would like to state that had the Government been really concerned about seeds, ayurvedic drugs or other indigenous drugs, it would have taken the Parliament into confidence before signing the GATT agreement and it would not have overlooked the public interest and not held the discussion inconclusively. The sentiments of those millions of people who had demonstrated were hurt by sending our representation and signing the GATT. Thereafter this drama is being enacted through the Ordinance.

Mr. Chairman, Sir, you also hail from rural background. You know it very well that earlier the rural peasants could develop any seeds in their fields as per their conveniences. If the seedling of the seeds was better, other also took it and commended the seedling. The farmers of our country are illiterate. They cannot understand the necessity of patenting their seeds. If America patents the seeds and brings them on Indian soil, the seeds will be very costly and it will be very unpleasant for farmers. It will create confusion here. The farmers will be faced with several problems here. Through you, I, therefore, would like to ask the Government whether it is prepared to patent the Ayurvedic drugs, Indian drugs based on the medical ethics of Charak and our Saints. Research can be held in Germany or America on our indigenous medicines—the medicines of cancer and others etc.

So far as the seeds of our country are concerned, they suit our country's climate. I, therefore, would like to submit to the Government not to sacrifice the interests of the country. The confusion created among farmers is not a

confusion, it is rather a reality. Eminent thinkers are of the opinion that the law made regarding patent gives the testimony that the Government has surrendered. Our interest should have been protected first. The patentisation should have started in our country first. I would like to illustrate here. I read about neem in newspapers. The people in our country term neem as "Neem Narayan" is the neem is equivalent to God. As God is the Supreme protector of we all, so is the neem. It has certain inherent qualities which provide protection, the paste and other drugs are made with neem, and it is used as medicines also. If neem is also patented by America will it not mean that the farmers of our country will not be able to use even the datun of neem? Moreover, they will not be able to use even the leaves of the neem. This is the problem that is being created here. I, therefore would like to submit that by signing the agreement the Government has shown utter disregard for the public opinion and it has not taken the opposition into confidence nor did it bother to consult all State Governments before signing it. The agriculture and forest are also their subjects. Now the Government is introducing patent law on the pretext of safeguarding national interest. In this regard I would like to ask only this much as to why this was not done earlier. The interest of India should have been given top priority.

I want to state that if there is any provision detrimental to self-respect of our country, it should be outright rejected. We are ready to suffer difficulties but we won't accept such humiliating provisions.

"Mushkilen kab rok saki hain, age badhne walon ke.  
Badhayen Kab bandh Saki hain, mar kar jeene walon ko".

I, therefore, submit that the entity of India should be recognised. In order to keep our economic dignity intact and to protect our sovereignty, the Government should hold talks with other countries.

With these words I oppose the patent law.

DR. LAXMI NARAYAN PANDEYA (Mandsaur): Mr. Chairman, Sir, I rise to support the motion disapproving this Ordinance and will express my views on it in brief. I have certain apprehensions about this Bill. It has been stated to abolish the Article 39 of the original Patent Act in this Bill. I would like to seek categorical assurance from the hon. Minister whether its abolition would not adversely affect India's interest. It is a fact that India became a Member country of the World Trade Organisation and signed on agreement with it. It is continuously increasing foreign pressure on the country and the Government is restored to introduce new Bills one after the another to enact laws.

Sir, the Government has just adopted a law regarding tariff and thereafter it is going to adopt another one. I do not want to say much on economic policies. The citizens of India be they from Andhra Pradesh, Karnataka, Maharashtra or Gujarat or any other state, have rejected the new economic policy in this perspective. It needs to be reviewed in this very perspective. Some senior leaders

from treasury benches themselves have criticised that economic policy very severely and have asked for its review. From this point of view, the entire aspect should be given a second thought. So far as Patent Law is concerned. It is a fact that with the enforcement of this law the other sectors like agriculture and drugs and pharmaceuticals which were not covered under it so far, has been covered now and it is likely to affect agriculture sector in particular.

Sir, the concern of farmers is but natural that they will be deprived of what they themselves grow. It will not affect agriculture and other things. Moreover, the experts of drugs and pharmaceutical sector are also expressing similar concern. The foreign countries are certainly better much ahead in the field of the Research and development as compared to India. Moreover, they will talk something of this kind and seek exclusive licence for marketing in India after getting their drug processing formulae or drug products patented and introduce them into our country. This will increase the prices of indigenous drugs not only by 2 or 4 per cent. but also even by 300 per cent. Its likelihood has been expressed by many persons. Many articles have been written on it and many experts also have expressed their opinion corroborating such apprehension. In such a situation I ask the hon. Minister to clarify it. It looks like a parallel system in which in our bid to take part in foreign trade, we are losing everything that we possess. It is certain that all big countries are continuously losing their markets. Their goods are not sold there and they are dumping their goods in our country. It is apprehended that our industries, entrepreneurs, industrialists and researchers will be disheartened and foreigners will bring their goods to our country they will make India their market and take our capital with them. It, therefore necessitates a clarification.

Sir, I do not want to speak much. I have expressed my two or three apprehensions. I want the hon. Minister of Finance dispel my apprehensions and give a clear reply.

DR. RAMKRISHNA KUSMARIA (Damoh): Mr. Chairman, Sir, this Patents (Amendment) Bill, 1995 has been introduced here to decide how the GATT agreement should be implemented in the country. No discussion has been held in this regard as to what kind of impact it is going to have on the poor people and farmers of this country. The time limit of 5 years made in the Patents Act, 1970 has been increased in this law. Now, the big countries, who have laboratories, technicians, etc. will be able to get their new discoveries patented through Trade Related Aspects of Intellectual Property Rights. As Shri Rasa Singh Rawat was just saying that our Rishis-Munis have also made several discoveries and prepared several formulae and the whole world is reaping its fruits. These should also have been patented and our country should have received its royalty but our people or the Government never thought of that and as a result thereof they are developing hegemonistic attitude by plagiarizing our formulae and getting them patented. The condition today is such that the poor people who were already finding it difficult to buy life-saving drugs, will now find it impossible

to get them. This law is going to benefit only those foreign companies which are equipped with sophisticated laboratories and technicians and have the latest know-how. The poor farmer of our country is not adept at it and it would lead to the misutilization of these laws and exploitation of the poor people. Our poor people will face great hardships and farmers will find scarcity of seeds as we would not be in a position to use the seeds produced by the farmers. That is why, it is my submission that the Government should withdraw this Bill in the interest of the people of the country and to defend the existence of the country.

SHRI ASHOKRAO ANANDRAO DESHMUKH (Parbhani): Sir, I feel the introduction of this Patents Bill is ill-timed because it had been promised by you that first the sui generis system would be adopted only then the Produce Patent Act would be introduced. This would be proper. I would like to say one thing regarding the intellectual property rights, preparation of medicines and their patenting. All the developed countries have already got their discoveries patented some 10 years back. There is need to protect the genes of wild species. Whether it is Vindhya mountain, or plains, or hilly area, all these Wild Species are needed to be protected. The Government had promised and we kept supporting it and suggesting that it would be better to have sui-generis system. That is why the whole House had supported it. I would prefer if Sui-generis system is brought before this Bill. I feel that this Bill does not protect the wild species. First, these should be protected. Secondly, they should receive the royalty of all the research work conducted in the university, all the prepared species, their research, all the plants made, and the subsequent research undertaken in that regard. The Government should bring a Bill in the House on it first.

Secondly, we have basmati rice and they can mix bitagene in it and claim it to be their own. An Act should also be made on it. It should cover all the hybrids and you are aware that product is made by patent chemicals. That is why I feel that we should make a separate gene bank for all the mountains and all the medicinal herbs on them only then it becomes necessary to pass this Bill.

Sir, I would like to submit to the Government, through you, that the Government should withdraw this Bill and we will support it only when a new revised Bill is introduced in the House for discussion.

17.57 hrs.

[English]

#### PAPERS LAID ON THE TABLE

##### Notifications under customs Tariff Act, 1975

THE MINISTER OF FINANCE (SHRI MANMOHAN SINGH): Sir, on behalf of Shri M.V. Chandrashekhara Murthy, I beg to lay on the Table a copy each of the following notifications (Hindi and English versions) issued under Section 9 A of the Customs Tariff Act, 1975:—

(1) Notification No. 74/95-Customs published in Gazette of India dated the 20th March, 1995 together with an explanatory memorandum seeking to impose provisional anti-dumping duty on Theophylline and

caffeine exported from the People's Republic of China at the rate of Rupees one hundred and eight and Rupees one hundred and one per kilogram respectively.

(2) Notification No. 75/95-Customs published in Gazette of India dated the 20th March, 1995 together with an explanatory memorandum seeking to impose provisional anti-dumping duty on 3, 4, 5 Trimethoxy Benzaldehyde exported from the People's Republic of China at the rate of Rupees two hundred and thirty-seven per kilogram

[Placed in Library, See No LT 7114/95]

17.58 hrs.

[English]

#### STATUTORY RESOLUTION RE: DISAPPROVAL OF THE PATENTS (AMENDMENT) ORDINANCE AND PATENTS (AMENDMENT) BILL—*CONTD*

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRY (DEPARTMENT OF SMALL SCALE INDUSTRIES AND AGRO AND RURAL INDUSTRIES) (SHRI M. ARUNACHALAM): Sir, I am very much grateful to the hon. Members for taking part in the discussion and for their valuable suggestions, observations and comments on the Bill.

The Patents (Amendment) Bill, 1995 was introduced to meet our obligations under an agreement for establishing the World Trade Organisation, which includes the agreement on Trade Related Aspects of Intellectual Property Rights. While meeting our obligations under the agreement, the Bill also seeks to provide safeguards to protect the interests of the Indian consumers and inventors.

A lot of apprehensions have been raised and a lot of Members have asked why the Government had brought an Ordinance instead of coming to the House straight. I would like to explain it briefly. On the conclusion of the agreement, the Government initiated steps to fulfill our obligations. An expert group was set up to consider the issues and to suggest necessary Amendments to the Patents Act; various views were considered. It was also examined whether it was necessary to make some Amendments to the Act or to restrict ourselves to amend the rules and issue administrative instructions. The matter was considered in depth, in consultation with the Law Ministry. This exercise took time. After due deliberations, it was decided that the Patents Act, 1970 would have to be amended to meet our obligations. As we were required to make the Amendments before the constitution of the World Trade Organisation, that is 1st January, 1995, and as Parliament was not in Session at that time, an Ordinance had to be promulgated on 31st December, 1994 amending the Patents Act, 1970.

18.00 hrs.

Sir, coming to the Trade Related Intellectual Property Agreements, it prescribes the minimum standards to be adopted by the parties concerned. In respect of patents, a



transition period of five years is available to all the developing countries to give effect to the provisions of the TRIPS Agreements. Moreover, the countries that do not provide product patents in certain areas can avail of the further transition period of five years. Notwithstanding the transition period as mentioned, one of the obligations under the TRIPS Agreement was to provide for filing applications with effect from the 1st of January 1995.....(Interruptions)

SOME HON. MEMBERS: Sir, the time is over.....(Interruption)

MR. CHAIRMAN: I seek the consent of the House as to whether the time of the house should be extended or not.....(Interruptions)

SOME HON. MEMBERS: it can be taken up tomorrow.....(Interruptions)

MR. CHAIRMAN: Okay. The House stands adjourned.

18.01 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, March 21, 1995/Phalguna 30, 1916 (Saka)*