LOK SABHA

Saturday, August 29, 1970|Bhadra 7, 1892 (Saka).

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

PATENTS BILL

MR. SPEAKER: Shri Dinesh Singh.

THE MINISTER OF PARLIAMENTARY AFFAIRS, AND SHIPPING AND TRANSPORT (SHRI RAGHU RAMAIAH): Before it is done, would you like to allocate....

SHRI PILOO MODY (Godhra): Before any thing is done, I would like to say a thing or two.

MR. SPEAKER: Before everything.

SHRI PILOO MODY: I speak with a sense of great sorrow and pain today.

MR. SPEAKER: What happened?

SHRI PILOO MODY: What has happened I am just about to explain.

The procedures that we have followed in this House for so many years are slowly being eroded away. Yesterday we made our protest. The Minister of Parliamentary Affairs like any other Member on this side took the opportunity of zero hour to put in a motion like many on my friends on this side have sought to do on occasions, which you properly disallowed. But in the process of disallowing it you have inadvertently or otherwise requested him to follow the correct procedure in submitting the motion by taking your permission in writing..... (*Interruptions*) That permission he later on sought which you in your wisdom granted him and allowed him to bring this Bill forward today. I want to make it quite clear. I do not care what the Bill is. Had it been a Bill wanting to ban the Communist Party, I would have protested just as vehemently because after all the rules of this House are meant to protect not only the Government but also the minority opinion in this House. How can minority opinion in this House be protected if the rules can be changed at will by the sheer force of votes by a Government which wishes to do things in a hurried, sloppy and haphazard way. In view of the fact that the rules have been violated, in view of the fact that this very House which had passed a resolution this very session unanimously that there will be no sitting of the House on Saturdays had reversed its own decision by a majority vote..... (*Interruptions*) I am not questioning the procedural legality of it; I am questioning the propriety of it. I seriously feel that this procedure has so endangered the proceedings of the House that I cannot understand how any Member can have any further faith in the rules and the protection that he enjoys with you I beg of you not to look at the watch; I shall not take longer than a minute. Therefore, I should like to say that the proceedings of this House today are in my opinion totally illegal and if you permit me, I move a motion asking for closure.

SHRI S. M. BANERJEE (Kanpur): May I take it that whatever Mr. Mody has said will not go on record as everything done today is illegal according to him?

MR. SPEAKER: I quite appreciate Mr. Mody's agony over the many

[Mr. Speaker]

points which he has mentioned. There is an observation by the Speaker that the rules should be suspended only in very exceptional circumstances. When the Minister got up yesterday, the whole House stood up; not a single voice was dissenting. That is the background of it. I hope you will appreciate it.

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND INTERNAL TRADE (SHRI DINESH SINGH): Mr. Speaker, I beg to move:

> "That the Bill to amend and consolidate the law relating to patents, as reported by the Joint Committee, be taken into consideration."

Hon. Members are aware that historically speaking the concept of patents is based on two main legal and social justifications. One, that the patents are private property that is to say, that the inventor has exclusive right in his invention; and the other that they are privileges for a limited period granted by Government to encourage research and invention and to induce researchers to disclose their inventions for industrial exploitation thereby providing new avenues for economic growth and development. However, we have to look at these ideas in the socio-economic conditions of our country today. We have to see how we can make patents serve the needs of our economy, how we can make them a vehicle of rapid growth. As a developing country, where the bulk of patents are foreign owned, we have also to see whether, on balance, the patent system can play a useful role in the transfer of technology from the developed countries or whether it will lead to greater exploitation. Another aspect we have to keep in mind is to see whether we have been able to accommodate the inter-related interests involved. That is to say the interest of the inventor in his creation, the social interest of encouraging research, the consumer interest in enjoying the fruits of invention on fair and reasonable conditions and the national interest in accelerating and promoting economic development of the country.

It has been our endeavour to take into account all these considerations in the bill and to introduce certain ideas, which could be considered novel in protecting our national interests. These could even become guidelines for other developing countries similarly placed as us.

I shall now give a brief historical background of this Bill and then deal with the most important provisions contained in it.

The present Indian Law on patents is embodied in the Indian Patents and Designs Act, 1911. During the period of the last 59 years, enormous developments in every field have taken place in the world and in India. It is true that the 1911 Act was amended from time to time. Even so, it was clear that the Indian patents law required a number of basic changes to bring it in line with modern conditions. Such modification was needed to meet the special requirements of our country whose economy, since we attained independence, was being rapidly transformed into a dynamic industrial economy. Indeed, there was new thinking in the country on the basic purpose served by the patent system. It was thus clear that in the context of our planned economic growth, a careful expert review of the concept of patents and the law that should regulate the grant and the maintenance of patents was needed. There were two enquiries made into the subject of patents. The first enquiry was by the Patents enquiry Committee under the Chairmanship of Dr. Bakshi Tek Chand, retired judge of the Punjab High Court, which reported in 1950; the second was by Shri N. Rajagopala Ayyangar who was then a judge of the Madras High Court and later retired as judge of the Supreme Court. Shri Ayyangar submitted his report in 1959.

These two reports contained very valuable information on the origin and development of the patent system, the experience of various countries of the world on the part played by the patent system in their industrial development and its relevance to India in the present context. Based on these studies, the Committees made recommendations for the modification of the Indian Law relating to patents so as to make the patent system an effective tool for our industrial and economic growth.

Both the Committees recognised that although India had the patent system, in some form or other, for over a century, she had not drawn much benefit from it. On the other hand, taking into account the experience of the industrially advanced countries of the world and the position of India as a member of the community of nations, both the Committees were clearly of the view that it was to India's advantage to retain the patent system. Shri Ayyangar's report, which took full note of the recommendations contained in the earlier report of the Tek Chand Committee, made a number of proposals for modifying and revising the Indian Patents and Designs Act, 1911, to suit the requirements of the country for development in the industrial and technological fields in the present conditions.

The Patents Bill, 1965 based mainly on the recommendations contained in his detailed report and incorporating a few changes in the light of further examination made particularly with reference to patents for food, drugs and medicines, was introduced in Lok Sabha on 21st September, 1965. This Bill was referred to a Joint Committee of Parliament on 25th November, 1965. After a careful consideration of the matter, the Joint Committee adopted a number of amendments to the Bill. The report of the Joint Committee, with the amended Bill, was presented to Lok Sabha on 1st November, 1966. The Patents Bill 1965 as reported by the Joint Committee, was formally moved in Lok Sabha on 5th December, 1966, but could not be proceeded with for want of time and eventually lapsed with the dissolution of the third Lok Sabha on 3rd March, 1967.

The Patents Bill, 1967 containing comprehensive provisions to amend and consolidate the law relating to patents and also embodying the amendments recommended by the Joint Committee was introduced in the Budget Session of the Fourth Lok Sabha on 12th August, 1967 as a fresh Bill of 1967 was referred to another Joint Committee of Parliament. The Joint Committee after considering the various representations, written memoranda and oral evidence before them, presented their report with the amended Bill to Lok Sabha on the 27th February, 1970. It is this measure that is now coming before the House for consideration and passing.

The Patents Bill, 1967 seeks to provide a comprehensive law on the subject of patents, which has an important bearing on the national economy. The Bill recognises the importance of stimulating inventions and encouraging the development and exploitation of new inventions for industrial progress in the country. At the same time, it seeks to ensure that patent rights are not abused.

The Bill makes provision for bringing the different clauses into force in a phased manner. The Bill is of a complex and technical nature and for its smooth working the new Patents Act needs to be brought into force in different stages.

One of the important amendments incorporated by the Joint Committee is with regard to Clause 2(i)(1) by which insecticides, germicides, fungicides and weedicides, which are used for the protection or preservation of

[Shri Dinesh Singh]

plants have been brought within the scope of the expression, 'medicine' or 'drug'. The purpose of the amendment is to apply certain provisions relating to Patents in the field of food, drugs and medicines to which I shall refer later. The insecticides, fungicides, weedicides etc., are generally known as 'agricultural chemicals'.

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

Another important feature of the Bill is the special provision which it incorporates in regard to the patentability of inventions relating to food, drugs and medicines or chemicals. A patent shall be granted only in respect of a process of manufacture and not in respect of substances manufactured. It is considered that in the interest of a developing country like India, it is not desirable to grant patents in respect of substances in the field of food, drugs and medicines or chemicals.

The Bill further provides for searches for novelty of inventions on a world-wide basis, which will enhance the intrinsic value of our patents.

In 1963 the Government directed the Controller of Patents and Designs under the Defence of India Rules, 1962 and subsequently under the existing Act as amended in 1968 to defer actions on applications for patents in the field of food, drugs and medicines. These applications will be dealt with under the new Act now. The term of such patents, when granted, would be reckoned generally from the date on which the new Act comes into force.

One of the most important provisions made in the Bill is that the grant of patents under the new Act will be subject to certain conditions specified in Clause 47. Under this clause the Government is empowered to use any patented invention for the purpose merely of its own user, the Government can also import the patented articles including drugs and medicines for distribution in any dispensary, hospital or other medical institutions. This clause will ensure that conditions of scarcity of the patented articles particularly drugs and medicines leading to their high prices are not created. The Government will not be required to pay any royalty to the patentees in respect of such use of patented inventions. Government use of patents granted under the Act of 1911, will, however, be subject to the payment of reasonable compensation to the patentees.

The Bill provides further that the term of patents relating to food, drugs or medicines would be 7 years, instead of 16 years, as in the present Act; the term of patents in other fields will be 14 years as against 16 years prevailing today. Science and technology are progressing at a very rapid rate; we are indeed in an era of technological explosion. This means that inventions become obsolete much faster than in the past. This clearly points to the need for a shortening of the term of patents.

The Bill also provides that patents in the field of food, drug and medicines or chemicals shall be deemed to be endorsed with the words "Licences of right", three years after their grant which would enable persons interested in the exploitation of patents to get licences under such patents, as of right. The royalty and other remuneration payable to the patentees in respect of such licences shall not exceed 5 per cent of the net ex-factory sale price in bulk of the patented article.

SHRI NAMBIAR (Tiruchirapalli): This is more than what was prescrib-

ed in the Bill. It was only 4 per cent; now it has been raised to 5 per cent.

SHRI PILOO MODY: You can always vote against it.

SHRI NAMBIAR: That is true. We are going to vote against it.

SHRI DINESH SINGH: These provisions are necessary in view of the imperative need for ensuring that such essential articles are readily available to the public in sufficient quantity and at reasonable prices and that domestic production and development in these fields are not hampered by monopolistic interests. On the other hand, a reasonable return is also ensured to the patentee for his invention.

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

The Bill also seeks to enable Government to authorise the import of a patented article in certain specified circumstances by a licensee under a patent (other than the patentee) subject to certain conditions including the payment of reasonable royalty to the patentee. This provision is an enabling one to be exercised when it is considered necessary in the public interest that the patented article be imported at a reasonable price.

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

The Bill stipulates that appeals from the decisions of the Controller of Patents in all cases, including compulsory licences, will lie to the High Court. The normal judicial process is thus ensured in the case of appeals. The Bill also includes a provision that every such appeal shall be heard by the High Court as quickly as possible and that an endeavour should be made to decide the appeals within a period of twelve months from the date on which it is filed.

The Bill includes provisions for the conclusion of bilateral or multi-lateral arrangements with foreign countries for the mutual protection of inventions on the analogy of the provisions contained in the Trade and Merchandise Marks Act, 1958 in respect of trade marks. These provisions are designed to revise and widen the present Section 78A of the Indian Patents and Designs Act, 1911 which is limited to reciprocal arrangements with United Kingdom and Commonwealth countries only.

In order to ensure that patents granted under the Act are commer-

[Shri Dinesh Singh]

cially worked in the country, provision has been made empowering the Controller to obtain information regarding working of patented inventions and publishing the information periodically for the benefit of the public. Mr. Speaker, Sir, the main object of this Bill is to promote research and invention, to accelerate industrial growth and through a well-regulated patent system, prevent the exploitation of a monopoly position.

That it will promote research, there is no doubt. We have taken care to give due protection to the inventor and provided for reasonable remuneration to him for his creation. The Bill also provides that the patentees—both Indian and foreign—get ample opportunity to exploit their inventions or to get them exploited industrially by others. Unhampered availability of modern technology is thus assured. However, we have taken care to ensure that there is no unfair advantage taken of our economic under-development. Hon'ble Members would have seen newspaper reports of depositions made before United States Senate Committees of how developing countries are being swindled by some large companies manufacturing pharmaceuticals. The same would be said of some other branches of industry. Would we be justified in permitting our developing economy to be stifled by international cartels on the excuse of transfer of technology? The bill, therefore, rightly seeks to give government powers to import and manufacture food, drugs and chemicals when it feels that the patentee is taking undue advantage of the privilege of patent given to him. Similarly, government would have powers to ensure that a patent is not used to retard economic development.

The Bill has gone through a close scrutiny by the Joint Select Committee and now represents the best possible consensus arrived at between the different sections of the House. Even the notes of dissent attached to the report indicate that the bill is the midway between the extremes of the opinions expressed.

Sir, I beg to move that the Patents Bill, 1967, as reported by the Joint Committee of both Houses be taken into consideration.

MR. SPEAKER: Motion moved:

> "That the Bill to amend and consolidate the law relating to patents, as reported by the Joint Committee, be taken into consideration."

Now the time allotted is: 10 hours. 4 hours for general discussion, 4 hours for clause by clause consideration and 2 hours for the third reading. The party-wise allocation is: Congress (Opposition) —27 minutes, Swatantra—14 minutes, Jana Sangh —13 minutes, DMK—10 minutes, CPI —10 minutes, CPI (M)—8 minutes, SSP—7 minutes, PSP—6 minutes, UIPG—11 minutes, BKD—4 minutes, Unattached—12 minutes, and Congress —1 hour 34 minutes.

SHRI NAMBIAR: May I submit that with regard to the second reading that is, clause by clause discussion four hours need not be necessary because the amendments are few. Only certain main sections are disputed. Other sections are merely procedural. Instead of that, for the first reading, instead of 4 hours we can have 5 or 6 hours.

SHRI BENI SHANKER SHARMA (Banka): As regards amendments Sir, we have not been able to give any notice because it was only very late yesterday that it was decided to take up this Bill to-day.

MR. SPEAKER: It was on the agenda for a long time. Amendments have already been received.

SHRI SHEO NARAIN (Basti): You said 10 hours have been allotted. We must get ten hours.

MR. SPEAKER: You will get.

SHRI SHEO NARAIN: The members should have the right to send amendments upto 1 O'clock. When Manipur case was discussed, Government was not courteous enough to give us a minute to introduce the resolution.

SHRI N. DANDEKER (Jamnagar): I have only arrived this morning and I had no time to give my amendments. I have had to come all the way from Bombay.

MR. SPEAKER: Upto 1 O'clock you can send as many amendments as you like. (*Interruptions.*) I thought they would type and bring it.

SHRI RANGA (Srikakulam): That difficulty was brought to your notice and all these things were over-ruled. You must be prepared to over-rule your ordinary rules and conventions here. (*Interruptions.*)

SHRI UMANATH (Pudukkottai): Who asked you not to give your amendments in time? (*Interruptions*). Mr. Masani has already given notice of amendments and they have been circulated to us.

अध्यक्ष महोदय : इस में तो कोई झगड़े वाली बात नहीं है । आप शांति से अपनी बात कहें ।

श्री शिव नारायण : आज श्री मसानी नहीं हैं, डा० राम सुभग सिंह नहीं हैं। Mr. Umanath is not the master of this House.

MR. SPEAKER: 1.30 P.M. is all right because at 2 O'clock when you come, these should be before you.

Dr. Sushila Nayar.

DR. SUSHILA NAYAR (Jhansi): I am glad this Bill has at last come before this august House for consideration. As the Minister has stated in his introductory remarks it has had a chequered career. Somehow or other there have been certain interests in the country who were opposed to the amendment of this Bill and they have obstructed the efforts of this Government for the revision of this Bill not only recently but right from 1948. A look into the history of this Bill shows how committee after committee was appointed and many valuable suggestions were made for the amendment of this Law, but they were all put on the shelf and no action was taken. Two committees were mentioned by the hon. Minister. Justice Tekchand Committee that gave its report in 1950 showed that of all the patents that were applicable in India only 10 per cent were those of Indians. Justice Rajagopala Iyengar's Report of 1958 revealed the same story. The Indian patents were not more than 10 per cent. This showed that even after independence it was the foreigner who got the benefit out of the patents and not the Indians by and large. If you look at the area of drugs in the whole area of patents and analyse the patents given, you find that not more than 5 per cent of those are drugs out of the 10 per cent given to Indians. Drugs and pharmaceuticals and chemicals are a most important area in which the Patent law operates. This should be obvious to anybody who has cared to analyse the Memoranda received by the two Select Committees which went into this Bill, as mentioned by the Minister already. There were hardly one or two Memoranda by other parties. All the Memoranda, all the deputation and the hectic lobbying that was done amongst Members of Parliament were, more than 95 per cent and probably 99.9 per cent of these organised form of the drug interests. The reason is obvious.

There has been too much profits in the drug industry. A careful look at the balance-sheets of any of these big drug companies will reveal that the original capital that they had employed was very small. Their origi-

[Dr. Sushila Nayar]

nal assets and capital would not more than 20 or 25 per cent of the assets that they have today. The large drug companies have big buildings, modern equipments, etc, out of the profits and yet given handsome dividends to share-holders. I don't grude them their legitimate dues and expansion out of the profits that they make. They don't admit, they have made big profits. That is the point. They just turn round and tell us how much they have invested in putting up those plants, machinery and buildings. But the truth of the matter is that by and large 99 per cent of these have come out of the profits earned in India. It is not their investment, it is Indian money earned in profits by them. And with all that, Sir, they have been paying handsome dividends to their shareholders. This shows the extent of profiteering in this field of drugs. I have the privilege of knowing the development from stage to stage of the Pimpri penicillin plant.

It was a pleasure to see how when the Pimpri Penicillin came into the market the prices of penicillin came crashing down. They came to a fraction of what they used to be and yet Pimpri made handsome profits. Out of their profits they expanded; they started streptomycin production, and a number of other things. Thus, they made profits and these profits went to the benefit of the people and they expanded their production, as I have already mentioned, inspite of reduced prices. How much profit must have been made by those who sold penicillin at exorbiant prices before Pimpri Penicillin came in the market.

Now, judging from this, all these show how much profit there is much profit in this field of drugs and chemicals. Now, Sir, why are we so much concerned about this whole business of profiteering in this area? It is because of the reason that drugs and chemicals are essential for suffering humanity. Sick people need these drugs and medicines. The price of drugs is of considerable importance. All those who deal with sick people will desire that quality drugs and medicines are available at reasonable rates. Why have we brought this Bill before Parliament in this hurry and in this urgency? That again is due to the fact that during the last few weeks and months, the prices of drugs have gone soaring up, and I believe it happened due to the bungling of this Government; otherwise, it would not have happened. They have bungled and bungled horribly, and the matter has been discussed in this House on a number of occasions. But, be that as it may, the result is that on the one hand, the prices of most drugs, barring a very few exceptions, have gone soaring up, and on the other, where the prices could not be raised, the drugs have disappeared from the market and they have gone underground. This type of thing has got to be stopped.

It is obvious that if this amending law is passed by this House, it will give certain powers to the Government to deal with the situation more effectively, if they want to, and if they do not bungle further in this matter. They are experts in bungling, but I hope that they will try to avoid making more mistakes and not bungle in this area which is so important from the point of view of the sick and the suffering in our country.

Regardig this Patents Bill, as I said earlier, committees were appointed right from 1948 onwards, and the report of the last committee headed by Mr. Justice Rajagopala Ayyangar was submitted in 1958. In 1962, we took this matter up again, and Government set up committee to examine the various aspects of the matter and they came forward with a new Bill.

Originally, we were informed that it was proposed that patents in drugs and foods would be done away with

altogether. Why was that proposition brought forward? If you examine the history of the patents law, you will find that prior to 1905, there were no drugs patents anywhere in the world. Even today, the medical men do not take a patent on the method of a operation or on techniques of particular diagnosis, and, therefore, it is open to any doctor or any physician or any investigator anywhere in the world to make use of these discoveries, these innovations and these techniques discovered by doctors, physicians and surgeons anywhere in the world. Nobody ever thinks of taking a patent on these things, and making profits.

In the old old days we know how the hakims and vaids passed certain very valuable prescriptions from father to son. I would not like to go into the idea behind that secrecy, nor is it necessary to do so now. But obviously, it had a certain remunerative value for those families which held these secret recipes and remedies in their hands. Everyone has condemned that practice. It has been said that it is not a good practice and remedies that could relieve suffering should not be kept secret. Patents have tried to do something slightly different. They say that they will make it available, but those who have made the discovery or exploited the discovery made by a scientist, shall have the exclusive right to exploit that discovery for 16 long years, and during that period, they can charge whatever prices they like and make whatever profits they like. This idea, as I said earlier, has started in this country, after 1905.

In 1905, Germany discovered Salvarsan, a drugs for the treatment of syphilis and took a patent on it. From that time onwards, patents in drugs have come up. I would not deny that the profit motive has had certain beneficial effects also. It has induced people to put forth a lot of effort and money on discoveries in the area of drugs, and such discoveries have been on the increase during the last 50 years much more than during the period prior to it.

At the same time, the fact remains that there has to be some check and control on profits made in this area. Nobody grudges reasonable remuneration, but exorbitant profits are reprehensible and not permissible, especially in the area of drugs. The drug industry tells us that it has to make this profit for the simple reason that out of the hundreds of products they discover, there are only a few which are capable of being developed into drugs, and out of the drugs that are manufactured, not all prove a success. Therefore, they must try to get the maximum out of those which prove a success to recover their expenditure on research and development.

Some years ago the American Senate had appointed a committee called the Kefauver Committee to go into this matter. It went into great details regarding the cost structure, and the cartels that have been set up by the drugs industry and every other aspect pertaining to the price problem. It came to the conclusion on the basis of facts and figures that 6 per cent was being spent on research and 25 per cent on sale promotion by the drug industry.

This shows that the money spent on research is just a fraction of what they spend on advertisement and sales promotion. Why is sales promotion necessary? Because there are mony products more or less the same in their effect, same in their composition but under different names and different brands, protected by the patent law, and the poor patent does not know one from the other. Very often you will find in the homes of people shelf-fulls of medicines more or less of the same type, one prescribed by one doctor, another by another doctor and so on, and the poor patient is thus swindled.

[Dr. Sushila Nayar]

Now, if Government would take care and see that these products are not duplicated unnecessarily, this would not happen. This is done in certain Scandinavian countries. There is no reason why we cannot do it. It can offer certain protection to people in this country.

I remember once an officer was very annoyed because he could not get Becozyme forte from the CHS. He could get B Complex forte which is the same thing, but the former is much more expensive. When it was explained to him, he was satisfied. But he said: 'How do I know? Whatever is prescribed to me, I consider to be the best. You doctors understand it. But I do not'. It is for Government to ensure that the generic names are displayed clearly and as prominently as the trade names, and secondly that a curb is put on too many products of the same kind. They should not give patents to too many products of similar nature. This will reduce expenditure on sale promotion.

I was saying that it is necessary to see that patents are only given for genuine new inventions. This Bill has made a provision for that. If that is properly applied, it will be good for our country.

Secondly, I have tried to explain how, when there are too many similar products, the industry has to spend money on sales promotion. Every one knows the number of samples that are sent to doctors. The medical representatives are paid so handsomely that graduates of science would rather be sales agents of drug companies than go and teach science in schools and colleges. And all that expenditure on sales promotion has to come out of the consumer's pocket.

Another very funny thing happens. The formulations are again something which are considered specialised, and sometimes have been patented, which is criminal. It should never be done. Formulations are the source of making really most exorbitant profits, and something should be done to check it in the interests of the common man.

As I said, because new patents law will touch the pockets of the drug concerns, they have obstructed all the efforts to amend these laws. Every one knows how the first Select Committee's report was not allowed to be discussed by the Third Lok Sabha. Certain reasons were given and no time was found for the discussion of the Bill so that it lapsed with the end of the Third Lok Sabha. The report of the second Select Committee, as the Minister said, has also been before the House since February, and, but for the excitement caused by the recent exorbitant rise in prices of drugs, I am afraid that this report too might have met with the same fate and might also have lapsed with the end of the present Lok Sabha. I am glad that has not happened and the Bill is here before us.

It is only right that this Bill has made a distinction between drugs and pharmaceuticals and certain other types of inventions. The period of seven years in the case of drugs should be enough for any one to exploit the patents and to get a reasonable profit out of that, provided they do not take time to start production in the earlier part. What happens is that they generally apply for a patent long before they are really ready with the details of the scheme, so that nobody else can get in to the area. Others are precluded from the *sanctum sanctorum* created by patents obtained by a particular concern. And then they take their own sweet time to develop the area and go into production years later, if at all. In the mean time they get permission to import those particular drugs, and they enjoy the monopoly to do so under the patent laws. You have seen in the newspapers, and

other people have mentioned in the course of discussions before, how prices are charges for drugs in this country which are 100 times, 500 times and even 1000 times and more the prices prevailing in other countries. This is a strange case of inverse proportion between the paying capacity of the people and the prices of drugs in this country. And this is due very largely to the evil arising out of the patent law as it has been prevailing in this country.

Even in Britain the Government have got the freedom to import for their own uses, but in India we could not import, we had to buy and eat out of the hands of these people enjoying monopoly rights. The present Bill provides power for the Government to import for the hospitals, dispensaries and other institutions of a non-profit nature. This is a very welcome step, and I am sure it will give considerable relief immediately. If the Government does not bungle again, it will be in a position, after this Bill is passed, to import some of these important drugs from countries where they are very much cheaper than the products which we have been getting so far, because certain drug houses from certain countries have held a monopoly in this area in the past. It will be good to break those monopolies and the powers of the Government to import for their own use will very greatly relieve the situation.

There are a number of other provisions of the Bill which are useful but there are a few which need a second look. We shall do so when we come to the clause-by-clause consideration. I wish to say that the five per cent royalty seems to me rather exorbitant. Similarly the licence of right, which is a very important thing in this Bill is hedged in by so many conditions that it needs to be looked at more closely and there is no reason why we should not use the language that was used in the original Act and make it simpler and more explicit. I shall deal with all these matters when we take up clause-by-clause consideration. I wish to welcome this Bill and I hope that the Government will make full use of this law after it is passed, in the interest of the suffering humanity in this country.

श्री प्रेम चन्द वर्मा (हमीरपुर) : अध्यक्षजी, आज इस विधेयक के बारे में सब से पहले मैं इस सरकार को और विशेष तौर पर इण्डस्ट्रीयल डवेलपमेन्ट मिनिस्टर को बधाई देता हूं कि वे इस विधेयक को आज यहां लाने में सफल हो गये हैं। इस में अध्यक्ष जी, आप का भी बड़ा योग है और पार्लियामेन्ट्री मिनिस्टर का भी बड़ा योग है। मैं तो यह समझता था कि कुछ लोगों की साजिश से, कुछ लोगों के अनोखे ढंग से यह बिल नहीं आयेगा, आप इस बात को सुन कर हैरान होंग कि इस बिल को रोकने के लिये कई प्रकार के हथकण्डे चलाये गये और बड़ी बड़ी कम्पनियों ने जिन का इस में बड़ा इन्टरेस्ट है, उन्होने हर तरह से प्रयत्न किया कि यह विधेयक इस सेशन में पास न हो, लेकिन अन्त में सारे सदन ने यह फैसला किया कि इस को आज लाया जाय और अब मैं समझता हूं कि शाम के पहले-पहले यह विधेयक पास हो जायगा और उन लोगों की साजिश धरी की धरी रह जायेंगी।

पेटेन्ट बिल में, अध्यक्ष जी, बहुत सी बातें तो ऐसी हैं, जिन पर जब खण्डवार विचार किया जायगा, तब कुछ ज्यादा कहा जा सकता है, लेकिन जो सब से बड़ी बात इस में है वह यह है कि इण्डस्ट्रीज के अन्दर, उद्योग के अन्दर एक ऐसा मोनोपली सिस्टम बन गया है जिन का अधिकांश लाभ विदेशी कम्पनियों को पहुंच रहा है। आज जितने पेटेन्ट्स हिन्दुस्तान में चलते हैं, उन में विदेशी कम्पनियों का अधिकतर हाथ है, उन के पास ज्यादा पेटेन्ट्स हैं। मिनिस्टर महोदय ने बताया था कि हिन्दुस्तान के पास तो इन में से केवल 10 फीसदी पेटेन्ट्स ही हैं और ये

श्री प्रेमचन्द वर्मा

विदेशी कम्पनियां उन पेटेन्ट्स का इस्तेमाल इस तरह से कर रही हैं, कुछ हिन्दुस्तानी लोगों को साथ मिला कर बेनामी तरीके से उस काम को चला रही हैं। इस बिल में इन बातों का खास तौर पर ध्यान रखा गया है, लेकिन इस वक्त जो शोर मच रहा है, वह इस बात पर है कि इस से इण्डस्ट्रीयल डवलपमेन्ट को बाधा पड़ेगी।

क्योंकि लोगों को आजादी नहीं होगी कि वे ज्यादा नई प्रकार की चीजें बना सकें। मैं समझता हूं कि यह धारणा गलत है। जो लोग हिन्दुस्तान में काम करते हैं, अगर उन को मौका मिले, तो वे हर तरह की चीजें बना सकेंगे। हमारी इंडस्ट्री पर विदेशी कम्पनियों का जो एक ग्रिप है, उस को छुड़ाने के लिए इस बिल में कोशिश की गई है। सोशलिस्ट समाज स्थापित करने के लिए यह जरूरी है कि सारी इंडस्ट्रीज कुछ ही हाथों में केन्द्रित न हो जायें। उदाहरण के लिए दवाओं की इंडस्ट्री का बहुत बड़ा हिस्सा सारा-भाई कनसर्न के हाथ में है। इस प्रकार की कई दूसरी कम्पनियां भी हैं। वे इस स्थिति का नाजायज फायदा उठाती हैं। इसीलिए सोशलिस्ट विचार रखने वाले लोग यह समझते हैं कि पेटेन्ट्स कानून में जरूरी संशोधन किये जायें।

12 hrs.

मैं ने देखा है कि जो लोग गलत प्रचार कर के बोगस दवाइयां बेचते हैं, उन को कंट्रोल करने के लिए इस बिल में कोई प्राविजन नहीं किया गया है। जैसे "ताकत की दवाई" "शादी से पहले और शादी के बाद"। मैं नहीं जानता कि मंत्री महोदय को उस का कोई एक्सपीरियेंस है या नहीं क्योंकि नौजवानों के अलावा बूढ़े भी उन दवाओं का इस्तेमाल करते हैं।

श्री विनेश सिंह: अभी तक नहीं है।

श्री प्रेम चन्द वर्मा: यह बात बड़ी महत्व-पूर्ण है। इस बिल में यह प्राविजन किया जाना चाहिए कि अखबारों, इश्तहारों या सिनेमा के द्वारा जिन गलत दवाओं का प्रचार किया जाता है, कंट्रोलर-जेनेरल को उन की तफसील और नुस्खा जानने का पूरा अख्तयार हो। ये लोग कितनी जिन्दगियों को तबाह करते हैं। जब नौजवान इस प्रकार की दवाइयों का इस्तेमाल कर के बर्बाद हो जाते हैं, तो वे इस बारे में किसी को शिकायत नहीं कर पाते हैं। इस तरह सारी नेशन की सेहत पर बुरा असर पड़ता है और सारी नेशन को उस का खमियाजा भुगतना पड़ता है। इस लिए मंत्री महोदय इस की तरफ भी तवज्जुह दें।

इस बात पर जोर दिया जा रहा है—और इस बारे में कई संशोधन भी दिये गये हैं—कि पेटेन्ट का टाईम कम न किया जावे, उस को अधिक रखा जाये। मैं समझता हूं कि पेटेन्ट का टाइम अधिक नहीं होना चाहिए, क्योंकि लगातार जो लूट चल रही है, उस को रोका जाना चाहिए। बिल में दवाइयों के बारे में सात साल का टाईम दिया गया है। वह काफी है और उस को बढ़ाना नहीं चाहिए। दवाइयों के अलावा और किसी भी चीज का टाइम दस साल से ज्यादा नहीं होना चाहिए।

इस बिल में पेटेन्ट की रायल्टी 5 परसेंट रखी गई है। मैं समझता हूं कि वह ज्यादा है। रायल्टी 4 परसेंट से ज्यादा नहीं होनी चाहिए। असल में तो 4 परसेंट भी ज्यादा है, लेकिन अगर किसी वजह से उस को कम नहीं किया जा सकता है, तो 4 परसेंट से ज्यादा तो किसी सूरत में नहीं होनी चाहिए। मेरे ख्याल में 2, 2½ परसेंट मुनासिब है।

इस बिल में ऐसी भी व्यवस्था की जानी चाहिए कि इस बात की जांच कराई जाये कि कितनी विदेशी कम्पनियां हिन्दुस्तानियों के साथ पार्टनरशिप कर के या बेनामी प्रोप्राइटरशिप के द्वारा अनुचित फायदा उठा

रही हैं और इस को रोकने के लिए जरूरी कदम उठाये जायें ।

श्री टेकचन्द और श्री अयंगार की रिपोर्टस में बहुत अच्छे सुझाव दिये गये हैं । जहां उन में से कई बातों का इस बिल में ध्यान रखा गया है, वहां कई बातें रह भी गई हैं । मंत्री महोदय को उन की तरफ ध्यान देकर उन के बारे में आवश्यक कार्यवाही करने की कोशिश करनी चाहिए । मैं उन में से कुछ बातों का जिक्र करना चाहता हूं ।

जब कोई कम्पनी किसी पेटेन्ट का इस्तेमाल कर के मुनाफा कमाती है, तो उस मुनाफे में से एक डेफिनट रकम, उस का एक निश्चत हिस्सा रिसर्च के लिए इस्तेमाल करना चाहिए । आज सारे का सारा मुनाफा उन कम्पनियों की जेब में जाता है । जैसा कि डा० नायर ने कहा है, दवाइयां और खाद्य पदार्थ बनाने वाली बड़ी-बड़ी कम्पनियां उस पैसे को जनता और कनज्यूमर्ज से वसूल करती हैं । इस बात का इन्तजाम किया जाना चाहिए कि वे कम्पनियां उस पैसे का इस्तेमाल केवल अपने फायदे के लिए ही न करें बल्कि उस पैसे का इस्तेमाल देश की इंडस्ट्रियल और टैकनालोजिकल डेवेलपमेंट और रिसर्च के के लिए किया जाये ।

सरकार के द्वारा ऐसी मशीनरी बनाई जानी चाहिए , जो इस बात की जांच करें कि जिस चीज का पेटेन्ट दिया जा रहा है, मैनुफैक्चरर उस की कीमत बहुत ज्यादा निर्धारित न कर सके । अगर पेटेन्ट देते वक्त प्राइस पर कंट्रोल नहीं किया जायगा, तो बाद में ऐसा करना बहुत मुश्किल हो जायगा । आखिर पेटन्ट का सब से बड़ा फायदा ही यह है कि हम कीमतों को कंट्रोल कर सकें और लोगों को ठीक और सस्ती चीजें दे सकें ।

यह भी बहुत जरूरी है कि पेटन्ट की हुई दवाओं की क्वालिटी की वक्तन-फवक्तन जांच की जाये । आज बाजार में नकली पेन्सिलिन और नकली कैलशियम बेची जाती है । ऐसी नकली और घटिया दवायें बेच कर लोगों को लूटा जाता है और साथ ही उन की सेंहत को भी नुक्सान पहुंचाया जाता है । इस तरह की दवाओं के इस्तेमाल से कई मौतें भी हुई हैं । पेटेन्ट का मतलब सिर्फ यही नहीं है कि सरकार उस को कहीं भी इस्तेमाल करने का हक ले ले । मैं नहीं समझता हूं कि यह कोई बहुत बड़ी बात है । यह तो सोशलिस्ट सरकार है । जनता की सरकार है और प्रजातंत्र है । प्रजातंत्र की सरकार को पूरा हक हासिल है कि वह किसी चीज को भी देश के लिए और देश के फायदे के लिए इतेमाल करे ।

श्री समर गुह (कन्टाई) : यह सोशलिस्ट सरकार है ?

श्री प्रेम चन्द वर्मा : बिलकुल हमारी सरकार सोशलिस्ट सरकार है ।

श्री समर गुह : यह रेडियो सोशलिस्ट सरकार है ।

श्री प्रेम चन्द वर्मा : अध्यक्ष जी, मैं यह अर्ज करना चाहूंगा कि जहां तक इस का सवाल है कि सरकार किसी चीज को वगैर रिलीफ दिए अपने इस्तेमाल के लिए लेना चाहती है तो यह ठीक है । मैं तो यहां तक कहूंगा कि जो कार्मशियल तौर पर इस्तेमाल किया जाय उस की रिलीफ दी जाय । लेकिन अगर उस के अलावा केवल अस्पतालों के लिए या केवल जनता की बहूबूदी के लिए इस्तेमाल करते हैं तो मैं समझता हूं कि उस में किसी प्रकार की रिलीफ न देना कोई बेइंसाफी की बात नहीं है बल्कि यह गरीबों के साथ इंसाफ की बात है । इस के लिए मैं मंत्री महोदय को बधाई देता हूं कि उन्होंने यह प्राविजन इस बिल में रखा है ।

[श्री प्रेमचन्द्र शर्मा]

दूसरे, मैं यह कहूंगा कि इस विधेयक को हम अच्छी तरह से विचार कर के, दलगत भावनाओं से ऊपर हो कर अपने स्वार्थ का ध्यान न रखते हुए इतना अच्छा बनाएं कि यह सारे संसार के लिए एक नावेल्टी साबित हो और दूसरे मुल्क भी इस का फायदा उठाएं। हिन्दुस्तान एक बहुत बड़ा मुल्क है, अगर इस में यह कामयाब होता है तो सारी दुनिया की जनता को इस का फायदा हो सकता है और विदेशों में भी इस का फायदा उठाया जा सकता है।

इस के साथ साथ जहां तक विदेशी कंपनियों के प्रोटेस्ट का सवाल है एक खास बात इस में कही गई है और मुझ भी एक दो मेमौरेंडम ऐसे मिले हैं जो यह कहते हैं कि टाइम निश्चित रूप से मुकर्रर होना चाहिए। पेटेन्ट की मियाद कब से शुरु होगी ? जब दरख्वास्त देगा तब से या जब से कंट्रोलर जनरल उस को मंजूर करेगा तब से शुरू होगी या जब से गजट होगा तब से शुरू होगी या तब से शुरू होगी जब कि उस पार्टी को वह पेटेन्ट मंजूर कर के भेज दिया जायगा ? तो इस बात का जरूर ध्यान रखा जाना चाहिए ताकि जो नई चीज बनाने वाले हैं, जो साइंस में तरक्की करने वाले हैं उन को भी नुक्सान न पहुंच सके और उन का भी हौसला अफजाई करें जिस में वह लोग इस से पूरा फायदा उठा सकें और उन का ध्यान इस तरफ लग सके। हमें दोनों तरफ की बातों को ध्यान में रखना चाहिए। एक तरफ यह कि गरीबों को लूटा न जा सके, मोनोपलिस्ट सिस्टम को खत्म किया जा जा सके और दूसरी तरफ जो इंडस्ट्री को डवलप करने वाले लोग हैं, जो साइंस और टेक्नालाजी में तरक्की करने वाले हैं या जो नई चीजें पैदा करने वाले हैं उन को भी हमें मदद करनी चाहिए और उन को जहां-जहां भी शिकायत है और जहां-जहां भी इस विधेयक में कोई ऐसी जेनुइन बात की उन की मांग है, उस के लिए मैं मंत्री महोदय से कहूंगा कि उन की जेनुइन बातों को मान लें। खास तौर पर समय के बारे में जो बात है वह डेफिनिट हो जाना चाहिए क्योंकि आप के कंट्रोलर जनरल दो-दो साल तक कागज अपने पास पड़ रखते रहते हैं और फिर दो साल गजट होने में लग जाते हैं, इस तरह चार साल का समय बीच में लग जाय तो बनाने वाले को नुकसान होना स्वाभाविक है। मैं समझता हूं कि सरकार का कानून बनाने का मतलब यह नहीं होता कि किसी को नुकसान पहुंचाया जाय बल्कि उस का मतलब यह होता है कि किसी चीज को रेग्युलेट किया जाय जिस में जिन के लिए बनाया जाता है उन को भी फायदा हो और जो बनाने वाले हैं उन्हें भी कोई नुकसान न पहुंचे। इन्हीं शब्दों के साथ मैं इस विधेयक का समर्थन करता हूं और उम्मीद करता हूं कि यह विधेयक आज शाम तक जरूर पास हो जायेगा।

SHRI N. DANDEKER (Jamnagar): Mr. Speaker, Sir, I wish to begin by adding my little protest to that of my hon. friend, Shri Piloo Mody, against this example of tyranny of the majority over this House. Knowing that ordinarily we would not be sitting on Saturdays and Sundays we plan our week-ends in such a manner as to be of some use either in the constituency from which we have been elected or in some other manner for the public work for which we have been elected. I will not say more than what Shri Piloo Mody said but I would like to go on record as saying that this is the most irresponsible example of utterly undesirable dictatorship and tyranny of the majority.

THE DEPUTY MINISTER IN THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND INTERNAL TRADE (SHRI M. R. KRISHNA): It was suggested by the Opposition.

SHRI N. DANDEKER: I would now proceed to the Bill. There is a good deal of confusion here. Whether I listened to the Minister's speech or to the speech of my hon. friend here or to the speech of my hon. friend there.... (*Interruption*).

SHRI SAMAR GUHA: On a point of order, Sir. If a resolution is passed by the majority of this House, can a Member call this resolution as utterly irresponsible however he may dislike it or may consider it undesirable?

SHRI PILOO MODY: I think, the tyranny of the majority is a concept that my hon. friend needs to understand.

SHRI SAMAR GUHA: I have not objected to the expression, the tyranny of the majority. But once a motion is passed by the House, I want to know whether he can call it as utterly irresponsible. (*Interruption*)

MR. SPEAKER: There is no point of order in it.

SHRI N. DANDEKER: Sir, listening to the speeches so far, I find that there is a considerable confusion both as regards the ends we wish to achieve and also as regards the means by which we seek to achieve them. For instance, there has been a good deal said, much of it rightly, as regards the exorbitant prices of some patented products, the monopolist practices of some pharmaceutical concerns and various things of the kind that we ought to object to. But the question surely is: Is this the Bill for the purpose of curing these evils for achieving restraints on monopolists, on monopolist practices and, even if you like, even on monopolist exploitation?

Only the other day, not so very long ago, we passed a measure called the Monopolies and Restrictive Trade Practices Bill. Precisely, for that purpose, various questions were raised and discussed about profiteering and about the extent of foreign exchange that had to be spent for importing a lot of essential drugs and medicines, etc. I am not here questioning whether these ends are desirable or not. I agree that restraint over forign exchange expenditure a probe into whether proper things are being produced here or not, and so on, — all these are right objectives. But the question again is: Is this the measure for exercising restraint either on foreign exchange expenditure or on pricing or on profiteering or on any of the various very desirable things that have been talked about as the main ground for supporting this Bill?

I submit, Sir, there is utter confusion in the minds of both the hon. Minister and the hon. Members who have spoken so far as to what really are or should in the objectives in regard to this particular Bill and whether these provisions in this Bill are the proper means for achieving the ends to which they have given expression.

I would suggest that if it is a question of price control, the Government already have the necessary mechanism, the necessary apparatus and the necessary powers for the purpose. If it is a question of restraining monopolist practices or restrictive trade practices, they already have the necessary powers. This House has passed the necessary measure and the Government has or is setting up the necessary apparatus for controlling monopolist practices and restrictive trade practices. If it is a question of restraining foreign exchange expenditure or indeed of going into the pricing of imported products and so on, again, the Government has at their disposal ample powers and ample machinery, ample legislation, to do all those things. So, Sir, I submit, there is a complete confusion about ends and means which ought not to have existed in the minds of the Members and certainly of the hon. Minister when they made their speeches on this Bill concerning patents.

[Shri N. Dandeker]

What is the real objective of any legislation concerning patents? Surely, Patents legislation is not intended in itself to create any proprietory rights *per se*. Such legislation's primary objective is not what the Minister stated, namely, to recognise private property. The first or primary objective of a legislation concerning patents is to ensure that people are not discouraged but encouraged to undertake research, to undertake inventions and to devote all their time and all those resources that are required for the purpose of research invention and development. It is recognised that one of the principal ways of doing so,—there may be various other ways too,—is to accept the proposition that for a certain period of time, subject to certain conditions, the person concerned will have proprietory rights in that particular invention which is the result of the expenditure of his labour and his resources.

Sir, I just want to be quite clear that is not a Bill for the purpose nor is any Patents legislation ever a measure for the purpose, of creating private property *per se*. Such legislation is for the purpose of encouraging people to go into inventions, to spend time and money, to provide the necessary organisation and to spend the best part of their lives in generaling inventions and all that goes with it. It is in order to encourage them to do so. I do not know whether this Bill has got all the various necessary provisions which describe and protect what the research people have in mind as to what an invention involves. There is the intention of a product; there is the invention of a process for producing a product, or there may be the invention of a machine, apparatues or design for producing a new product. There may be an invention of an apparatus, a machine, design, whatever it may be so that an existing product may be better produced or more cheaply. Therefore, an invention consists either of an apparatus or a machine or a design or of a process or of a product or of more than one of these things together.

Secondly, there is this question of the cost of it all. I should have thought that at least the Government would be aware of the enormous expenditure involved in research and development. The Minister has not even referred to this one most important thing. What is the amount which the national laboratories are spending in this country for the purpose of research and development? The National Physical Laboratory, the National Chemical Laboratory and all kinds of national laboratories presided over by the Central Council of Scientific and Industrial Research are spending millions of rupees. In UK the public expenditure runs into 900 million pounds. Private sector also undertakes a colossal expenditure. The magnitude of the expenditure that is involved in modern times on research and development is something incredible. It is not as if, as they did 50 years ago, that you sit down and fiddle around doing something, as an individual effort, and produce something. To-day nothing, no process, no apparatus, no new product, no design is the result of any individual effort. It is the result of organized effort costing a lot of money, and costing a lot of time. Out of over 10 items on the research and development of which people may be engaged upon, maybe in a period of two or more years one or two things may be found or evolved with some possibility for Commercial exploitation.

The second stage is exploring the possibilities of setting up an industrial pilot plant which is the next most important thing. Now Sir, I forget the name of the person who said this; but he said that all these costly and protested processes do not *per se* produce the wealth. This process of research and development

of setting up a pilot plant, making it into an industrial process for establishing an industrial plant undertaking market research for marketing the product—all these stages consume wealth. Wealth is produced only when as a result of these inventions a commercial set up takes it over and industrial production takes place and marketing physically takes place on a large scale. Only then comes the stage of production of wealth; until then it is the process of consuming wealth.

Now, having regard to this sort of background, a background which ought to be known and is known to the Government but which they deliberately do not mention; a background that is also known to me because of my association with the industry for the last 20 years; because of this and because of the experience in the past in all the countries of the world, it was found necessary not to discourage this essential activity to put it at its lowest, but to actively encourage it to put it at the highest, by conferring proprietory rights on the inventors. If that be the *sine qua non* of the reasoning concerning patent rights, if that is the basis, the real justification for a law relating to patents and for recognising private property rights in the thing that is invented and patented, then Sir we have to ask ourselves with regard to this Bill: will it achieve this particular and most essential objective? Will it sucessfully achieve what is desired, namely, that people will continue in this country—never mind abroad—that scientists will continue in this country to be encouraged, that foreign enterprises will find it worth while to be engaged in this country in research and development. If in spite of Patent rights they are not doing this, by all means push them around. By all means bring pressure on foreign enterprises to engage in research and development in this country. Do so by all means, but not by this kind of legislation. This is not the legislation that should be intended or is suitable for that purpose. Sir, it is from that angle, from the angle of what we want, from the angle that we want vast research and development here, from the angle that it all costs money, from the angle that it also takes a lot of time, from the angle that it takes or consumes a lot of wealth to produce inventions and discoveries — it is from these angles that I would ask the House to consider this legislation.

Therefore, Sir let me take the first point in this legislation, namely, the life of the patent. According to Cl. 53 for medicines, drugs and food including insecticides, pesticides, weedicides and all kinds of other 'icides', the life of a patent, whether it is a product patent, process patent, design patent or any kind of patent, is only 7 years. In fact there will be only process patents permitted in these fields; and then life wil be limited to seven years. We have our national laboratiories. These people could readily have given the Minister the figures of what it costs in the narrow field of chemical research. The Pimpri Penicillin Factory ought to be able to give figures of how much it cost them to develop some of the products which they have developed in the field of antibiotics. So against the very heavy cost, two years out of the period of 7 years' life of the patent will go in the process, which I may call legitimate process, of enquiring into the genuineness of the Patent, whether it is not a copy of something else, etc. in the office of the Controller because all such legitimate and necessary investigation has to be done. Thus in this period of 7 years, not more than 4 years will be the effective period for the purpose of commercially proving a Patent. Can they, i.e. the inventors and the patentees be encouraged to spend more money; can they be encouraged to invest, so that they may get the benefit of investment within the short period? I say, this is ridiculous non-sense. I do not know how it will work; in fact it won't work.

[Shri N. Dandeker]

Sir, originally the idea was to make it 7 years; then it was changed to 10; then, as I see from my notes, it was intended to be changed from 10 to 12 years; and now suddenly it has gone back to the fatal figure of 7 years.

From the fact that the Minister read his entire speech it is plain he is not familiar with the subject; he does not know the subject. The whole of his speech was written for him by the people in his office. And the same is, to some extent, true in my case as I am not altogether prepared with my subject. But the fact happens to be, by accident, when an early version of this Bill came before the House in 1965, I had an opportunity to speak on it. So some of these matters are familiar ground as far as I am concerned.

But, Sir, this period of 7 years as the permitted maximum life for all patents is such utter non-sense that we shall make ourselves a laughing-stock of the whole world in regard to this matter. Assuming we have got to have a shorter period for patents relating to certain product groups than for those to other product groups, I agree that 7 years may be adequate; let it be a shorter period for drugs, medicines pesticides, etc., than for any other products. I can understand that. But in regard to foods, drugs and medicines including pesticides etc., there are to be no product patents but only process patents. Moreover, the definition goes on to say that in regard to anything produced by "chemical process'—never mind, whether it is process for production of food, medicines, drugs or insecticides or any other kinds of things, —any chemical process for producing anything can only have a process patent with a life of only 7 years—I do not know whether these people have got any idea of what they are talking about. Certain amount of coherent thinking is necessary for the purpose of finding out through logical understanding, the rationale in regard to these matters. But this is totally lacking here.

There is another aspect, though I cannot obviously cover the entire-ground. But, at this particular stage, I would like to refer to Clause 47. It is the right of the Government under Clause 47, an extraordinary right, of being entitled to infringe a patent without paying any kind of compensation. That is worth mentioning. It can be any patent—product patent, process patent, design patent, machinery patent, anything—and not merely for the purpose of medicines and drugs. I can understand such a right for medicines and drugs, because I want more and more development of health services in this country. And, I agree, Government ought to be able to use these medicines for those purposes. But there is a narrow line between using things for Government's own purposes and using them for entering into commercial competition. Look at the range in Clause 47, the range of things Government can do in infringing patents without any kind of worthwhile justification or compensation for it. This is extraordinary. There is also sub-clause (4) that refers to one more thing. It says:

> "In the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution....."

They may also make it. These clauses give Government an extraordinary right to exploit in any way they chose any kind of patent, whether it is process patent or product patent or with regard to instrument patent or design patent or anything. If they want to be honest let them say that there shall be no patents at all *vis-a-vis* the Govern-

ment; let them say that every inventor shall be their slave so that if anybody has invented anything immediately it will be nationalised. Let the man and his invention be both nationalised, and let him become their slave. But let us not talk at the same time about democracy and liberty and individual rights and all that kind of thing on the one hand, and on the other, have this kind of business of depriving a person of the results of his labours.

My time is unfortunately coming to its close, and, therefore, I shall take just one more sample. I would like to refer to clauses 87 and 88. I shall just read out the marginal heading of clause 87 which is as follows:

> "Certain patents deemed to be endorsed with the words 'Licences of right".

This would mean that any person, anyone, anyone at all, is entitled, never mind how much money has been spent on research by X, the patentee, never mind what period he has had, if at all for exploiting that patent and for recovering some part of his recompense, after three years anybody at all has a right in respect of certain patents, to exploit them as a matter of right. He may have no qualification; he may be one of those people that have been described here as profiteers, monopolists and so on; there, they have no objection; they have no objection to any smart Alec coming along to exploit any medicines and drugs, because there it is a licence of right, and any person can go into it as a matter of right, and no inventor, no patent-holder and no licence-holder of a patent can object. Any adventurer can go in for it as a matter of right and start making medicines.

Surely, Government in the Health Ministry and in its Drug Control Wing have got some ideas as to the competence required for manufacturing medicines and drugs of quality, medicines that measure up to the standard required, medicines that have also certain lasting qualities. But now under this new patents law, anybody at all, any damn fool, any Tom, Dick and Harry and any exploiter and any adventurer or scoundral, any benamidar under somebody else's name can come along and exploit these patents as a matter of right. I really fail to understand; or, perhaps, Sir, I do understand that there is here a complete failure to think, an utter confusion in the minds of people who have spoken, and in the minds of Government who have brought forward this legislation.

What is it that they are trying to achieve? And what is the right way of achieving these things? They are trying to achieve through this Bill a number of things that ought to be achieved otherwise. I am not questioning at this juncture the need to restrain monopolies. I may be, indeed I am, a great protagonist of private enterprise, but I have always said that private enterprise should be subject to restraint against its excesses. Private enterprise will commit exesses as Government enterprises also commit excesses, and there is no question about this.

But the real question is this: and here I shall conclude as I began. There is here a tremendous confusion about what we are trying to do. Are those things to be done by this Bill? What should be the objectives of a law relating to patents? I may say that I am not confusing anyone when I say that this Bill will not only make us a laughing-stock in the world,—people are already laughing at us,—but it will also adversely affect the progress of this country. I do not see here the slightest possibility, except in regard to unessential patents and inventions,—I am talking about the essential ones when I say that I see no possibility here of anyone hereafter, either a foreigner or on Indian, putting money into research and development in India, and putting forth time and effort in training people, in the fields where we desire these most *i.e.* foods, medicines and drugs. You do not become a research

[Shri N. Dandeker]

worker overnight; you may be a wonderful scinetist, a Ph.D. and all that kind of things, but it takes a long time before you aquire the necessary techniques, the necessary skills, the necessary producers and the necessary understanding and even imagination to become a research and development worker.

I do not see this Patents Bill promoting that kind of activity in this country at all, certainly not in the fields we consider most essential. I therefore suggest to the House that this whole subject really does require re-thinking; this is not the sort of Bill to be brought forward before this House as a result of brute majority and majority tyranny, when we are given no time for a proper consideration of a measure of this kind. Even so, I would suggest this Bill be taken back again for further consideration by the Ministry from the angles that I have just been referring to.

MR. SPEAKER: Now, Shri Nambiar.

SHRI KANWAR LAL GUPTA (Delhi Saddar): I think you have to call me, because my party comes next. I wanted to go out to attend a meeting after lunch.....

MR. SPEAKER: Where does he want to go?

SHRI KANWAR LAL GUPTA: There is a meeting that I have to attend after lunch, and I would not be able to come afterwards. That is why I wanted to speak earlier. Even otherwise, my party comes after the Swatantra Party.

MR. SPEAKER: There is no question of that; it is a question of catching my eye.

SHRI PILOO MODY: There is no question of catching your eye in this. It is a established practice.

SHRI KANWAR LAL GUPTA: I am sorry. This is the established practice. This has been there since the last three years. This is not fair. I strongly protest. It is not a question of catching your eye. The party time calculation is there. You must call according to the party strength.

MR. SPEAKER: Those members who want to speak early should give me some advance intimation and not suddenly get up and protest when I call a particular member. There are 25 minutes still left. Shri Nambiar's Party has ten minutes and the hon. member's party 13. Both can be accommodated before lunch.

SHRI KANWAR LAL GUPTA: My objection is to you not calling members according to their party strength.

MR. SPEAKER: No, no. I am not going to do that.

SHRI KANWAR LAL GUPTA: I strongly protest. You must ascertain from your secretariat what has been the practice in vogue for the last three years.

SHRI BENI SHANKER SHARMA: May I say, Sir, that the practice has been to call members in the order of their party's respective strength?

SHRI KANWAR LAL GUPTA: Ye have always been obeying you. But you must not do anything you like.

MR. SPEAKER: It is purely my right. He should restrain himself. Suddenly he gets up and protests when I call a member. I am not going to tolerate it.

SHRI KANWAR LAL GUPTA: I strongly protest against this.

SHRI NAMBIAR (Tiruchirappalli): I am sorry for this small breeze.

I am a strong supporter of the Patents Bill. My only eriticism is that it does not go far enough; it does not come up to the standard reuqired in this country.

As regards the opposition from Shri Dandeker and others, I will argue my case this way: he will have to agree that in a country like ours with a population of 55 crores which has got so much of manpower and natural material resources, we must develop our own pharmaceutical industry, industries which produce food and other items necessary for us.

Till now we have been acting according to the Patents Act of 1911. When that legislation was enacted, it was a foreign government sitting here. Then we had not much of a pharmaceutical industry worth the name. The entire rights and privileges were given to the foreigners who came here with the sole purpose of looting the people in the field of essential things like drugs, food articles etc. Even afted 60 years having elapsed and today after 22 years of independence, to say that we must not think in terms of building up our own pharmaceutical and food industries and other industries for our people amazes me.

Shri Dandeker says that someone who has not got the capacity or know-how suddenly creeps up with a licence of right to produce medicines and other things. He has said that it is a crime. I say what is the harm. After all, what is patented is only the process and not the product. If there is someone who knows, who has the capacity to produce a medicine and he knows the method, he can do it. What is the harm or crime in it? Let him understand that in this country a large part of the pharmaceutical industry is owned by the foreigners, and they have got a monopoly of the patents that have been issued during these years. Once a patent is issued, no one can enter the field for a period of 14 years because he will be hauled up immediately for contravening the patent.

It is in this context that our country should come forward to produce, for the benefit of the common man, essential drugs that are required in this country, and, therefore, a radical change in the legislation is required. I am one who would ask for the scrapping of the 1911 Patents Act. I will go to the extent of demanding cancellation of the patent rights so that persons who are capable here can come forward and produce the goods which are necessary for the people. We have got certain items whose cost of production is only ten paise, but their selling price is one rupee, two rupees or even three rupees.

SHRI RAM KISHAN GUPTA. (Hissar): There is no quorum.

MR. SPEAKER: The bell is being rung. ....Now there is quorum.

SHRI NAMBIAR: The Select Committee which went in to the question heard oral evidence from many foreigners. A persual of the list of persons who gave evidence will show how the foreigners are interested in this industry. You will find persons coming from—I do not give the names—Yugoslavia, Switzerland, USA, UK, Federal Republic of Germany and Japan. Only an advertisement was issued by the Select Committee calling for memoranda and for persons who are willing to come and give evidence. All those persons who came from abroad strongly objected to our Patents Bill. They said that in their countries they were having patent protection and, therefore, their countries flourished, and that in India too we must have patent protection and then only it will be beneficial to us. That is the sort of advice that these people gave. But we had also evidence from an Italian that in his country there was no patent protection, that it had been introduced only recently. In Japan also it was not there and has been only recently. The industry in both Italy and Japan has fared well. In the Soviet Union there was no patent protection, only recently they have introduced a few things. They were all in the fore front in the production

[Shri Nambiar]

of pharmaceutical goods. Those persons came and advised us that we should not have patent protection. With what purpose: You must be impoverished, sickly persons and required medicine; we are here to produce and sell it to you at exorbitant price; we want to live on your sickness and ailments. That is the crux of their attitude towards us. There are also lobbies here representing them and speaking in the same strain. I do not understand what interest these persons have got except their own self-interest; they have not got the interest of the people at heart. Therefore, it is clear that a country like ours must have a right of allowing our citizens to develop our own industry and our own inventions. Unless and until we do that, our people will not develop. By the patent wall that has been raised by the Patent Act of 1911, the Indian scientist, the Indian entrepreneurs and the Indian industrialists and the common man in India are prevented from going forward in making the essential things that were required. That is exactly why we want this to be razed to the ground. But unfortunately the thinking of Government is a little different. They do not want to abolish patent rights completely but they do not also want to allow it to continue for 14 or 16 years because of pressure from below There was a compromise formula of ten years patent protection for drugs and essential food industries which are necessary for life. Then we had a detailed discussion in the Select Committee and the Government came forward to reduce it to seven years. That was a welcome move on the part of the Government but it did not satisfy those who wanted complete abolition. We, therefore, wanted that it may be reduced to five years. I have also tabled an amendment which is being circulated it is to that effect. That partly meets the point of Mr. Dandeker. If a person with all good intentions started a pharmaceutical industry and spends on inventions crores he can get a patent during five years.

MR. SPEAKER: The hon. Member should conclude now.

SHRI NAMBIAR: Now, according to our Constitution compensation has to be paid. Otherwise, nothing can be taken over. In the Joint Committee we heard the opinion of the Attorney General. Hereafter there will be two types of patent laws in the country. Those patents which were granted under the 1911 Act will continue to their full period as according to the Attorney General when once the right was given that right cannot be taken back even by Parliament. If a patent right has been granted for 15 years according to the 1911 Act, it is a property right; if only five years had expired, it will continue for the balance of ten years or seven years. That right cannot be taken. If any property is to be taken, it can be taken by payment of compensation, even according to our Constitution. Why do they allow that right to continue till the end of this period? Why can't you restrict it to five years period or seven years period, whichever you are going to allow, even to those patents that have been given under the 1911 Act? I made out this point to the Attorney General, and I put my questions to him. He said that this cannot be accepted because there is the danger of this being struck down by the Supreme Court. That is a different matter. I have mentioned it in my Note of Dissent also. But that right also has to be restricted to the period that is going to be allowed under the present Act. Otherwise, there will be two categories of patent rights in this country. The one that was given already must go.

MR. SPEAKER: The hon. Member's time is up.

SHRI NAMBIAR: Finally, about the royalty. The Bill had only prescribed four per cent. Our experience shows that never in any case we had paid more than two or two and a half per cent. The four per cent ceiling was not necessary. The hon. Minister will have to educate us saying what was the purpose of fixing it at four per cent. We argued agianst four per cent and we wanted it to be reduced. Unfortunately, it was raised from four to five per cent. Even then there is a tendency to pay more. When the ceiling is put at five per cent, there is the tendency to pay more. I am one of those who strongly plead for, say, three per cent, as a compromise. (*Interruption*). We can agree to three per cent. The reason is this The compensation is calculated on the net earnings.

MR. SPEAKER: Yes; that is enough. Your time is up.

SHRI NAMBIAR: Anyhow, the compensation problem is a very serious problem. We cannot afford to pay more. Therefore, it has to be restricted.

With these initial remarks, I welcome the move, but with my protest that it is not satisfacory I hope that the hon. Minister and the Government on the other side will agree, when we go to the next stage, the second reading, to certain proposals which I have made so that this measure will be completely beneficial to the people of this country.

SHRI H. N. MUKERJEE (Calcutta—North-East): Sir, this Bill goes nowhere near as far as it ought to have gone, but even so, we support it on the basis of the idea that half a loaf is better than none. We have heard the sorry story of motivated procrastination over this Bill. It was first mooted in 1953 and was hanging fire for a long enough period during the life of the third Parliament, and in the fourth Parliament, almost by main force, we have been able to secure this discussion. There is no reason on earth why on Independence we did not scrap the Act of 1911. It should have been done at once, but it was not. *Status quo* has been the watchword of this Government and that is why the glow of freedom is nowhere near as far as the hearts of the people are concerned, and our freedom fails to find fulfilment because of this adherance to the *status quo* idea. And the refusal of Government to scrap the Act of 1911 on Independence is indicative of that position.

We know of the pressure of foreign companies or investors and their Indian collaborators. And when Mr. Dandekar was speaking—he is a good friend of ours—

SHRI PILOO MODY: Sir, there is no quorum again.

SHRI S. M. BANERJEE: That is not going to help the Swantantra party. We shall see that the Bill is passed.

MR. SPEAKER: The quorum is all right. I have counted.

SHRI H. N. MUKERJEE: When Mr. Dandekar of the Swatantra party was speaking, I was reminded of what Gandhiji said in regard to those who participated in the sucking of the blood of the Indian people in the process of exploitation. When he was being tried in March, 1922, he told the court that the profits and the brokerage are sucked from the masses and the broakerage obtained by the Indian collaborators of foreign imperialist interests. There is no reason at all why life-saving drugs, and food for infants and expectant and nursing mothers, sick people and convalescing people should be subject to the law of patents at all. Before 1911, no patents in drugs and such things were there. We should not have any patent on these items, but we find that in the Bill even the royalty rate has been raised

[Shri H. N. Mukerjee]

from 3 to 5 per cent, exclusive of taxes and that amounts to a provision of 10 per cent in favour of these exploiters of our people.

Mr. Dandeker talked about encouragement to be given to scientists and inventors. But I am sure our scientists and inventors are not motivated by the idea of profit. On the contrary, what happens is, the scientists have to serve the interests of their employers. Particularly in countries like the United States, we find the talent of scientists being imprisoned for the blackguardly interest of private captial. That is why scientific research is not utilised to the extent that is possible. If it was done, then all this talk about population explosion, preventing economic recovery, etc. is moonshine and nonsense if the scientific talent which is available could be exploited in the interests of the people.

We find so many things have been done and Mr. Nambiar has referred to it—compensation for patent rights being taken over and ceiling being raised by a one vote majority in the Joint Committee from 4 to 5 per cent, which is much above the original provision. I do not see why Government has come forward with this particular idea. Mr. Nambair also referred to a very important matter, *i.e.* the spectre of property rights, the Golaknath case and the proclivities of the Supreme Court and the rest of it. But I am sure the desire of the people should have precedence.

In regard to the way in which the sharks of big business exploit our people, I am quoting from certain proceedings before the U.S. Congress in one of its committees, whose Chairman was constained to remark about the malpractices of American business interest in regard to the prices of drugs. They fleece the consumers in India as well as elsewhere. We find mention, for example, of a firm called Merck, who are very much in the picture as far as Indian collaborators are concerned. I a m quoting from the *Times of India* dated the 16th August:

> "Merck was selling an antihistamine called"—it is a very long name which can hardly be pronounced—
>
> > "to its Indian subsidiary at 1060 dollars a kg when a therapeutic equivalent in Europe cost 20.50 dollars a kg. The mark-up, *i.e.* the increase, here was 5,171 per cent."

This is one example of the way we have been fleeced and sucked dry by the exploitative tendencies of these people. This is why in the *Times of India* dated the 28th August, there was a feature sent out from Washington by its Special Correspondent. Even this paper, which is very much hand in glove with big business gave the heading "Almighty Role of US Drug Firms in India". One of the firms called Ciba, which is a Swiss Company, but which has its American association, is believed to have approached the Swiss Embassy to make representations on its behalf to the Indian Government and it has threatened to close down its plant in this country if it does not get its pound of flesh.

13 hours.

This very company, the CIBA company, had made the same threat against the Republic of Cuba and had carried out that threat because Cuba is a socialist country. But Cuba did not care a tinker's curse for this kind of operation. Cuba just threw them away; they got a kick on their pants and we also could follow Cuba and in that kind of manner go ahead in order to achieve our objectives.

We find instance after instance of how this kind of thing has happened. At the Congressional hearings of the

United States the Chairman of the Committee, Mr. Nelson, said—I am quoting his words from the *Times of India* report—

> "There is not a single underdeveloped country in the world that has any defence against exploitation of their people for profit by an American corporation."

It goes on to give further details in regard to this kind of position. Before the American Congressional Committee it appeared that prices were increased at rates ranging from 300 per cent to 11,364 per cent of European competitive prices. We find also from papers, which are circulating in our country—papers like the *Hindustan Standard* of the 22nd August, 1970—that there was one case affecting India where they charged 5,171 per cent more than what they do in the European market.

This kind of thing they do with impunity because we have no protection. We have a feeling, following Shri Dandeker's line of thinking, that scientific invention and the invention of processes and patents can only be the result of endeavour by the private sector. I think, the Minister also has a responsibility in this regard. He was asked by Shri Dandeker—the Minister, of course, is too busy confabulating with his friends. The Minister has already had a dig at him to the extent of his lack of knowledge which was shown in the way he presented his case. He should have the responsibility to tell this Parliament as to how far our own national laboratories, like the National Chemical Laboratory in Poona, have proceeded in this regard and what is the cost. He gave a challenge. The cost which perhaps the national laboratories incur to get a process is a good deal more, according to his challenge, than what the private sector spends. That may be completely wrong, but the Minister must come forward and give us some idea.

The Minister must also tell us something more about how our national laboratories, chemical and others, have functioned in this regard. Why is it that for the purpose of industrial development, the work of our national laboratories has not been linked up successfully so that our industrial production could go ahead in a self-generating fashion? That is the kind of thing which he has got to explain.

We are fighting, therefore, against one phase of that exploitation whose long and sordid story is very much known to us. When the British came to this country, they sliced off the thumbs of our weavers. The bones of the Indian weavers bleach the plains of Hindoostan—those are the words of European historians of this country. That was how they did it. When capital emerges after a process of primitive accumulation, blood, dross and dirt pour from every pore of its body. That is the kind of thing against which we have to fight as a developing country. Therefore we have to say, to hell with patent rights. Did Japan care about patent rights when Japan was going ahead? Did the Soviet Union care for patent rights? Did our own Dr. Mathur, who used to be mentioned by name by Dr. Meghnada Saha in the First Parliament, not suggest before the Government a whole plan for getting copies out of machines and so many things? So, without the botheration of patent we can go ahead. Far too long we have suffered this long and sordid story of exploitation. Even now we find the exploitation. The collaborators, all these people, are flourishing in this country. Something has got to be done about it. There is a good deal of reason to say this legislation is so unsatisfactory. But I have to accept it because half a loaf is better than none. It should have gone a good deal further. Therefore, I support this Bill, though with many reservations.

MR. SPEAKER: Now, the House adjourned for lunch to meet again at 2 P.M.

13.06 hours

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

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

[Mr. Deput Speaker *in the Chair.*]

PATENTS BILL—*Contd.*

श्री तुलशीदास जाधव (वारामती) : उपाध्यक्ष महोदय, यह जो पटेन्ट बिल है यह हमारे देश के लिये बहुत महत्वपूर्ण है। इस के लिये ज्वायेन्ट कमेटी मुकर्रर हुई थी और काफी बहस हो चुकी है। जो भी इन्वेंशन्स होते हैं और उन के आधार पर जो भी पेटेन्ट चीज होती हैं उन की ज्यादा से ज्यादा लोगों को आवश्यकता होती है किसी भी इन्वैशन को करने में टाइम बहुत लगता है फिर भी उससे जो सहूलियत लोगों को चाहिये वह मिल नही पाती है। इसलिये मरा कहना यह है कि इस पेटेन्ट बिल के बारे में जितनी भी ज्यादा से ज्यादा बहस हो सकती है वह हो चुकी है और इस को जल्दी से जल्दी पास कर देना चाहिये।

मैं इस बिल को सपोर्ट करता हूं फिर भी एक दो बातें कहना चाहता हूं। यहां पर लोग इन्वैशन करत हैं उन में स बहुत से गरीब भी होते हैं। इसलिये उनको जितनी भी सहूलियत मिलनी चाहिये, जितना धन चाहिये, उतना उनको अवश्य मिलना चाहिये। जब आप एसा करेंगे तभी इस देश में अच्छा काम हो सकेगा। हमार जैसे डेवलपिंग देश में काफी न्वैशनों की जरूरत है, लेकिन यहां पर जो पुराना ढांचा चला आ रहा था वही आज भी चल रहा है, इस लिये बहुत उन्नति नहीं हो पा रही है। हमारे शोलापुर शहर में दो तीन आदमियों ने काफी कोशिश कर के और मेहनत कर के हैंडलूम का घोटा पैदा किया है, लाकन उन लोगों के काम में बड़ी दिक्कत पैदा हो रही हैं। उनको ऐसा लगने लगा है कि उन को वह काम छोड़ देना चाहिये जैसा मैंने सुना है अमरीका इग्लैंड, और योरप के दूसरे देशों में नये-नये तरीके निकालने वाले जो आदमी हैं उनको बुला कर गवर्नमेंटल मशीनरी की त फ से काफी प्रोत्साहन दिया जाता है और उन के साथ बहुत अच्छा व्यवहार किया जाता है। लेकिन हिन्दुस्ता न में हालत यह है कि अगर कोई आदमी अपना इन्वेंशन करता है तो न केवल उस पर अपने पास से बहुत काफी पैसा खर्च करना होता है बल्कि प्रोत्साहन देने के बजाय उस के रास्ते में दिक्कतें पैदा की जाती हैं।

मैंने अभी आपको शोलापुर का उदाहरण दिया कि पावर लूम के लिये उसने एक खास हिस्से घोटे का इन्वेंशन किया है, अपने पास से काफी धन खर्च करके उस ने उसको निकाला है, वह बार बार मुझ से पत्र -व्यवहार करता है, लेकिन उसको कोई प्रोत्साहन नही मिलता है। उसकी हजार, बारह सौ रु० की मशीनरी है। उससे उसको यहां लाने के लिये कहा जाता है, यहां का कोई अफसर उस को देखने के लिये नहीं जाता है। अब तक जो कुछ हुआ वह हुआ, अब से हम को ठीक से काम करना चाहिये।

दूसरी चीज मैं यह कहना चाहता हूं कि जो चीज हम इम्पोर्ट करते हैं उसको इम्पोर्ट करने के बजाय इन्वेंशन करके उसके लिये कोई नई चीज जरूर निकालनी चाहिये। मैंने अभी शोलापुर का जिक्र किया। उसकी हालत यह है कि लकड़ी इम्पोर्ट करने का परमिट लेने के लिये लोग गये, लेकिन वह मिलती नहीं है। इसके माने यह हैं कि इस देश में जो एक डेवलपिंग कंट्री है, जो नई नई चीजें निकालने वाले आदमी हैं उनको प्रोत्साहन दे कर काम करवाना चाहिये। उस में सरकार का शेअर भले ही ज्यादा हो लेकिन प्रोत्साहन दे कर चीजें करवाई जानी चाहियें।

जैसा अभी श्री दाण्डेकर ने कहा आज कल की दुनिया में अपने रिसोर्सेज से धन लगाने वाला जो भाग है अगर वह कोई इन्वेंशन करता है तो उसमें उसका लाखों रुपया खर्च होता है, लेकिन एक गरीब इन्सान का उस से कुछ फायदा नहीं होता। आज कल की दुनिया में साइंस और टेकनालोजी की तरफ लोग बढ़ रहे हैं। ऐसे जमाने में जो भी रिसर्च स्टेशन्स खोलते हैं, गवर्नमेंट के भी बहुत से हैं, मेरी गवर्नमेंट से रिक्वेस्ट है कि जहां इस तरह के इन्वेंशन होने का कोई चांस हो वहां स्टेट को पूरा प्रोत्साहन देना चाहिये और खर्च कर के उनकी मदद करनी चाहिये।

एक अंतिम बात मैं कह कर समाप्त कर दूंगा। माननीय श्री दाण्डेकर जी ने कहा है कि शनिवार को मीटिंग बुलाना इरिसपांसिबल है। इस पर हमारे भाई श्री समर गुहा ने आपत्ति उठाई है। मेरा कहना यह है कि इस हाउस में जब कोई ऐसी चीज होती है जो हाउस के लिए ठीक नहीं भी होती है लेकिन जिस चीज को हाउस ने दिल से या एक मत से या मैजोरिटी से पास कर दिया होता है, उसके लिए ऐसी बात कहना श्री दांडेकर जैसे माननीय सदस्य को शोभा नहीं देता है।

मैं आपका अधिक समय लेना नहीं चाहता। मैं इस बल को सपोर्ट करता हूं।

श्री कंवर लाल गुप्त (दिल्ली सदर) : मैं समझता हूं कि इस विधेयक में कुछ अच्छी बातें की गई हैं जो पहले वाले विधेयक में नहीं थीं और उनका मैं स्वागत करता हूं। लेकिन मेरी मान्यता यह है कि जो पिछड़ा हुआ देश है, जैसे भारत है, उसके लिए पेटेंट ला बनाना गलत है। अगर भारत ने प्रगति करनी है, तो यह पेटेंट ला नहीं रहना चाहिये और दस साल के बाद जब देश इंडस्ट्रियली डेवेलप हो चुके, उसके बाद पेटेंट ला बनना चाहिये। उसके बाद ही हमको इस विषय पर सोचना चाहिये कि आया हमारे देश में पेटेंट ला हो या न हो।

अभी सवाल एक आया है कि हमारे देश को इस पेटेंट ला से लाभ हुआ है या नहीं हुआ है। इसके पहले वाला जो पेटेंट ऐक्ट था हमारे देश में वह एक इंस्ट्रुमेंट आफ एक्सप्लाइटेशन रहा है और वह हमारे देश की प्रगति के मार्ग में एक दीवार बन कर खड़ा रहा है और उसके कारण हमारे लोगों को जो लाभ होना चाहिये था वह नहीं हुआ। गवर्नमेंट ने एक पेटेंट्स इन्क्वायरी कमेटी बिठाई थी। उसकी जो रिपोर्ट है उसमें से उद्धृत करके मैं आपको बताना चाहता हूं। उस रिपोर्ट में कहा गया है :

"The Indian patents system has failed in its main purpose namely to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial purpose in the country so as to secure the benefits thereof to the largest section of the public.".

मेरा कहना यह है कि भारत के लिए यह पेटेंट ऐक्ट अभी तक बहुत ही हानिकारक रहा है और इसका लाभ नहीं हुआ है और इससे जो विदेशी हैं उन्हीं को लाभ हुआ है। उपाध्यक्ष महोदय, आपको ज्ञात ही है कि सोवियत यूनियन में, इटली में, और जापान में भी शुरू की अवस्था में पेटेंट ला नहीं था। जब उन देशों का विकास हो गया उसके बाद उन्होंने पेटेंट ला बनाया। उन्होंने पहले फारेन इनवेंशन की फीली कापी की और उसके कारण लोगों को चीजें सस्ती मिलीं। बाद में जैसे-जैसे वे डिवेलप होते गए वैसे-वैसे उन्होंने पेटेंट ला बनाए।

इसी तरह से फर्स्ट वर्ल्ड वार के बाद जब जर्मनी की हार हो गई तो सब से पहला काम जो यू० एस० ए० ने किया वह यह किया कि जर्मनी के पेटेंट ला को खत्म कर दिया और इससे उनको बहुत फायदा हुआ। इस वास्ते मैं समझता हूं कि यह बहुत जरूरी है कि आने वाले दस साल तक हम कोई पेटेंट ला न बनाएं।

[श्री कंवर लाल गुप्त]

कुछ दोस्तों ने कहा है कि इससे इंसेंटिव मिलता है, एनकरेजमेंट मिलता है डिवलेपमेंट को। मैं कोट करना चाहता हूं कि इस के बारे में भी और बताना चाहता हूं कि मि० फोर्ड जो अमरीका के सब से बड़े इंडस्ट्रियलिस्ट हैं उन से जब पूछा गया कि अगर पेटेंट ला न हो तो इनवेंशंज होंगी या नहीं होंगी, तो उन्होंने इसके जवाब में कहा था :

I feel quite definitely it will be carried on.

इसका मतलब है कि होंगी। यह सोचना कि इनवैशंन करने वालों को केवल प्राफिट मोटिव होता है, गलत है। फिर सवाल यह भी पैदा होता है कि इस पेटेंट ला से लाभ किसको होगा। इससे लाभ फाइनेंसर्स को होगा। छोटे साइंटिस्ट को नहीं होगा।

अभी मंत्री महोदय ने कहा है कि देश को इससे लाभ हुआ है। लेकिन अभी तक जो लाभ हुआ है विदेशियों को हुआ है। आप देखें कि 1957 तक कुल 14,656 पेटेंट रजिस्टर हुये थे जिन में से हिन्दुस्तानियों के केवल 1,663 थे। इसका मतलब यह है कि केवल ग्यारह परसेंट हिन्दुस्तानियों के हैं और 89 परसेंट विदेशियों के हैं और सारा लाभ विदेशियों को हुआ है। इसके मुकाबले में अमरीका में जितने पेटेंट रजिस्टर हुए हैं उन में से दस परसेंट विदेशियों के हैं और 90 परसेंट अमरीका वालों के हैं। जब हमारा देश डिवेलप हो जाए तब पेटेंट ला बनाने का फायदा होगा।

अभी तक हमारे यहां जो रिसर्च होती है उस पर कितने परसेंट खर्च होता है ? हमारे यहां रिसर्च पर बहुत थोड़ा खर्च होता है दूसरे देशों के मुकाबले में। आज भी हमारा देश उतना पैसा रिसर्च पर खर्च नहीं कर सकता है जितना विदेशी कर सकते हैं। इसका परिणाम यह होता है कि पेटेंट्स के जरिये से जो इनवैशंज हमारे यंग साइंटिस्ट करना चाहते हैं वे नहीं हो पाती हैं। होता क्या है ? कोई भी चीज जो हमारे साइंटिस्ट करने लगते हैं, विदेशी लोग आ कर उसे पेटेंट करा कर रजिस्टर करवा लेते हैं और पेटेंट करा लेने के बाद भी वे उस चीज को बनाते तक भी नहीं हैं। नतीजा यह होता है कि वे ब्लाक् कर देते हैं। इस तरह से डिवेलेपमेंट को ब्लाक करने का साधन यह पेटेंट ऐक्ट अभी तक रहा है।

हिन्दुस्तानियों के जो पेटेंट्स हैं भी वे बहुत छोटे छोटे पेटेंट्स हैं और बाहर वालों के जहां करोड़ों रुपया आता है, बड़े बड़े पेटेंटस हैं। ड्रग्ज तथा इसी तरह के दूसरे पेटेंट्स विदेशियों के हैं। मैं मांग करता हूं कि अगर पेटेंट ला होना ही है तो उसके जरिये केवल हिन्दुस्तानियों के पेटेंट ही रजिस्टर होने चाहियें, उन्हीं को पेटेंट रजिस्टर कराने का हक होना चाहिये, विदेशियों को नहीं होना चाहिये। आप कहेंगे कि विदेशों वाले भी हमारे लोगों के पेटेंट रजिस्टर नहीं करेंगे। वे न करें। विदेशों में हमारे हिन्दुस्तानियों के पेटेंट कितने रजिस्टर हुए हैं ? उनकी संख्या सारी दुनिया में कुल मिला कर सौ से अधिक नहीं है। यह नामिनल है। इस वास्ते अगर आपने पेटेंट ला बनाना ही है तो केवल हिन्दुस्तानियों के लिये बनायें, विदेशियों को पेटेंट रजिस्टर कराने का अधिकार नहीं होना चाहिये।

बड़े बड़े जो इंडस्ट्रियलिस्ट हैं वे भी रिसर्च पर ज्यादा पैसा नहीं खर्च करते हैं। उनके प्राफिट का कुछ हिस्सा रिसर्च पर जरूर खर्च होना चाहिये और इस के वास्ते एक कानून सरकार को लाना चाहिये।

विदेशियों ने पेटेंट रजिस्टर करवा कर गरीब लोगों का खून एक्सप्लायटेशन किया है। वे इंटरनेशनल मार्किट से कई गुना अधिक दवाइयों के दाम यहां चार्ज कर रहे हैं। मैं दो तीन चीजों की ओर आपका ध्यान दिलाना चाहता हूं। ट्रैंक्विलाइजर एक स्विस फर्म ने पेटेंट करवा रखा है और 1963-64 में हिन्दुस्तान में इसका एक किलो का भाव 5,555 रुपये था। दिल्ली की एक फर्म ने जब ओपन मार्किट से वही चीज बाहर से मंगाई तो उसका दाम 312 रुपये फी किलो दिया। इसका मतलब हुआ कि बीस गुना अधिक दाम ये लोग पेटेंट के जरिये ले रहे हैं, विदेशी फर्म ले रही है। इसी तरह से विटामिन बी 12 का एक किलो का भाव 230 रुपये यहां है लेकिन इंटरनैशनल मार्किट में इसका भाव केवल सौ रुपया पर किलो है। एक और पेटेंटिड चीज है टैक्सामैथाजोन। उसका भाव साठ हजार रुपया पर किलो था। हमारे इम्पोर्ट कंट्रोलर ने जब उन्हें दबाया और कहा कि यह भाव अधिक है तो उन्होंने इस भाव को कम करके सोलह हजार रुपया पर किलो कर दिया यानी चार गुना अधिक प्राइस। इस प्रकार से जो लूट हो रही है, एक्सप्लायटेशन हो रहा है गरीब आदमी का हो रहा है और उसी की जेब में से यह सब पैसा जा रहा है। यह हमारे देश की डेवेलपमेंट को ब्लाक करने का तरीका है। यह सरकार सोशलिस्ट तो हैं, लेकिन बाई कप्पलशन है। वह हाफ-हार्टिड मेज़र्ज़ लाती है। अगर वह समझती है कि पेटेन्ट ला से गरीबों का एक्सप्लायटेशन होता है, वेस्टिड इन्ट्रेस्ट्स पनपते हैं और विदेशी मानोपली बढ़ती है, तो उस ने दस साल पहले ही पेटेन्ट ला को खत्म क्यों नहीं कर दिया ? जब हमारा देश पर्याप्त डेवेलपमेंट कर ले और हमारे साइंटिस्ट्स दूसरे देशों के साइंटिस्ट्स के बराबर खड़े हो जायें, तब तो पेटेंट ला को लागू करना ठीक होगा, अन्यथा इस का कोई लाभ नहीं होगा।

फूड और ड्रग्ज पर, खाने की चीजों और दवाओं पर, पेटेंट ला लागू नहीं होना चाहिये। हमारे देश की आबादी करीब पचास करोड़ है। अगर इन चीजों पर भी पेटेंट ला लागू हो गया, तो हमारे देश का करोड़ों रुपया बाहर चला जायगा।

आपको मालूम होगा कि हिन्दुस्तान में दवायें बनाने वाली 14 विदेशी कम्पनियां हैं। उनमें से पांच कम्पनियां ऐसी हैं, जो अपने मुनाफे से दो साल में ही अपना टोटल इन-वेस्टमेंट पूरा कर लेती हैं और 9 कम्पनियां ऐसी हैं, जो चार साल में ही अपना टोटल इनवेस्टमेंट पूरा कर लेती हैं। गरीब लुट रहे हैं, कई कई गुना दाम लिये जा रहे हैं, लेकिन यह सरकार सो रही है और उन विदेशी कम्पनियों पर कोई कंट्रोल नहीं करती है। यह सरकार हिन्दुस्तानियों की मानोपली को खत्म करना चाहती है। यह अच्छी बात है। लेकिन विदेशियों की मानोपली को खत्म करने में वह क्यों डरती है ? इसलिये कि यह सरकार विदेशियों के प्रभाव और दवाव में है। वह समझती है कि अगर उस ने यू० के० और यू० एस० ए० की कम्पनियों पर कोई दवाव डाला, तो उन देशों से हमारी पंचवर्षीय योजना के लिये पैसा नहीं मिलेगा। इस सरकार पर मेरा यह चार्ज है कि वेस्टिड इंट्रेस्ट्स का उस पर बहुत जबर्दस्त प्रभाव है।

इस बिल में सरकार को यह अधिकार दिया गया है कि यह जनता की भलाई के लिये पेटेंट्स को छोड़ कर चीजें ले ले। मैं उसका स्वागत करता हूं। लेकिन जहां तक कम्पेन्सेशन का सम्बन्ध है, आरिजिनल बिल में वह 4 परसेंट था, जब कि सिलेक्ट कमेटी ने उस को 5 परसेंट कर दिया है। यह कम होना चाहिये—यह 3 परसेंट से ज्यादा नहीं होना चाहिये। मैं मांग करूंगा और मेरा ख्याल है कि मंत्री महोदय इस

[श्री कंवरलाल गुप्त]

को स्वीकार करेंगे—कि कम्पेन्सेशन 2 परसेंट या कम से कम 3 परसेंट से ज्यादा नहीं होना चाहिये ।

सरकार द्वारा बनाई गई अयंगार कमेटी ने कहा है :

"The advantages accuruing to a nation's economy from rewarding inventions with the grant of exclusive privileges for a limited time are dependent on two main factors: (1) the country must be technologically advanced to maintain the rate of invention which is brought forth by the promise of the reward."

कमेटी ने भी यह कहा है कि जब तक कोई देश टेक्नीकली एडवांस न हो, तब तक उस को पटेन्ट से कोई लाभ नहीं होगा, बल्कि नुकसान होगा ।

उस कमेटी ने यह भी कहा है :

"These patents are, therefore, taken not in the interest of the economy of the country granting the patent or with a view to manufacture there but with the main object of protecting and export market from competition from rival manufacturers particularly those in other parts of the world".

अर्थात् विदेशी लोग काम्पीटीशन से बचने के लिए अपने पेटेन्ट रजिस्टर करा लेते हैं ।

इस बिल के कुछ प्राविजन्ज तो जरूर ठीक हैं, लेकिन मैं जोर से यह मांग करूंगा कि जब तक यह देश टेक्नीकली एडवांस्ड न हो जाये, तब तक—दस लाख तक—यहां पर कोई पेटेन्ट न हो ।

SHRI S. KANDAPPAN (Mettur): I expected, when the hon. Minister moved this Bill, that he would gives reasons why it had been delayed so long. As he himself remarked, as early as 1950 there was the Bakshi Tek Chand Committee which submitted its report by 30th July, 1950 itself. Subsequently, in 1953 I understand a Bill was introduced in the Lok Sabha, but it was allowed to lapse. Then again, another committee was appointed, the Ayyangar Committee, which submitted its report, in September, 1959. Both these committees were of the firm view that the patent law prevailing in our country is very defective. They also said that the foreigners were misusing the provisions or the permissions that they got under the patent law, and that there was much to be changed in the patent law. I would like to quote only two sentences from the Tek Chand Committee's report, page 61:

"The provisions of the Act relating to the working of patents in India have been found to be ineffective."

Then they say:

"The provisions of the Act which aim at preventing the misuse and abuse of patent rights are inadequate."

They have also suggested so many changes, but in spite of this, the Government had not thought it fit to come forward with this Bill. Strangely enough in 1965; after the Bill was introduced and referred to the Select Committee and after the Select Committee submitted its report, it was allowed to lapse. And then there was another Select Committee.

I raise this point specifically because many Members on this side have a genuine fear that the Government has succumbed to pressure from outside earlier, and I have a fear that even in this Bill they are succumbing to pressure from certain quarters.

SHRI NAMBIAR: Till we pass it that fear will be hanging on.

SHRI S. KANDAPPAN: At least about that I am very certain, but still I do feel that the way in which certain provisions have been altered by the Select Committee goes to prove that it has not taken a progressive view, and that in certain respects the Bill has received a setback. So, I would like this point to be answered first by the hon. Minister.

Shri Dandeker has propounded a very powerful thesis about what the patent law should be, the *sine qua non* of it, and how it should be promulgated. I think that developed countries like U.K. and USA can benefit much from his thesis, but in an under-developed country like ours, which in the developmental ladder has the lowest or the second lowest *per capita* income in the world, there is no reason why we should not even do away with the patent law itself with regard to certain categories as suggested in the Committee by many responsible Members, but even if the Government, in their wisdom, think that due to some difficulties it is not possible, they should at least come forward, even at this stage, to reduce the period for patents particularly with regard to drugs, medicines, food articels used for babies, old men and convalscents, and pesticides and other things used very much in agriculture. In this country we all know what cost the farmer has to incur on pesticides and fungicides and other things for agricultural production. On the one side the cost of fertliser is high; on the other the cost of pesticides also is higher than in any other country in the world. At least with regard to these aspects, Government should not hesitate to come forward with amendment to some provisions in the Bill.

With regard to the bogy raised that the development of industries will be dampened if the patent law is made stringent or if there is no provision for a patent law, the hon. Member Shri Kanwar Lal Gupta who preceded me has already to some extent elaborated and quoted some figures. I should like to quote a few more figures from the Tek Chand Report as well as Rajagopala Ayyangar's report. They have given a table indicating the applications received during 1947-49. Out of a total number of 2370 applications received in 1947 only 222 were from Indians. For 1948 the corresponding figures are, 1921 and 297 and for 1949, 1725 and 345. Compare it with the figures for America alone, in 1947, applications from Americans numbered 439; for 1948 the figure was 273 and for 1949 the figure is 280. Superficially it looks as if the number is coming down. Unfortunately, if you look at the figures for the fifties and sixties, it is worse. I do not know how Government allowed this dangerious development. If you look at the table in Ayyangar's report there is an increasing demand for registration of patents from foreigners while the demand from Indians was going down. The table is given on page 302. The Government have failed to manupulate things in a way that will benefit our countrymen as against the foreigners who come here to loot us. And they have failed miserably. After all these years, they have now come with this Bill but as pointed out by other Members it is defective on a few counts. Sir, with regard to the period of patent, particularly on the items that I have referred to earlier, the report says it is fixed according to the Joint Select Committee's report as seven years. I think it should be brought down at least to five years, if not less, and I hope the Government is going to accept that amendment which will mitigate to some extent the rigour of the measure.

Coming to the question of royalty there is one most important factor to be remembered. I am very sorry that in the Joint Select Committee the original draft of the Bill pertaining to this question should have received an upward revision instead of the other way round. As I understand it the royalty in practice is given from 1|2 per cent to 2½ per cent and in some extreme cases I am

[Shri S. Kandappan]

told it goes upto 4 per cent. But here there is another factor that should be remembered which has been pointed out by Rajagopala Iyengar's report. Our country has got a vast potential market so that any commodity that comes into our market under the patent from any country receives and gets enormous opportunity to be sold in the market with the result that even this 1|2 per cent that goes out of it is a huge sum. That should be considered. For a small country it may be different. I am sure if the royalty prevails at the prevailing rate or in certain respects is reduced even then foreigners would be attracted because of the immense market. Having that in view I do not know why as against the suggestion of Rajagopala Iyengar's committee and others the Committee should think in its wisdom that the royalty should be raised to 5 per cent. I hope, Sir, the Government would in the interest of the country accept the amendment and try to reduce the royalty to at least 3 per cent if not less. If the Government is not going to accept the reduction in the royalty then I am afraid all their claim about their concern of the common man would be a bogus thing. Nobody will believe their claim.

Then I would like to point out the most important thing before I conclude. The Government whether deliberately or without knowing it do not seem to have approached the problem in the proper perspective because even in the initial remarks of the hon. Minister I find that the premises and approach are a little distorted. As one of the reasons for their consideration of this change in the patent law he said the inventor should be induced to disclose his discovery. I was unable to understand this thesis propounded by him. I do not think inducement is needed for anybody after a discovery is made to disclose it since it will not be even in his own interest not to disclose it. I say this because I have a feeling that their thinking has all along been rather controlled by the 1911 Act without bothering about the changing circumstances and without even recognising possibly that we have attained independence and it is for 23 long years of independence that we have been ruling this country. If they had this approach of assessing the royalties prevailing in our country the things would have been different. So, I beg of the Minister to take this into consideration as has already been pointed out by the other Members.

We welcome the Bill and urge upon the Minister that at least the basic two or three amendments—that is a must according to us— should be accepted by the Government.

श्री क० ना० तिवारी (बेतिया) : उपाध्यक्ष जी, जो सोलह वर्ष इसका पीरिअड रखा गया था अब इस को रिड्यूस कर के 7 वर्ष कर दिया गया है। यह रिडक्शन हुआ है कि इस का पीरिअड 7 वर्ष कर दिया जाय। अब जो मामले पेटेन्ट के लिये जायेंगे, उस के रिसर्च के लिये जायेंगे, उस के लिये रुपये-पैसे का इन्तजाम करने में, लाइसैंस वगैरह लेने में 3-4 साल तो वैसे ही निकल जायेंगे, अब जो दो-तीन साल बचेंगे, उस में सब से ज्यादा नुक्सान तो इन्डीजीनस रिसर्चर के होंगे, या जो इस में रुपया लगाना चाहते हैं या रिसर्च करा कर पेटेन्ट कराना चाहते हैं, उन को होगा। जो विदेशी कम्पनियां हैं, वे लोग जो रुपया लगायेंगे उनको इतना ज्यादा नुक्सान नहीं होगा, क्योंकि उन के तो नाम से वह दवा बिक जायगी। मान लीजिये हमारे घर में कोई बीमारी है, तो जो नामी दुकानदार है या जो नामी दवा है, उस को लेकर उस से अपना ट्रीटमेन्ट कराना चाहेंगे, तो नामी कम्पनी के लिये या नामी दवा के लिये कोई कठिनाई नहीं है, कठिनाई तो इण्डीजिनस लोगों के लिये है। इस लिये मेरी प्रार्थना है कि 7 वर्ष का जो समय रखा गया है, वह बहुत कम है। इस का नतीजा यह होगा कि लोग रिसर्च की तरफ नहीं जायेंगे, इसमें

अपना रुपया नहीं लगायेंगे, इस लिये ज़रूरी है कि इस पीरियड को बढ़ाया जाय।

मैं मंत्री महोदय से सवाल पूछना चाहता हूं —मुझ को भी थोड़ा बहुत देखने का मौका मिला है, जो रिपोर्ट तैयार हुई है, उस में इन्होंने क्या दिया है, जितना दिया था, उस सारे के-सारे को ले लिया है। दूसरा सवाल यह उठाया जाता है कि 5 परसेन्ट का जो प्राफिट उन को मिलेगा या जो रायल्टी मिलगी—यह बहुत ज्यादा है। लेकिन अभी तक का तजुर्बा यह है कि जो रायल्टी मिलती रही है और जो पेटेन्टवाले को देते रहे हैं, वह तीन-साढ़े तीन परसेन्ट से ज्यादा नहीं रही है। वह एक परसेन्ट भी दे सकते हैं, दो परसेन्ट भी दे सकते हैं, तीन परसेन्ट भी दे सकते हैं और मैक्सिमम उस में 5 परसेंट है मिनीमम 5 परसेन्ट नहीं है। जहां तक रिसर्च का सवाल है, आप जानते हैं, आप खुद प्रोफेसर है, लिपिस्टक के रिसर्च पर ज्यादा पैसे की जरूरत नहीं पड़ेगी, लेकिन अगर किसी को थाइसिस पर रिसर्च करना है टी० बी० पर रिसर्च करना है, तो लाखों करोड़ों रुपया उस में लग जायगा। जब उन को उस में कोई मुनाफा नहीं होगा, वह समझेंगे कि यह जो 7 वर्ष का समय दिया गया है एक्चुअली यह 3–4 वर्ष का समय है, तो कोई भी आदमी इस देश में रुपया लगाने को तैयार नहीं होगा। इस के लिये दो ही रास्ते है—या तो आप के पास मुल्क में इतना रुपया है कि हम इस में लगा दें और लाइफ सेविंग ड्रग्स को बनावें या दूसरी रिसर्च करवायें, लेकिन अगर हमारे पास इतना रुपया नहीं है तो हमें विदेशी कम्पनियों को, जिन के पास रुपया है, उन को थोड़ा बहुत एन्कजमेंट देना होगा, ताकि वे यहां आ कर अपना रुपया लगा सकें। वे लोग तभी रुपया लगावेंगे जब उन को मालूम होगा कि इस में उन को कुछ प्राफिट मिल सकेगा। इस लिये देश के हित में क्या है—इस पर थोड़ा गम्भीरता से विचार करना होगा, सेन्टीमेन्टस में जाने से फायदा नहीं होगा।

इस लिये मेरा निवदन है कि 7 वर्ष का पीरियड कम है, इस को बढ़ा कर 1 0 वर्ष कर देना चाहिये। लेकिन हम इस बात से भी कायल है कि आज देश में जो प्राइसेज बढ़ रही है, जो दवा की लागत है उस से ज्यादा चार्ज हो रहा है, उस पर गवर्नमेंन्ट को कन्ट्रोल करना चाहिये। जो कीमत दवाओं की फिक्स हों, उन पर लोगों को दवा मिलनी चाहिये, अगर यही फीलिंग लोगों की है तो हम उस के साथ है।

एक बात और कहना चाहता हूं। आज गवर्नमेन्ट पर शक किया जा रहा है कि जो रिकमेन्डेशन्ज हुई है, उन को इम्पलीमेन्ट नहीं किया जायगा। मैं एक अपील करना चाहता हूं—चाहे इस तरफ के सदस्य हों या उस तरफ के सदस्य हों—हम को यह देखना चाहिये कि कौन सा रास्ता अख्तियार करने से हमारे देश में रिसर्च ज्यादा होगी, जिससे हम थाईसिज जैसी बीमारियों से लड़ सकें, चाहे फूड के मामले में रिसर्च हो, चाहे फर्टिलाइजर के मामले में रिसर्च हो, चाहे मैडिसिन के मामले में रिसर्च हो—कैसे ज्यादा से ज्यादा रिसर्च हो—इस उद्देश्य को ध्यान में रखते हुए काम को करना चाहिये। जो लोग सेन्टीमेन्ट्स की बात करते हैं, हम समझते हैं कि वे देश की सेवा नहीं करते हैं और अपने समाज की सेवा नहीं करते हैं। इस लिये सेन्ट्रीमेंट्स में हम को नहीं बह जाना चाहिये।

श्री शिव चन्द्र झा (मधुबनी) : उपाध्यक्ष महोदय, प्रेजेन्ट पेन्टट का सिलसिला आप जानते हैं, शोषण करने का सिलसिला है, यह शोषण करने का हथियार है। जो समाज शोषणविहीन होना चाहता है, उस का प्रथम लक्ष्य, पहला मकसद हो जाता है कि वह अपने यहां से पेटन्ट सिस्टम को खत्म करे। आप देखिये—आज हर कोई कोकाकोला का इस्तेमाल करता, है, कोकाकोला अमरीकन कम्पनी की चीज़ है, उस पर उसका पेटेन्ट राइट है और आप यह भी जानते हैं कि यह

[श्री शिवचन्द्र झा]

हिन्दुस्तान में इस तरह से फैला है कि अब तो देहातों में भी चला गया है —इस तरह से देहात के नागरिकों का भी शोषण होता है और उस मुनाफे का बहुत बड़ा भाग अमरीकन कम्पनी ले जाती है। लेकिन यदि हम उस पेटेन्ट को खत्म कर देते हैं, तो आज कोका-कोला के जरिये हिन्दुस्तान का जो शोषण हो रहा है, वह खत्म हो जायेगा, उस के जरिये अमरीकन कम्पनी द्वारा जो शोषण चल रहा है, वह बन्द हो जायेगा । इसलिये पेटेन्ट चाहे दवाओं के मामले में हो, खाने की चीजों में हो, इस से शोषण का रास्ता खुलता है और जैसा बतलाया गया कि आज जितना पेटेन्ट हिन्दुस्तान में है, उस का 11 परसेन्ट आप का है, 89 परसेन्ट पेटेन्ट विदेशी कम्पनियों के हाथ में है। इस से स्पष्ट है कि इस देश का डबल शोषण होता है—चाह हिन्दुस्तानियों के हाथ में हो, उस पर मैं बाद में आऊंगा, चाहे विदेशी कम्पनियों के हाथ में हो, उस के जरिये हिन्दुस्तान का डबल शोषण होता है और इस का खात्मा होना बहुत जरूरी है।

रूस ने शुरू में ही पेटेन्ट का खात्मा कर दिया था—क्या उस की तरक्की नही हुई। पूंजीवादी मुल्क जापान और इटली ने उस को खत्म किया—क्या उन की तरक्की नहीं हुई। अर्जेन्टिना इस वक्त पेटेन्ट सिस्टम से बाहर है—क्या उस की तरक्की नहीं। टैट्रासाइक्लिन दवा जो एक अमरीकन कम्पनी द्वारा बनाई गई है, उस की कीमत हिन्दुस्तान में 122 रु० 50 पैसे—100 कैपसूल्ज की है, वही दवा अमरीका में 29 रु० की 100 कैपसूल्ज बिकती है और यदि उस को अर्जेन्टिना में जाकर ले तो हिन्दुस्तान में उस की कीमत सैन्ट्स में 40 सेन्ट्स है, जब कि अर्जेन्टिना में वही दवा केवल 7 सेन्ट में मिलती है—क्यों, इस लिये कि वह देश पेटन्ट सिस्टम से बाहर है । इस से साफ जाहिर होता है कि इस जाल में फंस रहने से हमारा शोषण होता है, लेकिन अगर इस से बाहर जाते हैं तो हमारा शोषण खत्म हो जाता है ।

मंत्री महोदय जब यह विधेयक पेश कर रहे थे, उस समय इन्होंने सारी बातें साफ़ नहीं की—जो मुल्क पेटन्ट् से बाहर हैं उन को किस तरह के फायदे होते हैं और क्यों फायदे होते हैं—आप के सामने क्या मजबूरियां हैं, जिन की वजह से आप बाहर नही जा रहे हैं—यह सब इन को साफ़ साफ़ बताना चाहिए था । हिन्दुस्तान में पेटेन्ट का सिलसिला 1911 से यानी कि अंग्रेजों के जमाने से शुरू हुआ था । वह शोषण का समय था, अंग्रेज शोषण करते थे एक्सप्लायटेशन करते थे, लेकिन आजादी के बाद तो इस का खात्मा होना चाहिये था, लेकिन ज्वाइन्ट कमेटी में जाने के बावजूद, हिन्दुस्तान की जनता की आवाज आने के बावजूद भी इस का खात्मा नहीं हुआ । कहा जाता है कि कुछ इन्सेन्टिव होना चाहिये, नई चीजों के लिये इन्सेन्टिव होना चाहिये । उपाध्यक्ष महोदय, आप जानते हैं भगत सिंह को क्या इन्सेन्टिव मिला, जो फांसी के तख्ते पर चढ़ गया ? कौन पैसा मिला खुदीराम बोस को ? कौन इन्सेंटिव था जिसकी वजह से वह फांसी के तखते पर चढ़ गए ? जगदीशचन्द्र बोस ने जो आविष्कार किए उसके लिए उनको क्या मानेटरी इन्सेंटिव था ? इसलिए मानेटरी इन्सेंटिव नहीं बल्कि सोशल इन्सेंटिव चाहिए और उसी से हमारे जो नागरिक नये आविष्कार करना चाहते हैं और समाज को देना चाहते हैं और वह दे सकने हैं यदि वातावरण सही हो । दूसरी तरफ आप जानते हैं कि रूस में लोग आखिरी सटरडे को अपना हुनर और अपनी अकल समाज को फ्री देते थे। उसी तरह से हिन्दुस्तान में भी अगर

अगर हम सही वातावरण पैदा करें तो समाज के लिए लोग अपना हुनर और अकल फ्री दे सकते हैं। समाजवादी समाज का लक्ष्य यही है—वन फार आल, आल फार वन । इस तरह का वातावरण बनाकर यदि हम पेटेन्ट के सिस्टम को खत्म भी कर देते हैं तो भी इन्सेंटिव का सिलसिला जारी रहेगा, यहां पर नये नये अविष्कार होंगे, नयी नयी चीजें ईजाद की जायगी और समाज को जो उससे फायदा होता है वह फायदा होगा पेन्टेंट सिस्टम के न रहने पर भी, लेकिन आपने ऐसा नहीं किया । जितना हम चाहते हैं उतना सरकार करती नहीं है ।

सरकार इस विधेयक के जरिए पेटेन्ट की मियाद को दस साल की जगह पर सात साल रखना चाहती है लेकिन वह भी बहुत ज्यादा है । मेरी राय में इसको पांच साल करना चाहिए । इसी तरह से जो रायल्टी और प्राफिट है उसको आप चार परसेन्ट की जगह पर पांच परसेन्ट कर रहे हैं। उसको आप दो परसेन्ट ही रखें। थोड़ी देर के लिए मैं मान सकता हूं कि हिन्दुस्तान में सभी लोगों का मानसपटल वन फार आल, आल फार वन वाला नहीं बना है लेकिन फिर भी 5 परसेन्ट की रायल्टी और प्राफिट बहुत ज्यादा है, उसको कम करके दो परसेन्ट कर दें। यदि आप इस जाल से निकलते नहीं हैं, इस जाल में ही रहते हैं और मानेटरी इन्सेंटिव के जरिए से नये अविष्कारों की बात लाना चाहते हैं तो काम चलने वाला नहीं है । अगर आप जाल से निकल जाते हैं तो समाज को दवा के मामले में और खाने के मामले में जो जरूरतें हैं वह भी पूरी हो जायेंगी और जो मुनाफाखोरी होती है भारतीय पेटेन्टीज के जरिए से और विदेशों से उसका भी खात्मा हो जायेगा । मैंने बहुत सारे संशोधन दिए हैं जिनको मैं सिकेन्ड रीडिंग के अवसर पर प्रस्तुत करूंगा, उनको अगर आप स्वीकार कर लेंगे तो इस विधेयक का रूप अच्छा हो जायेगा । बावजूद इन बातों के मैं इस पेटेन्ट का स्वागत करता हूं और मैं चाहूंगा कि आप हमारे संशोधनों को भी मान लें ।

SHRI SAMAR GUHA (Contai): Sir, the late Pt. Nehru made a correct diagnosis when he said that the malady in the drugs market would be removed by removing patents in regard to drugs and medicine production. But, unfortunately, he did not act up to it. On the contrary, Sir, not only during the British rule, that imperilistic Patents Act of 1911 was tolerated, but it also continued even after we attained freedom. It is also regrettable that even though in the second and third Lok Sabha, as also in the fourth Lok Sabha, this issue was raised, they have taken so long to bring up this measure, which is vital for the country and this House.

Sir, I consider that this Patents Bill is not an incentive to any scientific genius or scientific research work but it is a disincentive to it. Sir, I consider that all patents for food, medicines, baby food, and drugs should be totally abolished. As my hon. friend, Shri Nambiar has already stated, in Soviet Russia, Italy and Japan there have not been any patents for food, baby food, drugs and medicines. In Japan, only after the last World War they have introduced the Patents (Medicines) Bill.

Justice N. Rajagopala Ayyanger Committee's report said:—

> "The Indian patents system has failed in its main purpose."

The Committee also confirmed that the foreigners have misused the Patent law to block industrial progress in India.

It may be argued that if the patent right is abolished, it may so happen that production of drugs and medicines in this country may suffer or that

[Shri Samar Guha]

the supply from foreign countries may cease. This also is a very wrong concept. Both Russia and the USA have ceased to have any trade and commerce relations with China but we find that not only the East European but also the West European countries are having trade and commerce relations with China and are supplying all the drugs, medicines, baby food etc. to the Chinese people. Therefore, even in India if we totally abolish the right for patents for drugs, medicines and food articles, I think, there will be no difficulty, because in this competitive world there will be very many countries and companies who will vie with one another to have quite a lot of profit in India.

The cost of drugs that is extorted from our common people is Rs. 200 crores a year. It is almost a fantastic figure. Drugs that are being used by our common people require not more than Rs. 50 crores for their manufacture. That means, a fantastic profit of nearly 400 per cent, if not more, is made by these companies because they have a patent right for making those drugs.

Again, 87 or 90 per cent of the formulae of the patented drugs that are being made in India have been discovered not in India but in the laboratories outside. They have only imported the patent right and are introducing those patented formulae for making drugs and medicines here.

I will repeat again that the real incentive to our scientists to make an advance in the technology of making the drugs, medicines, baby foods etc., is to abolish the patent right for these items.

The Minister himself said in the beginning that this Patent Bill has been put forth in this House to allow the inventors to enjoy the fruits of invention. This, I should say, is an absolutely incorrect assessment of the incentive for invention. In our country, as in other countries also, who really are the inventors? They are the poor scientists in different laboratories and research workshops. But what is their condition either in the private sector or in the public sector? Let us first take the private sector.

In many of the industries, where they have their research laboratories, the fact is that they engage some director for those laboratories who are their own men. The research work is being done by the poor young scientists. At the time of publishing the result or of taking out a patent for that, it goes not in the names of those poor scientists but in the names of those directors. When those formulae are patented, what happens? Does the benefit go to the director or to the young scientist? No; it goes to the industrialist or the manufacturer of those drugs, medicines, baby food or the so-called invention.

Even in the Government and University laboratories it is my experience that there are many scientists, who guide the research worker, who do not even touch a test tube but at the time of publishing the results they put their names first, as if those research works had been guided by those professors. It goes in their names in collaboration with so-and-so. Those young scientists who really do the research work and invent something, do not get the benefit of their real invention.

The real incentive is not the patent law but the expansion of facilities for free and unhindered research work by young scientists in our country.

15 hrs.

My hon. friend, Prof. H. N. Mukerjee, has already said that we have a large number of national laboratories in the country. Many Departments have got laboratories. The Ministry of Petroleum and Chemicals, the Ministry of Food and Agriculture, the Ministry of Health and other Departments have a number of laboratories. If proper facilities are given to the young

scientists, and all form of help, the money, etc. required for research work is given to them, that will really give them incentive. If they really do good research work, invent something, an increase in salary, promotion and other benefits should be given to them, the honour can be conferred upon them. The most important incentive required is the expansion of free, unhindred, research facilities. That is the only real incentive for the young scientists for developing, I should say, not only science but also inventing new drugs, new formulae in drugs and medicines, baby foods, etc. Therefore, the real concept of giving incentives to the scientists for making new inventions is not the whole purpose of the patent law. I would challenge the very concept of the inventives given to the young scientists. This is not really an incentive. The freedom and the initiative of the young scientists for developing research are being restricted by these so-called patent laws because they deprive them of real fredom and incentive.

What is this patent law? It is nothing but a sanction given to those exploiters of monopoly in drug production, of monopoly in drug trade and of monopoly in having unlimited profits and making even substandard drugs. It is not that India is going to suffer on any account by abolishing patents. Many countries have abolished the patent law. Even U.S.A. and other countries, when they occupied Germany after the War, immediately abolished the patent law to get formulae from the Germans. It is not that India only is doing something extraordinary or radical. Many countries have abolished the patent law. There is no patent law in many countries. That is the real incentive to the scientists for invention of new formulae in drugs, etc.

Certainly, the word "wrose" is more tolerable than the word "worst". I would say, this Bill for me is of that category. But yet, for that reason, I support it with a few suggestions of mine. The duration of the patent right should be slashed down to 5 years. The percentage assured for the royalty should be slashed down to 2 per cent at ex-factory sale price. About 87 per cent of the drug manufacturers operating in India are foreigners. If any benefit in regard to patent rights is to be given, let it be given to Indian manufacturers. You abolish all patent rights for foreign manufacturers. In this competitive world, their competition of jealousy, their competition of greed, will bring them to India, even seeking lesser amount of profits. There will be no difficulty in getting foreign manufacturers into Indian market even if you abolish the patent law for them.

श्री रण धीर सिंह (रोहतक) : जनाब डिप्टी स्पीकर महोदय, इस बेहद तरक्की पसन्द प्रोग्रेसिव मेजर के लिये मैं सरकार को बधाई देता हूं । बैंक नेशनेलाइजेशन के बाद अगर कोई इमपौर्टेन्ट मेजर पालियामेंट के सामने आया है तो वह यह बिल है । बैंक नेशनेलाइजेशन वाले मेजर से करोड़ों आदमियों का फायदा हुआ, लोगों को कर्जा मिलने लगा, इसी तरह इस मेजर से भी करोड़ों करोड़ों गरीब मजदूर, किसान, देहात में रहने वालों को सस्ती दवायें मिलेंगी, जिन को वह अभी तक नही खरीद सकते थे। किसान को केमिकल्स,इमपुट्स सस्ते मिलेंगे और इस के अलावा जितनी मोनोपली है लोगों की यह भी एक बड़ा भारी साम्राज्य है जिस की तरफ़ शायद इस बिल के आने के बाद तमाम हिन्दुस्तान की तवज्जह गयी है ।

डिप्टी स्पीकर महोदय, बाहर का सरमायेदार और हिन्दुस्तान का सरमायेदार इकट्ठे हो कर लोगों को लूट रहे हैं, यह एक ऐसा फील्ड है कि जिस में करोड़ों आदमियों को ये सरमायेदार लूट रहे थे, और यह लूट शायद उस से कहीं अधिक थी जो अंग्रेज किया करते थे । वह तो 80, 82 अरब रुपया ही भारत से बिलायत हर साल ले जाते थे । लेकिन यह अमरीका और दूसरे देश पेटेन्ट के नाम पर दवाइयां और कैमिकल्स बना कर अरबों रुपया कोलेबोरेशन कर के, यहां

[श्री रणधीर सिंह]

के सरमायेदार से मिल कर बना रहे हैं । चार आने की चीज जो कई गुने दाम पर बेच रहे हैं । बोतल में दवाई कुछ है और नाम कुछ रख दिया जाता है । इस तरह से चीटिंग की जाती है । बेबी फूड, चौकलेट, टौफ़ीज पर अच्छे अच्छे लेबिल लगा कर एक पैसे की चीज के 10, 10 रुपये जनता से लूटे जाते हैं । यही काम इन का रह गया । इस से बुरा जुल्म मेरे खयाल से और कोई नहीं है ।

जहां आप और अच्छे कदम उठा रहे हैं या उठाये हैं सीलिंग लगाने के वहां इस बिल से भी उस साम्राज्य के ऊपर सीलिंग लगो है जो बाहर के आदमी हिन्दुस्तान में आ कर गरीबों को लूट कर अपना साम्रज्य बना रहे थे । दवाई ऐसी चीज है जो गरीब, हरिजन बैकवर्ड, सब के बच्चों को चाहिये लेकिन दाम अधिक होने की वजह से उन के बच्चे दवा से महरूम रह जाते थे । लेकिन इस बिल की वजह से यह नतीजा होगा कि गरीब के बच्चे को भी सस्ती दवाई मिल सकती है । अभी जिस दवा का दाम 10 रु० इन सरमायेदारों ने रख रखा था हो सकता है कि वह अब डेढ़ रूपये में ही गरीब को मिल सके और शायद हजारों, लाखों आदमी इस बिल की मेहरबानी से अब दवाई खरीद सकें जो कि पहले नहीं खरीद सकते थे । इस तरह अब शायद उन की जिन्दगी बच सके । इस का एक सब से अच्छा नतीजा यह भी होगा कि अभी तक देश के ऊपर जो एक इकानामिक शिकंजा कोलैबोरेशन के नाम से लगा हुआ था, जो एक साम्राज्य बन गया था वह टूटेगा । इन सरमायेदारों ने अपनी जागीरें बना ली हैं । हमारे देश में पहले 650 स्टेट्स थीं । लेकिन क्या स्टेट्स मुकाबला करेंगी इन सरमायेदारों का । कोका कोला को ही लीजिये । पता नहीं कितनी कमाई उसकी है । हैदराबाद के निजाम या पटियाला के महाराजा कोका-कोला वाले क्या क्या मुकाबला करेंगे । एक पेटेन्ट उस ने ले लिया उस के फौरमूला में पता नहीं क्या जादू है कि लोग उस कोल्ड ड्रिन्क के पीछे पागल हो गये हैं । लोग चाहते हैं कि उन के शहर में इस की एजेन्सी उन को दिला दीजिये । पता नहीं यह कोका-कोला वाला कौन है, क्या उस का फौरमूला है ? बाप दे गया और बेटा उस की कमाई खा रहा है । यही नहीं, इसकी देखा देखी न मालूम कितने किस्म के नकली कोका-कोला चल गये हैं, सारे देश का इखलाक इन्होंने गिरा दिया है । जो देखिये इन ड्रिन्क्स के पीछे पागल हुआ फिरता है, । इस तरह के ड्रिंक्स ने इखलाक गिरा दिया, बेईमानी, चोर बाजारी और सभी बुरी बातें सिखा दीं और तमाम नेशन को क्रिमिनल बना दिया है । मुझे उम्मीद है कि किसी मौके पर उन की भी गर्दन इस बिल की मार्फत पकड़ी जायेगी ।

जहां हम ने बड़े बड़े रजवाड़े खत्म किये, प्रिवी पर्स भी खत्म होने वाले हैं वहां यह पेटेन्ट की मोनोपली भी रजवाड़ों से कम नहीं है, बल्कि मेरी नजर में तो उस से भी इम्पौर्टेन्ट है । मेरे भाई स्वतन्त्र पार्टी के ठीक दुखी हो रहे थे । हो सकता है कि इन को भी कहीं न कहीं नश्तर लगा हो । मैं समझता हूं कि जो सरमायेदार अभी तक गरीबों, हरिजनों का खून चूसते थे वह इस बिल के पास होने के बाद बन्द हो जायगा ।

खाद की ही बात लीजिये, किसी कम्पनी को पेटेन्ट मिल गया लेकिन जमीन में उस को लगाइये तो जमीन ही बरबाद हो जाती है । इसी तरह से 20, 25 रु० की आप ने पैनिसिलीन खरीदी और जब लगायी तो आदमी ही मर गया । पता नहीं शीशी के अन्दर क्या भरा होता है, और लेबिल कुछ लगा होता है । मैं समझता हूं कि यह चीज इस से बन्द हो जायगी । सारा समय तो जनरल डिस्क्शन में निकल गया । मतलब की एक भी बात नहीं कह सका । अब दो, एक बातें मतलब की कहना चाहता हूं ।

तो मेरा अमेंडमेंट है ।

एक तो मेरा कहना यह है कि क्लाज 53(1) मैंने एक अमेंडमेंट दिया है ।

....I want your uniterrupted attention, Sir.

मेरा सुर चेयर के साथ मिला हुआ है । डिप्टी स्पीकर महोदय, जो चीज मैं अर्ज करना चाहता हूं वह क्लाज 53(1) के तहत है, मैंने इसके लिए एक अमेंडमेंट दिया है ।

MR. DEPUTY SPEAKER: Your amendment came after the time limit has expired.

श्री रणधीर सिंह : वह 1-35 मिनट पर आया । अगर इजाजत दे सकें तो ठीक है, अगर नहीं दे सकते तो मैं हमें ओरल अमेंडमेंट सबमिट करने की इजाजत दीजिए । मेरा अमेंडमेंट यह है कि 'टर्म आफ़ पेटेन्ट' जो है वह '7 इयरर्स है' । इसको 'फाइव आर सेवन' कर दिया जाए । वह कंसिडर किया जाए । आई वान्ट टू मूव दैट अमेंडमेंट ।

दूसरी बात जो मैं कहना चाहता था, वह भी मेरी जबानी है, अगर मिनिस्टर साहब गौर करें, वह है 5 परसेंट रायल्टी के बारे में । पहले जो ऐक्ट था उस में केवल 4 परसेंट है । यह क्यों बढ़ा दिया है ? कौन सा अमरीकन माइंड यहां काम कर रहा है यह समझ में नहीं आता । यह 5 परसेंट के बजाय 3 या 4 परसेंट होना चाहिए ।

आखिरी बात जो मैं कहना चाहता हूं वह यह है कि मैं तारीफ करना चाहता हूं गवर्नमेंट की कि क्लाज 47 के अन्दर जो गड़बड़ी करता है गवर्नमेंट उसको किसी भी टाइम पकड़ सकती है । उसके लिए मैं गवर्नमेंट को धन्यवाद देता हूं ।

आपने मुझे टाइम दिया बोलने का इसके लिए मैं आपका मशकूर हूं । मुझे उम्मीद है कि हाउस मेरे अमेंडमेंट्स को मंजूर कर लेगा । धन्यवाद ।

SHRI TENNETI VISWANATHAM (Visakkhapatnam): I welcome this Bill though not the way in which it has been brought before this House on this occasion. I trust neither the Government nor the Opposition will make this method a precedent for future occasions because it will out at the root of procedure and the procedure is the very life of democracy in parliamentary life.

I welcome this Bill because it has got some better features than the provisions of Indian Patents and Design Act although all the provisions are not as good as they should have been.

I agree with all the friends who have spoken about patent rights regarding life-saving drugs and foods which are necessary for babies, children, nursing mothers, sick people and convalescents. I agree with them that there should be no patent at all with regard to these articles.

With regard to foreigners we should not give any patent rights to them in our country. In fact the whole song of exploitation is being sung because these foreigners have exploited us having these patent rights.

A patent, by itself, is not such a bad thing as people think. A Patent right makes people to put in some efforts towards invention. One man's patent does not prevent another man from putting in effort to make other inventions. My hon. friend was talking about Coca Cola. It does not prevent anybody else from inventing some other coffee cola which will have a better market.

SOME HON. MEMBERS: Or Randhir Cola.

SHRI TENNETI VISWANATHAM : As I said patent by themselves are not bad but with regard to food materials and life-saving drugs there should not be any patent. Whether it induces the scientists to make further inventions or not, it is important for society that

[Shri Tenneti Viswanatham]

anybody who has made any life-saving drug should not get any particular right over it and it should be made available to the society. It is a humanitarian right of society to have it. The case stands on a different footing with regard to the industrial and manufacturing inventions.

15.15 hrs.

[SHRI K. N. TIWARY *in the Chair.*]

Sir, in this world everybody wants to get some reward for his labour. Everybody wants to get something out of his efforts. If a man has invented something by which a machinery functions better, produces better and gives better results for mankind, there is nothing wrong for him in expecting some reward out of it. It protected the consumer against spurious products. The patent is not always intended only to help the inventor. It helps the consumer, it helps the purchaser, to see that the right thing is purchased.

Therefore, these patents by themselves are not as bad as we are made to believe, as it is argued. The fact is, the people who have taken patents of such medicines and life-saving drugs have exploited us. Therefore a big confusion has arisen with regard to such patents

My submission is this: We welcome this Bill. With regard to provisions relating to life-saving drugs, there are some amendments. I would request the Minister to accept one of them. There are 3 or 4 such amendments. Out of them, whichever is more acceptable to him, he can accept, rather than forging us to call a division at this late hour.

Once the Bill has been brought forward, in whatever way, we all want that it should be passed. When a child is born, in whatever way it may be we want the child to be saved. We support the Bill.

श्री भोलानाथ मास्टर (अलवर) : सभापति महोदय, देर आयद दुरुस्त आयद वाला यह मामला है। पेटेन्ट बिल कितने ही दिनों से इंतजार कर रहा था और हमारे इंडस्ट्री मिनिस्टर साहब से भी बीच में कभी कभी बातें होती थीं। बराबर यह कहते थे कि अब आयेगा। इसको एक बार कमेटी में भी लाया गया, फिर वापस लिया गया। फिर सेलेक्ट कमेटी बनाई गई। उन्हों ने फिर से दावे किये। फिर से कंपनीज की जांच करने गये और बाद में अब यह आप के सामने बिल आया है।

मैं जानता हूं कि यह पेटेन्ट का जो बिल है यह वाजिब है और स्वागत योग्य है। इस की वजह यह है कि अभी तक हमारा देश बहुत पीछे था जहां नये नये इन्वेंशन या आविष्कार नहीं हो पाते थे। अब हम लोगों ने बराबर कोलोबेरेशन से बड़े बड़े इंवेंशन में हिस्सा लिया है। कोशिश इस बात की है कि हमारे देश के अन्दर ही सौ फीसदी वह चीजें प्राप्त होने लगें जो कि हम बाहर से मंगाते हैं और जिन की कि हम को आवश्यकता है। लेकिन इस पेटेन्ट कानून के आने से बहुत से लोग जो उत्साही हैं, जोशीले हैं, उन को मालूम है कि इस में काफी समय लगा हुआ है, पेटेन्ट उन का मिला हुआ है, इसलिए जो उत्साह उन के दिलों में होता है, वह नहीं हो पाता है। इसीलिए यह समय कम करने की बात जो की है, यह स्वागत योग्य है लेकिन इस से भी कम समय दिया जाय तो और लोगों को भी उत्साह मि०गा।

मुझे मालूम है कि मेरे शहर अलवर में पैस्टीसाइड जैसी चीज जो कि आम तौर से वहां बहुत तादाद में कइयों के पास तैयार होती है लेकिन वह तैयार करने वाले कारखाने सिर्फ जौब वर्क करते हैं बाकी उन पर पेटेन्ट का निशान "शैल" और "आई सी आई" का लगा दिया जाता है और जो मुनाफा है

वह सब का सब बड़ी कम्पनियों "शैल" या "आई सी आई" को दिया जाता है। इसलिए यह पेटेन्ट वाले मामले को जल्दी से जल्दी रिवाइज किया जाना चाहिए। जिन चीजों में हम स्वावलम्बी हो जायें उन चीजों को जल्दी से जल्दी पेटेन्ट से निकाल देना चाहिए और उन की मियाद ज्यादा नहीं रखनी चाहिए।

मैंने यहां तक देखा है कि ट्रैक्टर का जो डिस्क पार्ट होता है वह ऐस्कर्टस् या फर्ग्यूसन वालों किसी ने नहीं दिया लेकिन मोतियाखान में जब उसी को मैं तलाश करने गया तो वहां पर डिस्क मिल गई। उस पर घोड़े की एक छाप लगी हुई थी। इस तरह से एस्कोर्टस् इतना रुपया कमा रहा है। जितने उसके कल पुर्जे हैं वह आम तौर से मोतियाखान जैसी जगह पर मिल जाते हैं। दर असल मोतियाखान वाले अपने किसी एक छोटे कारखाने में इन चीजों को तैयार कर लेते हैं और बाद में एस्कोर्टस् या फर्ग्यूसन जैसी बड़ी कम्पनीज अपना छापा उन पर इस तरह से दे देते हैं। ऐसा करवा कर उन चीजों के दाम बहुत ज्यादा लिए जाते हैं। इसलिए यह पेटेन्ट के मामले में बहुत अधिक विजिलैंस रखने की जरूरत है। हमारा देश दिन पर दिन तरक्की कर रहा है इसलिए पेटेन्ट की लम्बी मियाद रखना ठीक नहीं है। जो कुछ छोटा मोटा कम्पेंसेशन देना हो वह दे कर यहां के अपने लोगों को मैदान में लाना चाहिए ताकि देश के लोग ही इन सारी चीजों को बनाने लगें। उन में उत्साह पैदा हो और नये लोगों को रोजगार मिले। बस इतना ही मुझे कहना था।

श्री शिव नारायण (बस्ती) : सभापति महोदय, मैं इस पेटेन्ट बिल का स्वागत करता हूं और चाहता हूं कि इस को पास कराने के बाद गवर्नमेंट इस पर ठीक नीति से अमल कराये। पंडित नेहरू ने भी कहा था जब तक हमारा मुल्क गरीब है तब तक सरकार का यह कर्तव्य हो जाता है कि वह देश के आम लोगो को अनाज और आवश्यक ड्रग्स आदि मुनासिब और सस्ते मूल्य पर सुलभ कराये। लेकिन दुर्भाग्यवश पेटेन्ट सम्बन्धी विधि इस तरह से चल रही है कि दवाओं आदि के मूल्य भी बहुत अधिक चढ़े हुए हैं साथ ही फारनर्स को काफी अधिक मुनाफा हो रहा है। इसलिए यह बहुत आवश्यक है कि आप पेटेन्ट को ठीक से संशोधित कर के चलायें और इस नाते से जो उसे संशोधित रूप में ला रहे हैं वह ठीक बात सरकार ने की है। मेरी समझ में यह सात वर्ष की मियाद ठीक रक्खी गई है और यह एक मुनासिब मियाद है। जैसा मैंने पहले कहा पेटेन्ट कानून अभी तक देश के हित के खिलाफ चलाया गया है लेकिन अब जो सरकार चेती है और संशोधित कर रही है तो वह ठीक ही है। विदेशियों के मुनाफे और मुनाफे भी थोड़े बहुत नहीं बल्कि काफी मोटे वह खत्म होने ही चाहिएं और इस नाते यह बिल स्वागत योग्य है। मैं गवर्नमेंट को सावधान करना चाहता हूं कि वह विदेशी व्यापारियों से सावधान रहे वरना हमारे देश की आजादी खतरे में है। उन से आप को बचना चाहिए। आज देश का जो एटमासफियर है वह शोचनीय है और इसलिए सरकार को बहुत सतर्क रहना चाहिए।

यह सर्वविदित बात है कि हमारे यहां दवाओं के दाम बहुत बढ़े चढ़े हुए हैं। मैं हाल में जब अपने निर्वाचन क्षेत्र में गया था तो मुझे बतलाया गया था कि दवाओं के दाम आस्मान को छू रहे हैं और दवा निर्माता उन पर कई गुना भारी मुनाफा कमाते हैं, एक बड़ी लूट चल रही है। यह कितनी अनुचित बात है कि जन-साधारण को उन के जीवन के लिए उपयोगी व आवश्यक दवाएं अत्यधिक बढ़े हुए मूल्यों पर मिलें। टी० बी० आदि जैसी भयंकर बीमारियों के शिकार लोगों के जीवन के साथ इस तरह से खिलवाड़ किया जाना सरासर अनुचित है। इसलिए मैं ने इस पेटेन्ट बिल का समर्थन किया है ताकि लोगों को सही और सस्ते दामों पर आवश्यक दवाएं सुलभ हो सकें। यह फौरनर्स पूंजीपति लोग जो कि यहां दवाओं पर दो, दो हजार गुना मुनाफा कमा रहे हैं वह बंद होना चाहिए और यहां के उन देशी दवा निर्माताओं को प्रोटैक्शन देना चाहिए जो कि दवाओं को सही मूल्य पर

[श्री शिव नारायण]

सुलभ करने को तैयार हों। अभी जो एक चीज चलती है कि जो बड़े-बड़े साइंटिस्ट्स निकलते हैं यह पैसे वाले उन को खरीद लेते हैं और उन को अपनी जेब में रखना चाहते हैं तो यह तो बात अनुचित है । इस सरकार को सचेत होना चाहिए और जो गुणी लोग हमारे यहां के हैं उन की कद्र करना चाहिए उन की अवहेलना नहीं करनी चाहिए। अभी हो यह रहा है कि यहां के साइंटिस्ट्स फौरेन कंट्रीज में चले जाते है और वहां उन को काफी पैसा मिलता है और हमारा देश उन के टैलेंट से मरहूम रह जाता है। यह चीज बन्द होनी चाहिए। और अपने देश के वैज्ञानिकों के अनुभव व ज्ञान का लाभ हमें स्वयं उठाना चाहिए।

मैं अपने उत्तर प्रदेश के वर्तमान मुख्य मंत्री की यहां तारीफ करना चाहता हूं जिन्हों ने कि सूबे की तरक्की की है। उन्हों ने ला एंड आडर को मेंटेन किया है। हम उन के खिलाफ नहीं हैं। वहां के मुख्य मंत्री ने अनुशासन को मेंटेन किया है ला ऐंड आर्डर को मेंटेन किया है।

सभापति महोदय : माननीय सदस्य उत्तर प्रदेश के मुख्य मंत्री की बात न कर के इस पेटेन्ट बिल पर बोलें।

श्री शिव नारायण : जैसा मैं ने कहा यहां के साइंटिस्ट्स को प्रोटैक्शन मिलना चाहिए। मैं गवर्नमेंट से कहना चाहता हूं कि वह यहां के देशी दवा बनाने वालों को पूरा प्रोटैक्शन दें। पेटेन्ट बिल को संशोधन करने के लिये जो अमेंडमेंट बिल लाया गया है मैं उस का समर्थन करता हूं और याद रखिये कि सरकार जो भी सही व माकूल काम करेगी उस का हम सदा स्वागत व समर्थन करेंगे अलबत्ता बुरे काम में हम आप का साथ कदापि न देंगे। यह सात वर्ष की जो मियाद रक्खी गई है वह ठीक है। इन शब्दों के साथ मैं इस का समर्थन करता हूं।

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND INTERNAL TRADE (SHRI DINESH SINGH): Mr. Chairman, Sir, I am most grateful to the hon. Members for the support they have given to us in this Bill that we have brought before the House.

As I mentioned in the very beginning, this is going to be a landmark not only in the industrial development of our own country but also something which may form the basis of technology for other developing countries also

Now, I shall take up some of the points that have been made by the hon. Members. There was an expression of an idea by some hon. Members that the patents should be abolished altogether. The hon. Member, Shri Shiva Chandra Jha said that there were no patents in the Soviet Union, Japan, Italy and Argentina. I am afraid the hon. Member is totally unaware of the fact that these countries have, Mr. Chairman, patents and in fact, our Patents Bill which is before the House, if passed, will be far more progressive than the patents that exist in any of these countries including the Soviet Union.

Then there was a suggestion made by some hon. Members that no patents should exist in food, drugs and chemicals. There is now such an arrangement in Italy where there are no patents in food and drugs. I believe there also they are thinking in terms of re-introduing patents in these items because it leads to certain complications of manufacture of certain spurious drugs and others. Therefore, although this experiment has been tried, it has not been very successful and it would, therefore, not be the time for us to try this experiment. In fact what we have to do and what we are attempting is that we are taking up this matter constantly in the United Nations and other forums that the transfer of technology from the developed countries to the developing countries should be made at the cheapest possible rate and if we succeed in that, that will be a far more effective assistance to us in our industrial development than trying to isolate ourselves from the main.

stream of development that has taken place and is continuing in other parts of the world.

As I mentioned in my opening remarks, as a member of the community of nations, we cannot have an altogether different set-up here because then we may bring about a certain measure of discrimination for ourselves. This applies also to the idea that was suggested by some hon. Member that we should have patents only for the Indian nationals—Indian citizens—and not for foreigners. Such discrimination may again creat various complications for us and I would therefore beg of the hon. Members to support us in the Bill that we have brought and I can assure them that this Bill will bring out the idea we have in mind, that is, an accelerated rate of growth and transfer of technology and will prevent exploitation to the extent it is possible for any national Government to do within its own sovereignty.

Then some hon. members raised the question of royalty and said that the 5 per cent provided is too high. That we have provided 5 per cent does not mean that 5 per cent will be given. The royalty will be whatever is thought fit. may be 1/2 per cent, one per cent, 2 per cent. But we have provided a ceiling. Why we have provided a ceiling which is higher than the average which will come is that at times when a new drug is developed, it is rather expensive. Take the case of a drug for cancer or something like that. We would not like our people to be denied this advantage as soon as it comes out anywhere in the world. Hence we have provided a higher ceiling which will not be reached in normal cases, but we would not like to deny our people the latest developments or inventions in the world. However, if hon. members feel that the 5 per cent is too high, we can take it up for consideration when we come to the relevant clause.

The duration of patents was another point raised. Look at the position. I have here a list of countries which have patents. In a large number of them the periods are around 15, 16 and 20 years—fairly long periods. In our case, we have had 16 years which we are bringing down to 14 in ordinary cases and 7 in the case of food and drugs. Seven years is not a very long time, not too high a price to pay to be able to get the latest medicines for our people, and even so we have incorporated in the Bill a clause to the effect that where excessive prices are charged, Government would be in a position to make direct imports for its own use and also for the use of hospitals and other institutions the latest medicines at whatever prices they are sold. So adequate precautions have been taken to see that there is no undue exploitation, and the duration of 7 years provided from the time that the full application comes with all details is really not too long. I suggest we do not change this provision which has been the result of discussion in the Joint Committee, and has been more or less agreed to.

Shri Dandeker made a rather strong criticism of the Bill. First of all, I would like to sympathise with him that he has missed his week-end. It was not exactly on our account this happened, but friends who sit around him felt that the Bill should be taken up today. We only went along, and gladly so; not that we were not anxious we were most anxious to get the Bill through as soon as possible. But I would not have liked to contribute to the ruining of his week-end. Perhaps this was the reason why he himself was rather confused and wanted to transfer the confusion on to us. He took certain objections to what I had mentioned in my opening remarks as the historical developments of the concept of patents, namely that two points of view had to be reconciled, one that the patent developed by an individual or group of individuals was their private property, and another that it should be made available to others and for that a certain amount of protection would

[Shri Dinesh Singh]

be provided. I do not know if he has any particular objection to history as such, but otherwise these are historical facts and this is still the concept.

He kept on emphasising all the time the tremendous expenditure involved. If you would care to glance through his speech when it comes in print, you will see that he has devoted a lot of attention to the money part of it. Unless something belongs to some one, where does the question of money come in? Obviously, the question is that it belongs to an individual or a group, and, therefore, he would like to keep it to himself and that nobody else should make use of it. Otherwise, what is private property? The point here is not what it is or what it is not, but what should be done about it. I am not quarrelling whether it is private property or not. I would not like it to be private property at all, but the point is what we should do with it, and the measure is the regulation that we propose in this regard.

He emphasised the tremendous expenditure that goes into research and development and I thought that he would be really interested in the subject. Because he said he was at one time on some Select Committee a number of years ago and had taken some interest, I thought he might be able to tell me how much the foreign companies, about whose expenditure in research and development he was very concerned, do spend on research and development in this country. Apart from one centre that has been started, I do not think there is any other centre. Therefore, where is this large amount of money being spent on research and development in India for which he would wish these companies to be compensated? Do we want the entire research and development to be compensated by their profits in India? Otherwise, if he is talking about research and development in USA or UK or the Federal Republic of Germany or any other country, obviously the question will be of getting the profits from a large number of countries. Why should all this be directed towards India, that India must pay for all this research and development when there is practically no research and development by these companies in India?

Shri Mukerjee read out from the article that appeared in the *Times of India*. I wish he had read out a little more in order that it might have given the House a better idea. with his permission, I might read out a little more than what he did. It says:

> "Several giant companies including American Cyanamide, Pfiser, Merck, Weyath,....

—and something else which is apparently rubbed out from the copy I have—

> "...and Upjohn were charged with selling antibiotics and other medicines to developing countries at rates ranging from 300 to 11,364 per cent of European competitive prices of the same product or its Allopathic equivalent."

I did not hear Shri Dandekar raise any concern about this.

SHRI N. DANDEKER: I said you should control the prices in other ways. I said there were hundreds of ways of stopping imports. I am being misquoted.

SHRI DINESH SINGH: He would like us to stop imports, he would like our people to be denied these medicines, but he would not like us to control them in the manner in which we can get them at fair prices. He talked about our thinking as absurd. I do not know if I can find a stronger word to describe his thinking.

It is totally out of date and beyond description that I can think of.

SHRI TENNETI VISWANATHAM: He is only asking which is the section which is controlling them?

SHRI DINESH SINGH: The section that covers royalty and the period of manufacture, enabling us to manufacture in this country. The question of price as such comes in from the manufacture. You can say that you will not allow so much higher than a particular price to be paid. If they do not bring the medicine in, how do you control it? That is where the Bill provides for the Government's right to import it if they so desire. That is why we have had two aspects. We can bring them in at fair prices and distribute them and at the same time we can go into manufacture ourselves.

He also raised the question why we had brought in pesticides and not confined ourselves to medicines only. He was kind enough to say that if it were confined to food, medicines and drugs he was willing to go along a certain way but asked: why pesticides and others? Here is a country, terribly short in food supply and wanting to usher in the green revolution to feed our people. Here are new drugs that have come in for enabling production to be raised in the field. There are also its impacts. It is discovered that pesticides, some of them, have even harmful effect. Therefore, it is a question of looking at the total health hazard as well as productivity of essential items. We must feed our people and provide them with better food; otherwise we shall be needing more medicines because the body physically will be weak. In modern times you cannot differentiate between medicine that a human being needs directly and the food that is coming to him as a result of agricultural production operation where pesticides may be used. This has to be viewed as a whole. It is part of human health and welfare. He himself has said that he is willing to go a long way and I think he would allow this Bill to be passed.

He mentioned the licensing rights as if it was harmful and dangerous. What have we done? The manufacturer in this country would be entitled to work the process patent three years after the date of sealing at reasonable royalties to be paid. I fail to understand what his objection is. It does not prevent them from making their own medicines. If he can make it better and cheaper, there will be consumer preference for that. But in a developing country when we are asking for non-reciprocal, non-discriminatory preferences in the markets of the developed countries, should we not in our own country be able to produce medicines and drugs for which the process has been patented even after paying due royalty? I am most amazed that there should be some objection. We are not taking away something from somebody. We are paying due royalty to which the firm is eligible. I hope hon. Member Shri Dandeker will appreciate that we have not brought forward this Bill without due consideration. Much thought has gone into it not only on the part of the Government but on the part of the hon. Members of this House and the other House and they spent quite sometime in the Joint Committee of which he himself was once a Member.. (*An Hon. Member*: No, no). Anyway for some period the hon. Member took some interest and I wish he had taken more interest on this occasion also.

Only one more point. Shri Mukerjee highlighted the point about research in our national laboratories. Now, we have had in this House discussion on our national laboratories. Also there are documents available in the Library and elsewhere to give the whole range of research that is taking place in the national laboratories. In the short time that you have been kind enough to place at my disposal it would not be possible to give an account of the work being done in the laboratories. But I would say this that so far as national laboratories are concerned they are working not to produce patents so much as to give an opportunity in a developing country like ours to people who

[Shri Dinesh Singh]

do not have on their own much research opportunities to get together, to try to keep abreast with modern technology and also to take up problems that are entrusted to them by certain industries and try to solve them in keeping with scientific development and technology. I appreciate the point that was behind this that it costs a lot of money to bring forward a new drug or a new medicine but when you look at the picture of what they take back from the public I do not think they would have any claim in any civilised country to exist in the manner in which they exist today.

Some hon. Members had suggested that we might consider acquiring some of these patents. We could have done that but we would have to pay compensation. Now that we have brought in this provision of licence of right, compulsory licence and Government's own powers to manufacture items when it considers necessary I do not think it is worthwhile going into the question of acquiring patents and paying royalty. Over a period of time these patents would be available to public to manufacture as they wish.

Then there was the question suggested by Mr. Varma—he was rather keen— that medicines which were advertised for making people strong should really make people strong. Now, I do not know which particular medicine he has in mind or he has tried or not but there is, I believe, Drugs and Cosmetics and Prevention of Food Adulteration Act which is administered by the Drug Controller and false trade description is prohibited. If he has any particular medicine in mind and brings it to the notice of the Drug Controller, I am sure, he will give his attention to it.

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

With these words, Mr. Deputy Speaker, Sir, I conclude this stage of discussion.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill to amend and consolidate the law relating to patents, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: Now we take up clause-by-clause consideration. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

MR. DEPUTY-SPEAKER: We now take clause 5.

Clause 5.—(*Inventions where only methods or processes of manufacture patentable*)

SHRI BENI SHANKER SHARMA: I move:

Page 5, *for* lines 27 to 29, *substitute* "no patent shall be granted." (47).

उपाध्यक्ष महोदय, इस बिल के प्रथम वाचन में जितने भी भाषण हुए हैं, उन सब से एक ही ध्वनि निकलती है कि जहां तक जीवन-रक्षक औषधियों और पोषक तत्व युक्त भोज्य पदार्थों का सम्बध है, वे पेटेन्ट्स बिल के मातहत नहीं आने चाहिए । मेरे इस संशोधन का उद्देश्य केवल उन विचारों को मूर्तिमान स्वरूप देना है । आप जानते हैं कि पहले जो वैद्य एक कविराज इलाज और औषधि देने का काम करते थे, भारतीय परम्परा के अनुसार वे औषधियों का मूल्य भी नहीं लिया करते थे । लेकिन आज तो औषधियों का वाजिब मूल्य लेने का तो प्रश्न ही नहीं है । आज तो पेटेंट करा कर लोगों से अधिक से अधिक दाम वसूल करने की चेष्टा की जाती है । यह भारतीय संस्कृति और परं-

परा के बिल्कुल विरुद्ध है। इस लिए औषधियों और भोज्य पदार्थों को पेटेन्ट्स बिल के जूरिस-डिक्शन से एक दम हटा देना चाहिए।

SHRI DINESH SINGH: I only wish to say that I appreciate the point that the hon. Member has made, but it would not be desirable for us to remove the patents on processes and methods because, as I mentioned arlier, we shall have certain difficulties. But so far as the substances are concerned, there is no patent for them. So, I do not accept the amendment.

MR. DEPUTY-SPEAKER: I shall put the amendment to the vote.

Amendment No. 47 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

MR. DEPUTY-SPEAKER: Clause 6. Amendment Nos. 36 and 37.

Shri Kanwar Lal Gupta is not present. So, I shall put the clause to the vote. The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clauses 7 and 8 were added to the Bill.

MR. DEPUTY-SPEAKER: Clause 9. Amendment No. 19. Shri Jha is not present. I shall put the clause to the vote.

The question is:

"That clause 9 stand part of the Bill".

The motion was adopted.

Clause 9 was added to the Bill.

Clauses 10 and 11 were added to the Bill.

MR. DEPUTY-SPEAKER: Clause 12. Mr. Jha is not there.

SHRI NAMBIAR: If you can permit me, I can move an amendment now, orally.

MR. DEPUTY-SPEAKER: No, no.

SHRI NAMBIAR: Instead of "eighteen months" it should be "nine months".

MR. DEPUTY-SPEAKER: No, no. I shall put the clause to the vote.

The quetsion is:

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

Clauses 13 to 47 were added to the Bill.

New Clause 47A

MR. DEPUTY-SPEAKER: Amendment No. 1 for new clause 47A.

SHRI N. DANDEKER: I beg to move:

Page 25,—

after line 30, *insert*—

"47A. (1). The powers of the Government to import or make use of, by or on its own behalf, any machine, apparatus or other article in respect of which a patent has been granted or any article made by using a process in respect of which a patent has been granted under sub-section (1) of section 47, shall be exercised only for non-commercial and charitable purposes, and in the event of widespread calamity such as floods, epidemics, famine, drought and other like causes.

(2) The Powers of the Government to use any process by or on its behalf merely for its own purposes, under sub-section (2) of section 47, shall be exercised only for non-commercial and

[Shri N. Dandeker]

charitable purposes and in the event of widespread calamity such as floods, epidemics, famine, drought and other like causes.

(3) The powers of the Government under sub-section (4) of section 47, shall be exercised only for non-commercial and charitable purposes and in the event of widespread calamity such as floods, epidemics, famine, drought and other like causes.

(4) The importation of any machine, apparatus or other article, or the use of any process to make any article under sub-section (1) of section 47; the use of any process under sub-section (2) and the importation of any medicine or drug under sub-section (4) of section 47, shall be made upon such terms as may be agreed upon either before or after the importation or use between the Central Government or any such person who is authorised under sub-sections (1), (2) and (4) of section 47 and the patentee, or as may, in default of agreement, be determined by the High Court on a reference under section 103." (1)

The object of this amendment is quite simple. It has two objects. The first is to make it clear that the right of the Government under sub-clauses (1), (2), and (3) of clause 47 should be exercised only for non-commercial and charitable purposes and in the event of widespread calamities such as floods, epidemics, famine, drought and other like causes, Government's right under these sub-clauses should not extend to the commercial use of these things. Sub-clause (4) of the new clause 47A is to make it clear that some payment must be made by Government for this. It may be either by agreement between, the Government and the patentee or in default of the agreement, it may be determined by the High Court. I hope these things are so obviously necessary that the Minister will be pleased to accept this new clause 47A.

SHRI DINESH SINGH: I have already explained in detail to the House the reasons why we have reserved this position for Government. So far as import of medicines etc., and their manufacture for the use of Government only is concerned, we have not provided for any royalty. So far as commercial use is concerned, we have said that royalty will be paid for that. Therefore, the hon members objection is really met by this that royalty will be paid if Government feels that there is to be utilisation of these things for any commercial purpose. But when it is a question of import or its manufacture for the Government in public interest, it will not be right that we get into this position of payment of royalty because there are certan articles which may be of absolute necessity for the well being of our people and it would not be right to tie down the hands of Government in this respect. This applies to certain essential sectors such as food, medicines, etc. Therefore, it will not be a question of Government misusing this power but really using it in national interest. I regret very much that it will not be possible for us to accept the amendment.

MR. DEPUTY SPEAKER: I will now put Amendment No. 1 to the House.

Amendment No. 1 was put and negatived.

Clause 48—(Rights of patentees.)

MR. DEPUTY SPEAKER: There is an amendment by Mr. Masani and others.

SHRI N. DANDEKER: Anything in the name of Mr. Masani, I have been authorised by the Speaker to move.

MR. DEPUTY-SPEAKER: your name also is there.

16 hrs.

SHRI N. DANDEKER: Then I would request you to call my name instead of others.

Sir, I beg to move:

Page 25, line 43,—

add at the end—

"and of using or selling in India articles or substances made by such method or process and of authorising others so to do".(2).

Sir, in order to explain this amendment, I ought to read sub-clause 2(a) of Clause 48, which is a very simple one: "Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted after the commencement of this Act shall confer upon the patentee—

(a) where the patent is for an article or substance, the exclusive right by himself, his agent or licensees to make, use, exercise, sell or distribute such article, or substance in India....."

Now, sub-clause (b) is, unfortunately, I think, incomplete, because it says, "where a patent is for a method or process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the method or process in India". Now, one does not exercise these things for the sake of his health. He does so for the sake of using or selling in India, article or substances made by such methods or processes and authorising others to do so. At present, the clause merely allows this gentleman, the patentee, to use or exercise a method, but not to sell products made as a result of using or exercising the process. The amendment that I have moved enables a person to do that, *viz.* using or selling any articles or substances made by a certain method or process and authorising others so to do.

I hope, this at least the Minister will accept because it makes the meaning clear.

SHRI NAMBIAR: Sir, I beg to move:—

Page 25,—

Omit lines 31 to 34. (28)

Sir, my amendment is quite opposite to the amendment of Mr. Dandeker. In fact, the hon. Minister tries to be in the middle of that. I think he should not.

Sir, my amendment is this. If you read Clause 48(1) then you will understand my amendment:

"Subject to the other provisions contained in this Act, a patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licenses to make, use, exercise, sell or distribute the invention in Inda."

and, may I add, whatever is there under the sun. And, Sir, then comes the second part of it—sub—clause (2):

Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted after the commencement of this Act shall confer upon the patentee" the following rights....

Therefore, Sir, in India, after the enactment of this legislation there will be two patent rights: one section who had the patents already granted under the 1911 Act, will have their period extended beyond the scope of the new patentees who are coming under the new Act. Those patents that are already granted would continue up to the extreme end of the term. 'We have no right, this Parliament has no right to limit it' is the point from the legal side. Therefore, this whole clause is made out in consonance with the so-called legal opinion. Sir, there I differ.

My point is this. When the property right can be limited, or circumscribed by giving appropriate compensation—if that is possible—then why

[Shri Nambiar]

not have it restricted to a period of seven years or whatever you are prescribing under this clause? Why should those persons who had got the right earlier have the advantage or a special privilege of getting the whole period extended up to the term? This is my point. Therefore, to say that if we restrict that then the court will intervene, is wrong.

Even the Attorney-General's opinion was sought. I know under what circumstances this opinion was sought. I need not go into those details; it may not look nice at this time to go into them. But the point was— I argued that point even in the Joint Committee— that if Parliament has the right to limit one's property rights and give compensation, that is applicable to both. How can it not be done? What is the logic and the argument? This point can be canvassed very well in the court. Instead of that, under the plea that the court may undo this, to give a particular right is a wrong argument.

Therefore I want this portion to be deleted. Put them on par. Those who already have patent rights and those to whom the patent right is going to accure hereafter under the new law must be put on par; or else there is a danger of discrimination and the court may come down upon it. That is exactly what Shri Masani and other friends say, namely, that there is discrimination. In that discrimination the whole clause 48 may get struck down, with the result that he whole thing will become infructions. Let us not give room to the court to come down upon us and do away with the entire clause 48. Therefore, my suggestion is, accept my amendment, delete these four lines and put all on par.

श्री बेणी शंकर शर्मा (बांसवाड़ा) : उपाध्यक्ष महोदय, मैं आप के माध्यम से माननीय मंत्री जी से केवल इतना ही कहना चाहूंगा कि इस क्लाज में जो संशोधन माननीय दाण्डेकर ने दिया है, वे उन्हें एक्स्ट्रीम राइट की तरफ ले जाते हैं, और जो संशोधन माननीय नम्बियार जी ने दिया है, वह घसीट कर एक दम एक्स्ट्रीम लेफ्ट की तरफ ले जाते हैं, लेकिन मेरा संशोधन उन को बीच में रखने वाला है। उन्होंने अभी अभी कहा है कि वे मध्यम मार्ग को अपनाना श्रेष्यकर समझते हैं। इसलिए मैं समझता हूं कि मेरा संशोधन उन को मान्य होगा और मैं नहीं समझता कि इसे मान लेने में उन्हें कोई आपत्ति ही होगी।

कहा जा सकता है कि 1911 के कानून के अन्तर्गत इस कानून के पास होने के पहले जो अधिकार कुछ लोगों को दिये गये थे, वे अक्षुण्ण रहने चाहिएं—मैं इस बात को मानता हूं, यह बहुत अच्छा सिद्धान्त भी है। लेकिन जब आप राजाओं के प्रीवी पर्स के उन्मूलन के लिये नया कानून बना सकते हैं और अपने पूर्व पुरुषों द्वारा दिये गये आश्वासनों का उल्लंघन कर सकते हैं, जब आप आई० सी० एस० के आफिसरों को दिये गये आश्वासनों में संशोधन कर सकते हैं, तो फिर केवल एक मामूली रजिस्ट्रार द्वारा दिये गवे कुछ आश्वासनों को बदलने में आप को कोई असुविधा नहीं होनी चाहिये।

जैसा अभी नम्बियार साहब ने कहा है कि अगर इस क्लाज को आप पास करते हैं तो दो तरह के पेटेन्टीज हो जायेंगे—एक तो वे जो 1911 के कानून के अन्तर्गत आते हैं, जिन को बहुत से अधिकार मिले हुए हैं और दूसरे वे जो नये होंगे, जिनको वे अधिकार नहीं मिलेंगे—यह एक तरह से डिस्क्रीमिनेटरी चीज होगी और मैं समझता हूं कि शायद बाद में यह कानून विशारदों के द्वारा यह मान्य भी नहीं होगा। इसलिए जो संशोधन मैं ने दिया है उसे मंत्री महोदय को मान लेना चाहिए। मैं इसे पढ़ कर सुना देना चाहता हूं —

"Subject to the other provisions contained in this Act, a patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licensees

to make, use, exercise, sell or distribution the invention in India for a period not exceedng five years."

मैं समझता हूं—अगर आप इस शर्त को जोड़ देना मान लेते हैं तो आज नये और पुराने कानून में जो भेदभाव हो रहा है, वह दूर हो जायगा । आप एक बीच के मार्ग को अपनाना चाहते हैं, मेरा संशोधन भी आप को बीच के मार्ग पर ही ले जा रहा है—इसलिए मैं समझता हूं कि इस को मानने में आप को कोई आपत्ति नहीं होनी चाहिए ।

I beg to move:

Page 25, lne 34,—

add at the end—

"for a period not exceeding five years"(48).

SHRI HIMATSINGKA (Godda): I cannot follow the amendment suggested by Shri Nambiar. Sub-clause (1) refers to patents granted before the commencement of this Act and the other sub-clause refers to patents granted after this Act commences. If these four lines are deleted, there will be no reference to patents granted under the previous Act. Then, what will happen to them? They will perhaps continue as they are and have the same right. I do not think the position will improve if these four lines are removed.

SHRI NAMBIAR: They will come on par.

SHRI HIMATSINGKA: But they will not be affected at all; clauses 87, 88 and others do not apply to patents granted under the old Act, as appears from the definition of patents. The definition of "patent" is there in clause 2(m) on p. 3 of the Bill and clauses 53, 87 and 88 do not refer to patents. Therefore, the position will not improve in any way.

SHRI DINESH SINGH: Taking up the point made by the hon. Member, Shri Dandeker, this matter was really taken up in the Joint Committee. The amendment is for vesting patentee with exclusive right of selling articles or substances made by the method or process. Clause 5 allows only claims of method or process in the field of food, drugs, medicines and chemicals. The Joint Committee, therefore, deleted these rights following amendment to clause 5, that is, allowing patents only for process of manufacture and not for product in any form. The process of patent could merely confer right of using the process for the manufacture of article, not an exclusive right for the sale of the product. It is in this line that clause 48(b) stands and it would not be possible for us to accept the amendment that he has proposed.

Now, the point made by the hon. Member, Shri Nambiar, was the one to which I had referred earlier, that is, the question of taking over some of these patents and running the risk of paying compensation. In fact, that will not be commensurate with the money that would have been spent. They are gradually coming to an end even under the old Act and then it will be possible for the people to take them on. As the hon. Member know, there is also clause 64.....

SHRI NAMBIAR: Clause 48 is about those patents which are granted under the old Act. The duration will soon expire. What I say is that we need not take them over. The time will expire according to the new law and then it will become open to anybody to take it. There is no question of paying compensation.

SHRI DINESH SINGH: I understand the point that it should be brought under the provisions of the new law. But it was felt that there may be a risk of paying compensation because of certain arrangement that had been made here. The hon. Member, Shri Beni Shankar Sharma, mentioned that when we are thinking of removing certain other privileges, these privileges could also

[Shri Dinesh Singh.]

be removed. But I say they are coming to an end by themselves. It was, therefore, felt that it would not be worthwhile disturbing the position at this stage.

SHRI BENI SHANKAR SHARMA: After 5 years, they may be placed at par with others.

SHRI DINESH SINGH: These are coming to an end. Therefore, it is not really worthwhile tampering with them at this stage. Therefore, the suggestion that he has made is quite right. Let us keep in between the two suggestions that have been made and let the position remains it is.

SHRI NAMBIAR: What about the danger of discrimination?

SHRI DINESH SINGH: There is no danger of discrimination.

SHRI NAMBIAR: Under the Patent law, there are two types of patentees. That will be a discrimination.

SHRI BENI SHANKAR SHARMA: What is the maximum period in the case of any patentee who will be enjoiying the rights under the old Act?

SHRI DINESH SINGH: They used to get 16 years. But it depends on a particular patent when it was granted.

SHRI TENNETI VISWANATHAN: Suppose it was given last year?

MR. DEPUTY SPEAKER: Now I put amendments No. 2, 28 and 48 to the vote of the House.

Amendments Nos. 2, 28, and 48 were put and negatived.

MR. DEPUTY-SPEAKER : The question is:

"That clause 48 stand part of the Bill."

The motion was adopted.

Clause 48 was added to the Bill.

Clauses 49 to 52 were added to the Bill.

Clause 53—(Term of patent.)

MR. DEPUTY-SPEAKER: Clause 53. There is a plethora of amendments. The Amendment Nos. 3, 4, 21, 22, 44 and 55 are being moved.

SHRI N. DANDEKAR: I beg to move:

Page 28, line 11,—

for "seven" *substitute* "ten" (3).

Page 28, line 11,—

after "of the" *insert*—

"sealing of the" (4)

SHRI SHIVA CHANDRA JHA: I beg to move:

Page 28, line 11,—

for "seven" *substitute* "five" (21).

Page 28, line 12,—

for "seven" *substitute* "five" (22).

SHRI NAMBIAR: I beg to move:

Page 28, line 11,—

for "seven years from the date of the patent"

substitute—

"five years from the date of sealing of patent or eight years from the date of filing of complete specification or whichever period is shorter" (44).

SHRI BENI SHANKER SHARMA: I beg to move:

Page 28, line 12,—

for "fourteen" *substitute* "seven" (52).

MR. DEPUTY-SPEAKER: Mr. Somani.

SHRI RANDHIR SINGH (Rohtak): What about my amendment?

SHRI N. K. SOMANI (Nagaur): You missed the bus!

MR. DEPUTY-SPEAKER: I am informed by the Table Office that it was received late. It was time-barred.

SHRI RANDHIR SINGH: Then, I move a verbal amendment, Sir.

MR. DEPUTY-SPEAKER: It was received after 1.30 P.M. today.

SHRI N. K. SOMANI: He should know about it. Mr. Deputy-Speaker, Sir, as far as this particular clause is concerned, I would like to bring it to the notice of the hon. Minister, since he is also new to this job, that originally when this was being discussed in the Select Committee, the Government itself, and I would like him to support this fact, came forward with an amendment that ten years would be provided for as far as the duration of a patent is concerned. This was the provision at that particular stage, and later on it transpired during the subsequent discussion of the Select Committee that it was reduced to seven years. Now, the first point that was also made by Mr. Dandeker in the morning was this that out of this limited period of seven years, the initial period of two years is taken to deposit this particular patent with the Controller's office and for various formalities and for the confirmation and sealing of this. And, therefore, in effect, what a particular applicant gets is only five years and not seven years. It is a very short period and this gestation period does not allow any patentee or inventor or industrialist to recoup or recover all the profits or whatever risk that he had to take. As I said, the original period that was envisaged for drugs and medicines was ten years, and for the rest of the items and other inventions, it was 14 years.

Sir, now I would briefly refer to the evidence of this Committee; and this is not my view. I hope the Minister has heard the names of Dr. Govindachari, Dr. Chippalkatti and Mr. Borkar, who was then the Drugs Controller of the Government of India. They themselves said that there is considerable time lag between the date of application for the grant of a patent for a drug and the date of its actual commercial exploitation. I have described the time-lag. And these are the views that have been upheld by the highest authority of the land under this Government's jurisdiction. And not only that. A Group of the Select Committee visited the plant of the Hindustan Antibiotics which is again another Government company. They were clearly informed that it took that company at Pimpri about 8 years time from the date of discovery of their new anti-biotic, Hymacin, upto the stage of pilot plant for a commercial exploitation. The Minister must know that after the pilot plant for a commercial exploitation there is a further time lag. It took 8 years just in this particular process, a fact supported by their own company and supported by their own officers. I, therefore, do not see what was the reason which impelled this Government to change their own proposal from 10 years to 7 years.

Let us have a look at it and how it is particularly operating in terms of tenure in various other countries with some of which the hon. Minister is quite familiar. Except two countries, Libya and UAR, most other countries —we have a list of 81 countries where the patent law is now in administration—all provide a period of between 15 to 20 years. This list which allows 15 to 20 years includes developing countries and some, he would like to call as progressive countries like Iran, Iraq, Jordan, Morocco, Pakistan, Philippines, Syria, etc. Now it cannot be the intention of this Government not to pay regard to this international trend which is found everywhere, not only in developed countries but also in developing countries and in socialist countries and in progressive countries. Therefore, I do not know why this Government want to cut across the trend all over the world which has been proved and go against the inventions and promotion of scientific research and technological develop-

[Shri N. K. Somani]

ment not only in this country but elsewhere too. Therefore, now this ten years period is the basic minimum period for which this should be granted and in view of what I have said so far, I think, the Government even now would see reason and accept this particular amendment that I have been speaking on.

श्री शिवचन्द्र झा : उपाध्यक्ष महोदय, अभी इन्होंने कहा कि यह समय जो पेटेन्ट का अभी है यह 7 साल रखा गया है । लेकिन इन्होंने कहा कि यह ज्यादा रहना चाहिए । लेकिन हम सब जानते हैं कि समय का तकाजा है कि पहले तो पेटेन्ट सिस्टम का ही खात्मा होना चाहिए, यह सिस्टम ही हमारा जो ध्येय है, मकसद है, उद्देश्य है समाज का उसके अनुकूल नहीं है । लेकिन यदि हम मान लेते हैं कि कुछ इंसेंटिव की जरूरत है, हमारा समाज उतना विकसित नहीं है, अगर कोई चीज ईजाद करता है तो उसे कुछ फायदा होना चाहिए, तो यह जो 7 साल का समय है, यह ज्यादा है । इसको 5 साल करना चाहिए । विज्ञान आज बहुत तेजी से आगे बढ़ रहा है । यह भी हम जानते हैं कि 5 साल के अन्दर कोई भी पेटेन्ट या आविष्कार की चीज हो सकती है कि आउट-डेटेड हो जाये । पेटेन्ट देन के बाद भी वह हक से महरूम हो जायेगा अगर इतनी लम्बी अवधि में वह आउट-डेटेड हो जाये । इसलिए 7 साल के लिए जो आप फायदा देंगे नया आविष्कार करने वाले को, तो वह ज्यादा है जब कि हम समाजवाद की स्थापना करने का लक्ष्य रखते हैं । इसलिए 7 साल के बजाय 5 साल होना चाहिए ।

दूसरा संशोधन उपाध्यक्ष महोदय यह है कि—इन रिस्पेक्ट आफ ऐनी अदर इंवेंशन, 14 इयर्स फ्राम दि डेट आफ दि पेटेन्ट । यह 14 साल किसी एक व्यक्ति को हक देना, प्रापर्टी राइट के रूप में जब कि समाज को उससे ज्यादा फायदा हो सकता है, समाज उससे ज्यादा लाभान्वित हो सकता है, तो यह हमारे ध्येय के अनुकूल नहीं है । इसलिए मेरा संशोधन है कि 14 की जगह 10 कर दिया जाये । वैसे यह 10 भी ज्यादा है, उसको भी कम करना चाहिए, लेकिन यदि थोड़ी देर के लिए हम रखते हैं, बीच का रास्ता हम निकालते हैं, तो 10 साल रखें । तो "7" की जगह "5 साल" और "14" की जगह "10" रखें, यह मेरा संशोधन है, क्लाज 53 में ।

SHRI NAMBIAR: My point is: I am pressing my amendment No. 44 which reads as under:

Page 29, line 11,—

for "seven years from the date of the patent"

substitute—

"five years from the date of sealing of patent or eight years from the date of filing of complete specification or whichever period is shorter" (44).

My argument is quite opposed to that of Mr. Somani. The reason is this. I am agreeable to this gestation period of 3 years plus 5 years for patent period. During these 5 years, the whole amount that is to be spent is to be earned by the patentee. Therefore we are not depriving the patentee who has certain sums invested, who spends money on that, and he may get returns. Otherwise there will be no incentive. For those who are living only for the money value and not for humanitarian service, we are quite prepared to give their money's worth. Let them have a period of 3 years or 2 years for getting the patent sealed; after that we give them 5 years; and during those 5 years Mr. Somani and such other friends, who are good in business, must be good enough in getting back the money also and leave us out. That is the purpose; we are not taking the whole thing out.

Therefore, if the Government side will agree, I will amend my amendment slightly (*Interruption*) for the

benefit of the Government also. Instead of 8, I want to make it 7. I shall so put it so that the Government and the House may agree . . . (*Interruption*).

MR. DEPUTY-SPEAKER: I cannot allow any more amendments.

SHRI NAMBIAR: Sir, you have to finally accept an agreed formula. For the benefit of the agreed formula, I suggest this.

SHRI C. K. BHATTACHARYYA (Raiganj): Sir, you have disallowed Shri Randhir Singh's amendment because it was time-barred.

SHRI NAMBIAR: If the House agrees, we can change this, without changing the contents. My amendment reads:

> "five years from the date of sealing of patent or seven years from the date of filing of complete specification or whichever period is shorter"

Instead of that, Sir, my new amendment will be:

> "five years from the date of sealing of patent or seven years from the date of patent whichever period is shorter"

If the Government will agree, that would be better. In regard to specifications etc. there were certain difficulties on the part of the Government. I came to know of it. I had some talk with Government side also and they found it difficult. With the acceptance of the House, this may be carried. Otherwise there is one danger. The other one is time-barred; the original thing will remain. Therefore, please give us this benefit. Thank you.

श्री वेणी शंकर शर्मा : उपाध्यक्ष महोदय, मुझे इस अवसर पर केवल दो ही शब्द कहने हैं । जहां तक औषधियों एवं बालकोपयोगी पोषक भोज्य सामग्री या भोज्य पदार्थों का प्रश्न है, मैं और मेरी पार्टी चाहती है कि यह आवश्यक दस्तुएं बिना मूल्य के लोगों को दी जायें जैसा कि प्राचीनकाल से भारत में होता भी आया है, जो भारत की परम्परा है । कम से कम औषधियों के लिए अगर कोई व्यक्ति नाजायज या अधिक दाम लेता है तो मैं उसको एकदम ग़लत और नावाजिब चीज समझता हूं । इसलिए जहां तक कम से कम भोज्य पदार्थों जैसे बेबीफूड तथा औषधियों का प्रश्न है मैं चाहूंगा कि पेटेन्ट के लिए जो 7 वर्ष का समय दिया गया है उसको घटा कर 5 वर्ष कर दिया जाय । भारतवर्ष एक बहुत बड़ा देश है और जाहिर है कि जो लोग इस क्षेत्र में कोई आविष्कार करेंगे उसकी बिक्री यहां काफ़ी मात्रा में होगी । इसलिए उन्होंने जो कुछ उसमें खर्च किया है उसकी पूर्ति देश को बड़े होने के कारण स्वयं ही हो जायेगी । इसलिए मैं समझता हूं कि 7 वर्ष के बजाय 5 वर्ष का समय ही उपयुक्त रहेगा ।

SHRI N. DANDEKER: Mr. Somani has spoken on Amendment No. 4. I wish to speak on Amendment No. 3. I will just take one minute. The patentee has got certain period to exploit the patent. The Bill provides 7 years. Mr. Somani has given reasons why it should be 10 years. An equally critical point in this is: 7 years or 10 years from when? My submission in making this amendment is that it should be—whichever period is finally accepted by the Government—from the date of the sealing of the patent, so that all the time which is legitimately taken by the Controller of Patents for examining the patent application to see whether it is genuine and what is new about it and so on and all the time taken for the lot of proceeding to be done could be taken into account. I would not like to suggest that this proceeding ought to be cut down because I think it is proper and he should have the time that he requires. Therefore whether it is seven years as proposed in the Bill or 10 years as Shri N. K. Somani has urged, and which I

[Shri N. Dandeker.]

support, in either case, it should be from the date of sealing of the patent.

SHRI DINESH SINGH: Two divergent points of view have been expressed in the House. One is that seven years should be extended to ten years and the other is that it should be reduced to five years. I am willing to accommodate to a certain extent all the points of view that have been expressed by hon. Members including Shri N. Dandeker, that it should be from the date of sealing. I would put it this way. There is an amendment proposed by Shri Nambiar which says that it should be seven years from the date of patent or five years from the date of sealing of the patent, whichever is shorter. If you would permit this amendment, I shall have no difficulty in accepting it. It will accommodate the period of five years that has been put and also the period of seven years provided by the Joint Committee. It will take into account the concept of having an exact date that Shri N. Dandeker has mentioned, namely that it should be from the date of sealing of the patent. All the concepts as such would be accommodated in this.

The point that Shri N. K. Somani made in this regard was gone into in great length in the Joint Committee. Although he is right in saying that at one stage it was thought that we might have this period extending up to ten years, while considering this matter, taking into account various views and also listening to various expert advice, the Joint Committee felt that the period should be really seven years from the date of patent which is the same as the date of filing of complete specifications. I do not think that it would now be desirable to try to change this because much thought has gone behind it.

Besides, I have not quite understood the point that Shri N. K. Somani was making. He is interested in this country manufacturing something and manufacturing it quickly. Why should he want to wait for another three years when we have an opportunity of making it three years earlier? The idea that foreign companies will not be coming forward here to cater to the market of over 500 million people is totally absurd.

SHRI N. K. SOMANI: Then, why wait even for five years? Let us have no period at all. Let it be a plunder!

SHRI DINESH SINGH: It is a question of a balance. As a manufacturer, I thought, the hon. Member would be interested in our facilitating his manufacturing something quickly and on reasonable terms rather than being exploited by a foreign patentee, and we are only trying to held him.

MR. DEPUTY-SPEAKER: The hon. Minister has indicated that he is prepared to accept the amendment of Shri Nambiar as modified. He has indicated that he is prepared to accept amendment No. 44 of Shri Nambiar as modified by him just now. If Government and the hon. Member agree, then I do not want to come in the way.

SHRI N. DANDEKER: What is there private about it? Let us know what is happening. Have you, Sir, understood what it is?

MR. DEPUTY-SPEAKER: I may be allowed to make my observations, and then hon. Members can protect or do whatever they like. I shall put all the other amendments to the vote of the House. But, I am clarifying only one issue. I do not want to stand in the way. I am prepared to accept the modified amendment of Shri Nambiar and put it to the vote of the House. I shall read that out.

SHRI C. K. BHATTACHARYYA: May I make a submission? When you overruled Shri Randhir Singh's amendment, did you ask the Minister to indicate his reaction to the same? Did he indicate his reaction to the amendment? (*Interruptions*).

MR. DEPUTY-SPEAKER: I understand your point. This is not a new amendment. This is only a modification of an amendment which has already been moved. The question of moving an amendment is different.

SHRI C. K. BHATTACHARYYA: That means moving a fresh amendment.

MR. DEPUTY-SPEAKER: Order please. There are many amendments to this Clause. Shall I put amendment Nos. 3 and 4 together?

SHRI N. DANDEKER: If I understand what Shri Nambiar's modified amendment is then I may be able to reply.

MR. DEPUTY-SPEAKER: Shri Nambiar's original amendment reads as follows:

Page 28, line 11,—

for "seven years from the date of the patent"

substitute—

"five years from the date of sealing of patent or eight years from the date of filing of complete specification or whichever period is shorter." (44).

Now he wants to modify it this way. The modified amendment of Shri Nambiar reads as follows:

Page 28 line 11,—

for "seven years from the date of the patent"

substitute—

"five years from the date of sealing of patent or seven years from the date of patent whichever period is shorter."

DR. SUSHILA NAYAR: We are opposed to it.

MR. DEPUTY-SPEAKER: You oppose it. I am only reading that again as Shri Dandeker wanted to know what Shri Nambiar's modified amendment was. Shri Nambiar's original amendment was as follows:

Page 28, line 11,—

for "seven years from the date of the patent"

substitute—

"five years from the date of sealing of patent or eight years from the date of filing of complete specification or whichever period is shorter."

His modified amendment now which the hon. Minister is prepared to accept is "five years from the date of sealing of patent or seven years from the date of patent whichever period is shorter." I am only clarifying this to understand the position. May I put the amendment Nos. 3 and 4 by Shri Dandeker and Shri Somani together?

SEVERAL HON. MEMBERS: Yes.

MR. DEPUTY SPEAKER: I shall now put the amendment Nos. 3 and 4 together to the House.

Amendments 3 and 4 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"Page 28, line 11,—*for* "seven"

substitute "five". (21).

The Lok Sabha divided:

Division No. 11] **[16.43 hrs.**

AYES

*Govind Das, Dr.
Jha, Shri Shiva Chandra
Khan, Shri Ghayoor Ali
Molahu Prasad, Shri
Mukerjee, Shri H. N.
Nayar, Dr. Sushila
Nihal Singh, Shri
Sen, Shri Deven
Sen, Dr. Ranen
Sharma, Shri Yogendra

NOES

Aga, Shri Ahmed
Amat, Shri D.
Atam Das, Shri
Awadesh Chandra Singh, Shri
Babunath Singh, Shri
Bajaj, Shri Kamalnayan
Bajpai, Shri Vidya Dhar
Barupal, Shri P. L.
Basumatari, Shri
Bhagat, Shri B. R.
Bhandare, Shri R. D.
Bhanu Prakash Singh, Shri
Bhattacharyya, Shri C. K.
Brahmanandji, Shri Swami
Buta Singh, Shri
Chanda, Shri Anil K.
Chandrika Prasad, Shri
Chaturvedi, Shri R. L.
Chavan, Shri Y. B.
Dandeker, Shri N.
Dar, Shri Abdul Ghani
Dass, Shri C.
Deshmukh, Shri B. D.
Deshmukh, Shri K. G.
Dhuleshwar Meena, Shri
Dinesh Singh, Shri
Dixit, Shri G. C.
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Gautam, Shri C. D.
Gavit, Shri Tukaram
Ghosh, Shri Parimal
*Tiwary, Shri K. N.
Girja Kumari, Shrimati
Gowda, Shri M. H.
Gupta, Shri Lakhan Lal
Gupta, Shri Ram Kishan
Heerji Bhai, Shri
Himatsingka, Shri
Jadhav, Shri Tulshidas
Jadhav, Shri V. N.
Jamir, Shri S. C.
Kahandole, Shri Z. M.
Kamala Kumari, Kumari
Karan Singh, Dr.
Kasture, Shri A. S.
Kavade, Shri B. R.
Kedar Nath Singh, Shri
Kesri, Shri Sitaram
Khadilkar, Shri R. K.
Khan, Shri Zulfiquar Ali
Kisku, Shri A. K.
Krishna, Shri M. R.
Krishnan, Shri G. Y.
Kureel, Shri B. N.
Laskar, Shri N. R.
Laxmi Bai, Shrimati
Lutfal Haque, Shri
Mahadeva Prasad, Dr.
Maharaj Singh, Shri
Majhi, Shri Mahendra
Mandal, Dr. P.
Mandal, Shri Yamuna Prasad
Marandi, Shri

*Wrongly voted for AYES.

Master, Shri Bhola Nath
Melkote, Dr.
Mishra, Shri G. S.
Mohinder Kaur, Shrimati
Naik, Shri G. C.
Nanda, Shri
Pahadia, Shri Jagannath
Pant, Shri K. C.
Paokai Haokip, Shri
Partap Singh, Shri
Parthasarathy, Shri
Patil, Shri Anantrao
Patil, Shri Deorao
Patil, Shri S. D.
Pramanik, Shri J. N.
Qureshi, Shri Mohd. Shafi
Radhabai, Shrimati B.
Raghu Ramaiah, Shri
Rajni Devi, Shrimati
Raju, Shri D. B.
Raju, Dr. D. S.
Ram Sewak, Shri
Ramamoorthy, Shri S. P.
Randhir Singh, Shri
Rao, Dr. K. L.
Rao, Dr. V. K. R. V
Rao, Shri V. Narasimha
Reddi, Shri G. S.
Reddy, Shri Ganga
Rohatgi, Shrimati Sushila
Roy, Shri Bishwanath
Roy, Shrimati Uma
Sadhu Ram, Shri
Sankata Prasad, Dr.
Sayyad Ali, Shri
Sen, Shri Dwaipayan
Sethi, Shri P. C.
Shambhu Nath, Shri
Shankaranand, Shri B.
Sheo Narain, Shri
Shiv Chandika Prasad, Shri
Siddayya, Shri
Siddheshwar Prasad, Shri
Sinha, Shri R. K.
Sinha, Shri Satya Narayan
Somani, Shri N. K.
Sonar, Dr. A. G.
Sudarsanam, Shri M.
Sunder Lal, Shri
Sursingh, Shri
Swaran Singh, Shri
Tapuriah, Shri S. K.
Thakur, Shri P. R.
Uikey, Shri M. G.
Ulaka, Shri Ramachandra
Verma, Shri Prem Chand

MR. DEPUTY-SPEAKER: The result*of the Division is: Ayes 11; Noes 119.

The motion was negatived.

MR. DEPUTY-SPEAKER: I shall now put amendment No. 22 to vote.

Amendment No. 22 was put and negatived.

MR. DEPUTY-SPEAKER: Now, Shri Nambiar's amendment.

श्री शिवचन्द्रन : उपाध्यक्ष महोदय, मेरा पायंट आफ़ आर्डर है । इस क्लाज 53 में 7 साल की जगह 5 साल करने का मेरा संशोधन था, जिसको हाउस ने रिजेक्ट कर दिया है । 7 साल की जगह 5 साल करने के लिए मेरा संशोधन था जिसको कि हाउस ने रिजेक्ट कर दिया । तो अब नम्बियार का संशोधन जो है, जिसमें मैं मानता हूं कि मेरा भी नाम है, एस० एम० बनर्जी का नाम है और कंडप्पन का नाम है, कई सदस्यों के नाम हैं, उसमें वह कहते हैं :

"five years from the date of sealing of patent or eight years from the date of filing of complete

*The following Members also recorded their votes for NOES: Sarvashri K. Suryanarayana, Shashi Ranjan, J. Ahmed, K. N. Tiwary and Dr. Govinda Das.

[श्री शिव चन्द्र झा]

specification or whichever period is shorter".

तो मेरा कहना यह है कि जब पांच साल का मेरा संशोधन रिजेक्ट हो गया तो यह दूसरा संशोधन 5 साल के लिए कैसे लिया जा सकता है ?

SHRI NAMBIAR: About the point of order, the hon. Member has not properly understood the new amendment.

SHRI N. K. SOMANI: Is he answering the point of order?

MR. DEPUTY-SPEAKER: When a point of order is raised, I have to give the ruling, but it does not bar me from hearing arguments on the point of order.

SHRI NAMBIAR: The clause reads:

> "in respect of an invention claiming the method or process of manufacture of a substance,*** where the substance is intended for use, or is capable of being used, as food or as a medicine or drugs, be seven years from the date of the patent;"

Instead of seven years he wanted five years. That means five years from the date of the patent. Only that has been rejected. What I am asking for is eight years from the date of patent and five years from the date of sealing. Therefore, these two amendments are different and one does not bar the other.

SHRI ABDUL GHANI DAR (Gurgaon): I think there is some difficulty. Probably you must have seen that the Prime Minister voted for Ayes, in favour of Mr. Jha's amendment. I think the ruling party misguided their leader who voted for Mr. Jha while they voted against Mr. Jha. You kindly give your ruling that the voting be taken again. Otherwise, the Prime Minister will be in the wrong position.

MR. DEPUTY-SPEAKER: How she votes is not my concern. There is no point of order.

Mr. Jha's amendment sought to reduce the period from seven years to five years from the date of the patent. Mr. Nambiar's amendment is different. He wants five years from the date of sealing of patent. They are two different things. Therefore, his point of order is not sustained.

SHRI N. DANDEKER: What is the difference between the date of the patent and the date of the sealing of the patent?

SHRI DINESH SINGH: The date of patent means the date of filing of complete specifications. I would invite the attention of the hon. Members to clause 45 in this regard. The date of sealing of the patent is the date on which it is actually sealed. The Bill provides that there would be an interregnum of about two years between these processes, and, therefore, the two periods may perhaps be co-terminous in that way.

MR. DEPUTY-SPEAKER: I shall now put Shri Nambiar's amendment as modified.

The question is:

Page 28, line 11,—

for "seven years from the date of the patent"

Substitute—

"five years from the date of sealing of patent or seven years from the date of patent whichever period is shorter" (44, as modified).

The motion was adopted.

MR. DEPUTY-SPEAKER: I think there is no need to put amendment No. 55 of Mr. Beni Shanker Sharma to the vote of the House. Has he the

leave of the House to withdraw his amendment?

Amendment No. 52 was, by leave, withdrawn.

MR. DEPUTY-SPEAKER: The question is:

"That clause 53, as amended, stand part of the Bill."

The motion was adopted.

Clause 53, as amended, was added to the Bill.

New Clause 53-A

MR. DEPUTY- SPEAKER: There is amendment No. 5 to insert a new clause 53A Is Mr. Dandeker or Somani moving it?

SHRI N. K. SOMANI: Yes, Sir. I move:

Page 28,—

after line 23 *insert*—

"53A. (1) A patentee in respect of an invention referred to in clause (a) of sub-section (1) of section 53 may present a petition to the Controller praying that the term of his patent may be extended for a further term; but such petition must be left at the patent office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee and must be advertised by the patentee within, the prescribed time und in the prescribed manner.

(2) Any person may, within such time as may be prescribed and on payment of the prescribed fee give notice to the Controller of objection to the extension.

(3) On hearing of a petition under this section any person who has given notice under sub-section (2) of objection shall be made a party to the proceeding.

(4) If it appears to the Controller that the patentee could not work his invention on a commercial scale for a period of not less than six years at any time after the date of the sealing of the patent, or that the patent has not been sufficiently remunerative, the Controller may, having regard to all the circumstances of the case, by an order extend the term of such patent for a further term not exceeding four years as may be specified in the order and subject to any restriction, conditions and provisions which the Controller may think fit." (5).

We are seeking to introduce this new clause 53A for various reasons. I have already mentioned in my earlier submissions some instances. The Hindustan Anti-Biotics, for instance, said that it took them eight years to develop their new anti-biotic Haymicin. Out of the seven years time that they had been pleased to sanction for the administration of the patent, six or seven years lapse before which a particular company or innovator is successful in making commercial exploitation of that particular product or process. Then of course he has nothing to gain at all there is very little chance for exploration of that particular process. I also said at that time that a lot of developing countries have given a great deal of thought to this. In addition to the countries that I mentioned, I should like to say that some socialist countries and communist countries from which our Government takes a great deal of inspiration Czechoslovakia, East Germany, Hungary, Poland, USSR and also Cuba have all invariably provided between 15 and 20 years. Does our Government wish to claim for itself a much more revolutionary character than those countries? (*Interruptions.*)

We have now put in seven years for the life of a particular patent. I have given one instance and I am sure the

[Shri N. K. Somani]

Minister would know of several others. To develop a particular process to the stage of commercial exploitation it takes a great deal of time. Sub-para (4) of the new clause which we seek to insert seeks to give additional time. If it can be reasonably proved by the applicant before the Controller of Patents, that inspite of his being sincere and industrious he has not been able to work it on a commercial scale, the Controller may grant him further time. It reads as follows:

> "If it appears to the Controller that the patentee could not work his invention on a commercial scale for a period, of not less than six years at any time after the date of the sealing of the patent, or that the patent has not been sufficiently remunerative, the Controller may, having regard to all the circumstances of the case, by an order extend the term of such patent for a further term not exceeding four years....".

We are not asking for *carte blanche*. Anybody else can take exception to this under sub-clause (3); he can give notice and say that this is frivolous and unworkable and therefore the application should not be upheld. When you look into the circumstances of the case and the interest of the country and international development, you will find that clause 53A asks for a very reasonable extension of time to the patentee and I hope the Government would give due consideration to this.

DR. SUSHILA NAYAR: I wish to oppose this amendment for the following reasons. Firstly, we have asked for seven years because we know very well that many persons take patents long before they are ready to exploit them and the only objective is to keep everyone else out of the field. It is to prevent that tendency that we have kept the period of seven years. There is nothing to prevent them from starting their commercial output even before the sealing of the patent for the simple reason that the patent protection is given from the day it is filed and not from the day it is sealed. Under the circumstances we want the people who take the patents to start exploiting those patents at the earliest possible moment and not go on waiting for years. Now under this amendment they can deliberately or negligently or for any other reason go on delaying production in the earlier stages. It is not only that. It is to their advantage in many cases to delay production because they can import those drugs in the meantime and derive the benefits which are very considerable and substantial. Under the circumstances it is absolutely necessary that we do not encourage this deliberate delaying tactics which have been so detrimental to the progress of industry in our own country and, therefore, I hope that the Government does not accept this amendment.

SHRI N. DANDEKER: I would like to say a word. In this new clause 53(a) no right is proposed to be conferred. All that is proposed to be done is to give the person an opportunity of satisfying the Government, that is, the Controller as to the genuineness of the circumstances, if any, as to why the patent could not be developed on a commercial scale within the time allowed. There is no question of requiring the Controller to grant the extension; there is no question of preventing anybody of objecting to the grant of extension. The whole thing is entirely a matter for the Controller to decide having regard to the genuineness or otherwise of the circumstances urged and if he has the slightest suspicion of the kind my friend has been urging I have no doubt a person in that position could reject the application outright.

श्री अब्दुल गनी डार : मैं सोमानी जी की ताईद में खड़ा हुआ हूं । उन्होंने जो प्वाइंट सामने रखा है उस पर मेरी बहन ने खयाल नहीं किया है । इनकी ख्वाहिश नहीं है कि एक बार छाप लगा कर बैठ जायें तो एक्स्प्लायट करते रहें यानी जिसको मिल जाये वह एक्स्प्लायट करता चला जाये बल्कि उनकी ख्वाहिश है कि देख लें जैन्युइननेस है या नहीं । मै उनको मुबारिकबाद देना चाहता हूं कि उन्होंने यू० एस० एस० आर०, क्यूबा, चेकोस्लोवाकिया का हवाला दिया । मुझे इस बात की खुशी है कि अगर यह बात हो जाये, यू० एस० एस० आर० से गठजोड़ हो जाये तो मैं इनकी शादी पर मुबारिकबाद देता हूं ।

شری عبدالغنی ڈار - میں سومانی جی کی تائید میں کھڑا ہوا ہوں - انہوں نے جو پوائنٹ سامنے رکھا ہے اس پر میری بہن نے خیال نہیں کیا ہے - انکی قطعی یہ خواہش نہیں ہے کہ ایک بار چھاپ لگا کر بیٹھ جائیں تو ایکسپلائٹ کرتے رہیں یعنی جس کو مل جائے وہ ایکسپلائٹ کرتا چلا جائے بلکہ ان کی خواہش ہے کہ دیکھ لیں جینوین لیس ہے یا نہیں - میں ان کو مبارکباد دینا چاہتا ہوں کہ انہوں نے یو ایس ایس آر کیوبا چیکوسلوویکیا کا حوالہ دیا - مجھے اس بات کی خوشی ہے کہ اگر یہ بات ہو جائے یو ایس ایس آر سے تو جوڑ ہو جائے تو میں ان کی شادی پر مبارکباد دیتا ہوں -]

SHRI P. RAMAMURTI (Madurai): I oppose this amendment. My friend, Shri Dandeker, said that after all discretion is sought to be given to the Controller. I am very much opposed to giving discretionary powers because we know how big business interests are able to get hold of these Controllers. We have enough experience and it is not at all necessary. They are not above board. Seven years is a long period for anybody to commercially exploit it and if a man is not able to exploit it for seven years then he will not be able to exploit it in another four years. If he does not exploit for seven years then there must be some other reason.

SHRI ABDUL GHANI DAR: What about China? (*Interruptions*).

17 hrs.

SHRI P. RAMAMURTI: Do not quote China and Cuba where there is no private trade.... (*Interruption*).. or Czechoslovakia or Cuba or Poland. There is no private interest involved there. Therefore, the question does not arise. I am so much opposed to this and so I say that the amendment should be rejected outright.

SHRI DINESH SINGH: Mr. Deputy-Speaker, the concept that the hon. Member has mentioned, about the company not being able to have commercial exploitation and therefore being given more time, really does not fit in with the overall picture, because if a large company—he is thinking in terms of foreign companies—has not been able to go into commercial exploitation, it is not likely that any other company would be able to go, and therefore there would be that gap and a difference between the exploitation.

But apart from that, he referred to various points, and purely for the record, I would like to correct him. There is a provision in the United Kingdom, and in some other commonwealth countries including India under the present Act; there is a provision for extension. Shri Justice Ayyangar has recommended that this provision for extension be deleted. In the United Kingdom also, the report of the Banks Committee which has been published in July, 1970, has suggested

the omission of the provision for extension of term. There is no provision for grant of extension of patents in the United States, Germany, Switzerland, Holland and Belgium. The hon. Member has collected from somewhere some figures about some socialist countries. I would not like to say that he probably refers to the wrong books which give ideas of socialist countries but he certainly has got them wrong somehow. According to the papers that I have, Poland does not have any provision for extension, nor does Czechoslovakia have any provision for extension nor Rumania. (*Interruption*). There are certain provisions in the Soviet Union which is very rarely considered, I believe. But this is the whole problem: we are always looking to what is happening either in the Soviet Union or the United States or the United Kingdom. We have got to look into the conditions in this country.

The eminent people in this country who have gone into it, such as Justice Ayyanger, and the Joint Committee that went into it came to the conclusion and thought that it would not be desirable to provide any extension of term.

Besides, there is a serious difficulty that they have mentioned. It would be almost impossible to draw up the criteria under which this extension should be considered, and we would get involved in unnecessary legal questions and that will only cause delay.

I would, therefore, request the hon. Member not to press this amendment because we are not in a position to accept it.

MR. DEPUTY-SPEAKER: Are you pressing it?

SHRI N. A. SOMANI: I am pressing it.

MR. DEPUTY-SPEAKER: All right. The question is:

Page 28, *after* line 23, *insert*—

"53A. (1) A patentee in respect of an invention referred to in clause (a) of sub-section (1) of section 53 may present a petition to the Controller praying that the term of his patent may be extended for a further term; but such petition must be left at the patent office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee and must be advertised by the patentee within the prescribed time and in the prescribed manner.

(2) Any person may, within such time as may be prescribed and on payment of the prescribed fee, give notice to the Controller of objection to the extension.

(3) On hearing of a petition under this section any person who has given notice under sub-section (2) of objection shall be made a party to the proceedings.

(4) If it appears to the Controller that the patentee could not work his invention on a commercial scale for a period of not less than six years at any time after the date of the sealing of the patent, or that the patent has not been sufficiently remunerative, the Controller may, having regard to all the circumstances of the case, by an order extend the term of such patent for a further term not exceeding four years as may be specified in the order and subject to any restriction, conditions and provisions which the Controller may think fit." (5).

The Lok Sabha divided:

Division No. 12] **AYES** **[17.07 hrs.]**

Bajaj, Shri Kamalnayan
Dandeker, Shri N.
Dar, Shri Abdul Ghani
Dass, Shri C.
Deb, Shri D. N.
Deo, Shri P. K.
Ghosh, Shri Bimalkanti
Gupta, Shri Ram Kishan
Himatsingka, Shri

Abraham Shri K. M.
Aga, Shri Ahmed
Ahmed, Shri J.
Atam Das, Shri
Awadesh Chandra Singh, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Banerjee, Shri S. M.
Barupal, Shri P. L.
Basumatari, Shri
Bhagat, Shri B. R.
Bhandare, Shri R. D.
Bhanu Prakash Singh, Shri
Bhattacharyya, Shri C. K.
Brahmanandji, Shri Swami
Burman, Shri Kirit Bikram Deb
Buta Singh, Shri
Chanda, Shri Anil K.
Chandrakar, Shri Chandoolal
Chandrika Prasad, Shri
Chaturvedi, Shri R. L.
Chavan, Shri Y. B.
Choudhury, Shri J. K.
Daschowdhury, Shri B. K.
Deshmukh,, Shri B. D.
Deshmukh, Shri K. G.
Dhuleshwar Meena, Shri
Dinesh Singh, Shri
Dixit, Shri G. C.
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Gautam, Shri C. D.
Gavit, Shri Tukaram
Majhi, Shri Mahendra
Naik, Shri G. C.
Ranga, Shri
Raju, Shri D. B.
Raju Shri D. S.
Rao, Shri V. Narasimha
Sheo Narain, Shri
Somani, Shri N. K.
Tapuriah, Shri S. K.

NOES

Ghosh, Shri Ganesh
Ghosh, Shri Parimal
Girja Kumari, Shrimati
Gopalan, Shri P.
Govind, Das Dr.
Gowd, Shri Gadilingana
Gowda, Shri M. H.
Gupta, Shri Kanwar Lal
Gupta, Shri Lakhan Lal
Halder, Shri K.
Jadhav, Shri Tulshidas
Jadhav, Shri V. N.
Jamir, Shri S. C.
Jha, Shri Shiva Chandra
Kamala Kumari, Kumari
Kandappan, Shri S.
Karan Singh Dr.
Kasture, Shri A. S.
Kavade, Shri B. R.
Kedar Nath Singh, Shri
Kesri, Shri Sitaram
Kisku, Shri A. K.
Krishna, Shri M. R.
Krishnan, Shri G. Y.
Kureel, Shri B. N.
Lakkappa, Shri K.
Laskar, Shri N. R.
Laxmi Bai, Shrimati
Lutfal Haque, Shri
Mahadeva Prasad, Dr.
Maharaj Singh, Shri
Mahishi, Dr. Sarojini
Mandal, Dr. P.
Mandal, Shri Yamuna Prasad

Marandi, Shri
Master, Shri Bhola Nath
Melkote, Dr.
Mishra, Shri Bibhuti
Mishra, Shri G. S.
Mohahu Prasad, Shri
Mukerjee, Shri H. N.
Nambiar, Shri
Nanda, Shri
Nayar, Dr. Sushila
Nihal Singh, Shri
Pahadia, Shri Jagannath
Pant, Shri K. C.
Paokai Haokip, Shri
Partap Singh, Shri
Parthasarathy, Shri
Patil, Shri Anantrao
Patil, Shri Deorao
Patil Shri N. R.
Patil Shri S. D.
Qureshi, Shri Mohd. Shafi
Raghu Ramaiah, Shri
Rajni Devi, Shrimati
Ram Sewak, Shri
Ramamurti, Shri P.
Ramani, Shri K.
Randhir Singh, Shri
Rao, Shri Jaganath
Rao, Dr. V. K. R. V.
Raut, Shri Bhola
Reddi, Shri G. S.
Reddy, Shri Ganga
Rohatgi, Shrimati Sushila
Roy, Shri Bishwanath
Roy Shrimati Uma
Sadhu Ram, Shri
Sankata Prasad, Dr.
Sayeed, Shri P. M.
Sayyad Ali, Shri
Sen, Shri Dwaipayan
Sethi, Shri P. C.
Shambhu Nath, Shri
Shankaranand, Shri B.
Sharda Nand, Shri
Sharma, Shri Beni Shanker
Sharma, Shri Madhoram
Sharma, Shri Yajna Datt
Sharma, Shri Yogendra
Shiv Chandika Prasad, Shri
Shukla, Shri Vidya Charan
Siddayya, Shri
Siddheshwar Prasad, Shri
Sinha, Shri R. K.
Sinha, Shri Satya Narayan
Sonar, Dr. A. G.
Sudarsanam, Shri M.
Sunder Lal, Shri
Suraj, Bhan, Shri
Surendra Pal Singh, Shri
Sursingh, Shri
Suryanarayana, Shri K.
Swaran Singh, Shri
Thakur, Shri P. R.
Uikey, Shri M. G.
Ulaka, Shri Ramachandra
Umanath, Shri
Verma, Shri Prem Chand

MR. DEPUTY-SPEAKER: The result* of the division is:

Ayes 18, Noes 133.

The motion was negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clauses 54 to 63 stand part of the Bill."

The motion was adopted.

Clauses 54 to 63 were added to the Bill.

Clause 64.— (*Revocation of Patents.*)

SHRI N. K. SOMANI: I beg to move:

Page 34, line 6, *for* "in India possessing average"
substitute "possessing". (6)

On page 34, the preamble reads thus:

* Shri K. P. Singh Deo also recorded his vote for AYES.

"that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in and average knowledge of . . . ".

This is my main objection. What is the definition of average Indian skill and average knowledge? Is it my skill and knowledge or the minister's skill and knowledge? This is a generic term and it is so vague. This is something which is liable to be misused. For the sake of precision and brevity, we have moved this extremely innocuous amendment seeking to drop the word "average". I do not think there is any definition of these two terms "average skill" and "average knowledge". I hope the minister will accept the amendment.

SHRI DINESH SINGH. Mr. Deputy-Speaker Sir, if the whole idea is a very simple one, as the hon. Member says, I cannot see why he is pressing it. What is it that really bothers him? Who will take advantage? He said, "Advantage may be taken of it". Who will take advantage of it? You mean the Government? The Government, of course, represents the people of India, and therefore, if the hon. Member takes objection to the people of India taking advantage of it, I do not agree with him.

The whole idea behind this, Sir, is that they may put the process, which is to be patented, in such a manner that may not give out the process fully and it may be difficult for somebody to start manufacturing on that basis. For example, it may take into account a certain other process. They may say that you arrive at this product from such and such process and then move forward. Here the idea is that it will give an opportunity to the Indian manufacturer to get full details of the patent, by which he will be in a position to manufacture. It is only a question of further clarity. I don't see what is the objection. Where is the question of taking advantage? All that we are saying is that the process must be spelt out as fully as possible. I see no objection.

AN HON. MEMBER: Below average thinking.

MR. DEPUTY-SPEAKER: I will now put Amendment No. 6 to the House.

Amendment No. 6 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"Clause 64 stand part of the Bill".

The motion was adopted.

Clause 64 was added to the Bill.

Clauses 65 to 73 were added to the Bill.

Clause 74.—(Patent office and its branches.)

SHRI SHIVA CHANDRA JHA: I beg to move:

Page 38,—

after line 42, *insert*—

"Provided there is at least one such office in each State." (23).

उपाध्यक्ष महोदय, क्लाज नम्बर 74 पर 23 नम्बर का जो मेरा अमेंडमेंट उसके सम्बन्ध में मैं दो शब्द कहना चाहता हूं ।

Sub-clause (3) of Clause 74 says: "The head office of the patent office shall be at such place as the Central

[Shri Shiva Chandra Jha]

Government may specify, and for the purpose of facilitating the registration of patents there may be established, as such other places as the Central Government may think fit, branch offices of the patent office"

My amendment is: "Provided there is at least one such office in each State".

यह ठीक है कि सेंट्रल गवर्नमेंट जैसे स्पेसिफ़ाई करेगी वहां पेटेन्ट आफ़िस का हैडआफिस बनाया जायगा । लेकिन उसमें गड़बड़ियां हो सकती हैं और पक्षपात की बातें आ सकती हैं । इसलिए मेरा संशोधन है कि यहां पर साफ़ कर दिया जाय कि कम से कम एक दफ्तर पेटेन्ट का आप को हर प्रान्त में रखना चाहिए ताकि धांधलियां न हों । हर एक स्टेट में कम से कम एक ऐसा आफ़िस हो यही मेरा संशोधन है ।

श्री दिनेश सिंह : उपाध्यक्ष महोदय, विधेयक में ऐसा कहीं नहीं लिखा हुआ है कि प्रदेश का दफ्तर केन्द्र में नहीं हो सकता है । फिलहाल सवाल यह है कि जो हमारा केन्द्रीय दफ्तर है अभी उसको काफ़ी बढ़ाना है, काफ़ी मजबूत करना है । जो नई-नई जिम्मेदारियां आ रही हैं उनके लिए वहां इंतजाम करना है । इस वक्त अगर जो हम यह झा जी की बात मान लेते हैं तो एकदम से हम को केन्द्रीय दफ्तर और सब प्रदेशों में बढ़ाने होंगे । इस वक्त इतने पेटेंट्स प्रदेशों से नहीं आ रहे हैं जिसके लिए कि यह सुविधा हम को वहां करनी चाहिए ।

श्री शिवचन्द्र झा : चार हजार पेंडिंग केसेज हैं ।

श्री दिनेश सिंह : माननीय सदस्य बिहार में इतने काफ़ी पेटेंट्स का इंतजाम कर लें कि वहां पर एक दफ्तर की आवश्यकता हो तो हम जरूर वहां एक दफ्तर खोल देंगे ।

MR. DEPUTY-SPEAKER: I shall now put amendment No. 23 to the vote of the House.

Amendment No. 23 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 74 stand part of the Bill."

The motion was adopted.

Clause 74 was added to the Bill.

Clauses 75 to 83 were added to the Bill.

Clause 83A (New)

SHRI KANWAR LAL GUPTA: Sir, I move:—

Page 41,—

after line 9, *insert*—

"83A. Without prejudice to the other provision in this chapter, the patentee shall notify the controller of the actual working of the patented invention on a commercial scale within a period of three years from the date of sealing. If no notification or evidence of working is given to the Controller, the invention is held not to be worked." (38)

उपाध्यक्ष महोदय, क्लाज 83 के बाद यह नया क्लाज जोड़ने के लिए मैं कह रहा हूं । मेरा खयाल है कि मंत्री महोदय को इसमें कोई ऐतराज नहीं होना चाहिए । वह मुझ से इस बात में सहमत होंगे कि काफी संख्या में ऐसे पेटेंट्स हैं जो रजिस्टर हुए हैं । लेकिन वह कभी इम्प्लिमेंट नहीं हुए । केवल ब्लाक करने के लिए यह काम हुआ है । एक्सपर्ट कमेटी की जो रिपोर्ट है पेटेन्ट्स के ऊपर उसमें भी यह बात मानी गई है कि कई जगहों पर फारेनर्स यह काम करते हैं कि

पेटेन्ट रजिस्टर करा लिया हिन्दुस्तान में और उसके बाद सो गये, ताकि यहां पर कोई लोग उसके ऊपर काम न कर सके ।

मैंने कहा है कि जहां आप ने सात साल लिखा है, वहां पर तीन साल लिख दीजिये, यानी तीन साल के बाद यह देखना चाहिए कि आया वह कुछ काम कर रहे हैं या नहीं । अगर कर रहे हैं तब तो ठीक है, नहीं कर रहे हैं तब उन से कह देना चाहिए कि तुम पेटेन्ट के हकदार नहीं हो । मैंने सीधी बात कही है कि आप सात साल के बाद यह चीज कहें यह ठीक नहीं होगा । मेरा खयाल है कि तीन साल के बाद यह देखने का मौका मिलना चाहिए कि कितना डेवेलपमेंट हुआ है । मेरा खयाल है कि मंत्री महोदय इस बात को मान लेंगे ।

श्री विश्वेश्वर सिंह : माननीय सदस्य जो बात कहते हैं वह तो विधेयक में दी गई है । उसमें साफ तौर पर कहा गया है कि रिवोकेशन हो जायेगा पेटेन्ट का अगर उसका इस्तेमाल नहीं हो रहा है । कंट्रोलर को अख्त्यार है कि उसके बारे में सूचना मांगे और जरूरत समझे तो उसको रिवोक कर दे । जो माननीय सदस्य का भाव है वह तो विधेयक में मौजूद है । उसके लिए कोई नई चीज लाने की आवश्यकता नहीं है ।

MR. DEPUTY-SPEAKER: I am now putting amendment No. 38 to the vote of the House.

Amendment No. 38 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clauses 84 to 58 stand part of the Bill."

The motion was adopted.

Clauses 84 to 86 were added to the Bill.

Clause 87—(*Certain patents deemed to be endorsed with the words "Licences of right".*)

SHRI N. K. SOMANI: Sir, I move:

Page 42, line 39,—

for "three" *substitute* "five" (7)

Page 43, line 2,—

for "three" *substitute* "five" (8)

DR. SUSHILA NAYAR: Sir, I move:

Pages 42 and 43,—

for lines 28 to 43 and 1 to 3

respectively,

substitute—

"87. (1) Notwithstanding anything contained in the Act,—

(a) every patent in force at the commencement of this Act in respect of inventions relatng to—

(i) substances used or capable of being used as food or as medicine or drug;

(ii) the methods or prosesses for the manufacture or production of any such substance as is referred to in sub-clause (i);

(iii) the methods or processes for the manufacture or production of chemical substances (including alloys, optical glass, semi-conductors and inter metalic compounds);

(b) every patent granted after the commencement of this Act in respect of any such invention as is referred to in Section 5,

shall be deemed to be endorsed with the words 'Licences of right'

[Dr. Sushila Nayar]

in the case of inventions referred to in Clause (a), from the commencement of this Act, and in the case of inventions referred to in Clause (b), from the date of the sealing of the patent." (30)

There are two things in this which need your attention. Firstly, the language of clause 87, as it stands, does not say very clearly what needs to be stated. The language that I have proposed clarifies the idea of the licence of right. We want the licence of right from the very commencement. If the licence of right is given three years after the patent is filed, it will become meaningless. It takes three to four years for the sealing of the patent, according to the time schedules that have been given under different clauses. For instance, clause 12(2) gives the examiner a period of 18 months to make a report; clause 21 provides a total period of 10 months for complying with the objections to applications or the complete specifications; clause 22 gives a further period, indefinite period, for giving complete specifications; clause 25 gives another period of 4 months and clause 43 gives another six months. All this comes to something like 44 months as the minimum period to 54 months more at the maximum.

As such, if the licence of right is given after 3 years of the commencement, it will mean that before the person can exploit the patent, the period of 7 years of the patent life would have been expired. It will become meaningless.

I would like to say that the licence of right is not something new. That was there in the old Act of 1911. It says:

> "At any time after the expiration of 3 years from the date of the sealing of the patent, the Central Government may apply to the Controller General on one or more grounds . . . to ensure that the patent is endorsed with the words "Licence of right"."

After 50 years or more of passing 1911 Act, if we again say that the licence of right will start after 3 years, it becomes meaningless. I want the hon. Minister to consider this and to have the licence of right from the commencement as was originally proposed and which was watered down in the Joint Committee under whatever circumstances it might have been.

I hope, the hon. Minister will accept this amendment which implies clearer language and the language which is, more or less, taken from the 1911 Act, the major operative provision is that the licence of right should start from the beginning and not 3 years after the patent is sealed.

SHRI N. K. SOMANI: Sir, we have said repeatedly that this period of 3 years is extremely short. I do not have anything new to add to this. The amendment seeks to enlarge the period or substitute the period from the expiration of 3 years to 5 years. Certainly, our view is that it will be beneficial to the development of research that we stand for and it will be in the interest of the country. I hope it will be accepted.

SHRI NAMBIAR: I am in support of Dr. Sushila Nayar's amendment. As she has explained, it will be an infructuous thing if it goes as it is. The licence of right will practically be nullified because by that time seven years period will be over. If the amendment of Dr. Sushila Nayar is accepted, the purpose will be served and the licence of right of a patent will be in operation. Otherwise, the licence of right will be just on paper and, in practice, it will not be operated and 7 years period will be over. After all, what she says is nothing new from the spirit of what you want to do. Let us put it in clearer manner so that you may get the benefit out of it. The Government can accept it because, by doing so, you are not going against the accepted spirit of the provisions of the Bill.

SHRI DINESH SINGH: Sir, you have heard two points of view that have been expressed here, one that we should raise this from 3 to 5 years and the other that we do away with 3 years. As I mentioned, that Select Committee had gone into in very great detail and they had tried to work out the best possible concensus taking into account the various points of view that are being expressed here. They have been equally expressed there. And in the final analysis, we felt that we should go along with the views of this Select Committee. After all, if there is any difficulty in the working of this Bill, we can always consider it at any time. But for the moment, we feel that it would be useful to retain these three years and see how it works out. If there is any difficulty, we can always consider it later on.

MR. DEPUTY-SPEAKER: I shall now put the Amendment Nos. 7, 8 and 30 to the vote of the House.

Amendments Nos. 7, 8 and 30 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 87 stand part of the Bill."

The motion was adopted.

Clause 87 was added to the Bill.

Clause 88.---(*Effect of endorsement of patent with the words "Licences of right."*)

MR. DEPUTY-SPEAKER: Clause 88. Amendment Nos. 9, 10, 24, 31, 32, 39 and 55 are being moved.

DR. SUSHILA NAYAR: I beg to move:

Page 43,—

for lines 18 to 12, *substitute*—

"88. (1) Where a patent has been endorsed with the words 'Licences of right' any person who is interested in working the patented invention in India shall at any time after such endorsement be entitled as of right to a Licence under the patent on such terms as may be mutually agreed upon by the patentee and the person applying for the licence, notwithstanding that he is already the holder of a licence under the patent before the endorsement." (31)

Page 43,—

for lines 35 to 38, *substitute*--

"(6) Save as otherwise provided in sub-section (5), the provisions of sub-sections (1), (2), (4), and (5) of section 93 (regarding the powers of the Controller) and of sections 94(a), 95(1) (iii), 95(2) and 95(3) shall apply to licences granted under this section as they apply to licences granted under section 84." (32)

SHRI KANWAR LAL GUPTA: I beg to move:

Page 43, lines 30 and 31,—

for "five per cent." substitute—

"three per cent. extendable upto four per cent. at the discretion of the Controller". (39)

SHRI P. R. THAKUR (Nabadwip): I beg to move:

Page 43, line 30,—

for "five" *substitute* "four" (55)

SHRI N. DANDEKER: I beg to move:

Page 43,—

after line 24, *insert*—

"(4A) The Controller shall in determining whether or not to grant a licence in pursuance of sub-section (3) of this section take account of the following matters, that is to say,—

(a) the nature of the invention, and the measures already taken by the patentee or any licence to make full use of the invention;

[Shri N. Dandekar—*contd.*]

(b) the ability of any person to whom a licence is to be granted to work the invention in the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the licence is granted but shall not take account of matters subsequent to the making of the application for grant of a licence made in pursuance of sub-section (3) of this section." (9)

Page 43,—

for lines 25 to 34, *substitute*—

"(5) In respect of every patent referred to in sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 87, which is endorsed with the words 'Licences of right' under clause (a) or clause (b) of that sub-section, the royalty or compensation payable to the owner of the patent under a licence granted to any person shall be determined in accordance with the provisions of section 95 of this Act." (10)

SHRI SHIVA CHANDRA JHA: Page 43, line 30,—

for "five" *substitute* "two" (24)

SHRI N. K. SOMAN: Sir, this particular clause, I think, is quite objectionable for more than one point of view. What it means to do or seeks to do is that all patents relating to food, medicine or drug products shall be deemed to be endorsed with the words 'Licenecs of right' from the commencement of the Act or for three years, as we have just now passed. But as far as the effect of this endorsement is concerned, the very dangerous precedent, which as I said and which was clearly pointed out by Mr. Dandeker in the First Reading, is that any person in India, irrespective of his qualification or ability to work a particular patent in India, will now have an automatic right to make use of the patent. Now, surely Sir, it cannot be the intention of this Government to expose a particular process. And now we certainly should take exception in the field of food, medicine and drugs. We have higher standards of manufacture and they will have to be maintained. I would not like to use the word plunder, but this is some kind of license which would enable each and every person to do so.

17.28 hrs.

[MR. SPEAKER *in the Chair*]

And therefore, Mr. Speaker, this is certainly not in the interest either of the development of the industry in the country or in the health interest.

Sir, it is recognised that the patents system, and we also agree with this, that as such should be encouraged to step up indigenous and local industries. And you have sufficient safeguards not only in this one but in many other provisions under the Industrial Development Act. And, therefore, with this particular use, you also expose this whole field as a free-for-all, and is not certainly understood. As I said, the use of patents for food, drugs and medicines by third parties shall now be automatic immediately on the sealing of the patent. And what is more: the Controller or the Government has diverted itself with the power to satisfy with a particular applicant or a particular man or a firm which wishes to go into this, has got the necessary technical skills, has got the expertise, has got the professional advice and whether he has got the finances. Anybody who seeks to apply as a matter of right would now be able to do. Sir, I think this will go against what you want to do yourself. And now the third thing is in respect of the compensation which is to be given to the patent-holder. And I think this has been arbitrarily and statutorily fixed at a fixed maximum of percentage, which will also go against the development of such things.

I would like to emphasise once again and bring to the Minister's attention Mr. Justice Ayyenger's observation in his report of 1959 (page 233) on the Revision of the Patents Law, Mr. Minister, has come to the conclusion that as far as this clauses of inventions is concerned—I am talking about the clause of food, medicine and drugs and all those kinds of sensitive and valuable products—they touch upon the public health and it is very necessary that there should be a guarantee that persons who are permitted to work the inventions are those who are qualified to work them honestly and efficiently. And he, therefore, proposed that the Government should definitely screen the applicants before granting any rights for 'licenses of rights'.

Mr. Speaker, now I would like also to recall that at an earlier stage, the Government itself recognised the force of this argument and first suggested that only those persons who had secured a license under your Drugs Act would only be allowed to apply as far as this particular thing is concerned. Now you again reverse your own original thinking, which I think was more sensible. Therefore, to me it is not clear as to why this vital thing which is likely to affect the health of the citizens of our country as well as the development of this important thing is being sought to be nullified. The Government itself is seeking to divest itself of this power. I think this is extremely improper. Therefore, our amendment No. 9 gives this power to the Controller that he must satisfy himself as far as these things are concerned.

श्री शिव चन्द्र झा : अध्यक्ष महोदय, मेरा यह संशोधन क्लाज 88 में जहां 5 परसेंट की बात है वहां 5 की जगह 2 परसेंट करने का है। मेरा कहना यह है कि 5 परसेंट बहुत ज्यादा होता है इसलिए इसको 2 परसेंट कर दिया जाय। लेकिन जैसा कि मुझे मालूम हुआ शायद आप क्लाज 100 में 4 परसेंट करने जा रहे हैं तो यहां उससे कांट्रेडिक्शन हो जायेगा। इसलिए मैं अपने संशोधन को माडिफाइड रूप में रखना चाहता हूं कि 5 परसेंट की जगह यहां भी 4 परसेंट कर दिया जाये। हालांकि मेरा संशोधन अभी जो है वह 5 की जगह 2 परसेंट का है लेकिन मैं उसे माडिफाइड रूप में रख रहा हूं कि 5 परसेंट की जगह 4 परसेंट कर दिया जाय।

DR. SUSHILA NAYAR: I wish to oppose the amendment of Mr. Somani. He is unnecessarily worried when he says that the provisions of this clause are throwing open the floodgates and making it free for all, anybody and everybody will start manufacturing drugs. The truth of the matter is that there are a number of other Acts which control drug production. There is the Drugs Act for instance and the Industrial Licensing Act. I don't think it would be right to throw this burden on the Patents Controller to decide on qualifications for giving licence of rights. We know how this right was hedged in by a number of conditions in the 1911 Act so that although the provision for licence of right was there, in the 50 years of or so of its existence, I do not think in any single case the licence of right was availed of by any once. Somehow or the other the matter went into all kinds of controversies and litigations and the right was never utilised by anybody. Further, the patent Controller's hands are full and to burden him further with the secreening of applications and laying down conditions, etc., will not be proper and fair. On the other hand, it will unnecessarily expose these officers to uncharitable charges of corruption. If they give judgment in favour of one, they will be accused by the other party and *vice versa*. Therefore, I don't think the amendment moved by Mr. Somani should be accepted.

Now I come to my own amendment. I request the Minister to give very careful consideration to this amendment. It is a very reasonable amendment. What I have stated therein is

[Dr. Sushila Nayar]

that automatically to apply the provisions of Sections 94 and 95 to clause 88 is not fair and proper. I would like him to examine these clauses 94(a) and (b). So far as 94 (a) is concerned, it states:

> "that patented inventions are worked on a commercial scale in India without undue delay and to the fullest extent that is reasonably practicable;"

This is acceptable. There can be no objection to it. Then we come to (b):

> "that the interests of any person for the time being working or developing an invention in India under the protection of a patent are not unfairly prejudiced."

This is very dangerous. Under this anybody can be abstructed and anybody can be stopped from using licence of right, and the operative effect of this clause will be the same as has been the effect of the restrictions in this respect in the 1911 Act. Therefore, I beg of the Minister not to insist on applying 94(b) to this clause 88.

Coming to 95 (1), (i) it says that the 'royalty and other remuneration, if any', for these drugs and foodstuffs, will be gone into. Sir, the royalty for drug and foodstuffs has already been fixed at 5 per cent maximum in an earlier clause. And so, this is unnecessarily confusing the issue to apply this to clause 88, and it can lead to litigation and unnecessary conflict I hope the Minister will agree with me that application of 95(1)(i) is undesirable and should be omitted. Sir, sub-clause (ii) says, "that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him." Sir, whoever gets licence may work it at reasonable profit or without profit. He may work it to provide drugs at a cheaper rate which will give him satisfaction. It is not for the Government to insist on his making reasonable profit. Therefore, I think, it is better this is left out. Therefore my amendment says:

> "Where a patent has been endorsed with the words 'Licences of right' any person who is interested in working the patented invention in India shall at any time after such endorsement be entitled as of right ...."

This is very important to use the clear term 'licence of right"—I would like to use the words, 'as of right'; as it is, these words are not used in the Bill. Therefore, it remains ambiguous. 'Licence of right' is already there in the 1911 Act. Therefore, my amendment says that he shall be entitled ...

> "as of right to a licence under the patent on such terms as may be mutually agreed upon the patentee and the person applying for the licence, notwithstanding that he is already the holder of a licence under the patent before the endorsement."

Therefore, we would like that the insistence that is there already of the application of these clauses 94 and 95 is unnecessary. If you examine the Act they are designed to cover the cases of compulsory licences as distinct from licence of right under Section 84 and they are sought to be attached to Clause 88 under licence of right which I am objecting to.

I have already explained why 94(b) should be omitted and why 95(1)(i) and (ii) should be omitted. I hope Government will accept it.

श्री कंवर लाल गुप्त : अध्यक्ष जी, मेरा संशोधन यह है कि जो पांच परसेंट है, उसको 3 परसेंट और एक्सटेण्ड कर के 4 परसेंट तक रखा जाय । मेरे खयाल से जो यहां 5 परसेंट है, वह मैक्सिमम है, यानी उससे कम भी हो सकता है, इसका मतलब यह होगा कि मेरे संशोधन के अनुसार 5 की जगह

4 परसेंट मैक्सिमम हो, इतना मोडिफिकेशन मेरे संशोधन में होना चाहिए। इसका कारण यह है कि चूंकि हिन्दुस्तान की आबादी करीब 50 करोड़ है, उसमें फैक्टरी प्राइस के हिसाब से जो सेल है, वह बहुत ज्यादा होगी, जो 5 परसेंट के हिसाब से बहुत ज्यादा रायल्टी हो जायगी। वास्तव में जो ओरिजनल बिल था, उसके अन्दर भी यह 4 परसेंट था, लेकिन सिलेक्ट कमेटी में एक मत से, जब कि कुछ मेम्बर्ज गैरहाजिर थे, यह 5 हो गया था। अधिकांश सदस्यों की यही राय है कि चार ही रहना चाहिये और मेरा भी यही संशोधन है कि चार ही माना जाये। मैक्सिमम चार ही रहना चाहिए।

SHRI P. R. THAKORE: I do not want to make any speech. Since it is a very important amendment, I hope the hon. Minister will accept it.

SHRI NAMBIAR: May I say a word in support of Shri Shiva Chandra Jha's amendment as also that of Shri Kanwar Lal Gupta I want to plead with Government ....

SHRI K. N. Tiwary (Bettiah): This is not the practice in the House to support anothers' amendment. The Mover of an amendment moves it and speaks, and that is all.

SHRI NAMBIAR: I am saying what amendment I am accepting. Instead of 5 per cent royalty, they want to make it 3 per cent; I have also got an amendment that it might be made 2 per cent or 3 per cent. But I am prepared to agree to 4 per cent. The reason is this. In the original Bill it was 4 per cent but in the Joint Committee, by one-vote majority, it was made 5 per cent. I hope the hon. Minister will agree to 4 per cent.

SHRI DINESH SINGH: If I may take first the points raised by Shri N. K. Somani, he had expressed a doubt that because of the licence of right, many people may be able to acquire patent process and manufacture goods for which they may not have the qualifications or the expertise. My hon. friend is aware of the industrial licensing system in this country and will, therefore, appreciate that it will not be enough for someone to acquire a patent and go into manufacture just because he has been able to get the patent from the patent office. He will still have to apply for an industrial licence. In applying for an industrial licensing in connection with drugs, medicines and chemicals etc. he will have to obtain a licence under the Drugs and cosmetics Act or under the Prevention of Food Adulteration Act or the Insecticides Act as the case may be. Therefore, the fact that he can acquire a printed copy of the patent does not give him an automatic right to start manufacture. I appreciate the idea that my hon. friend has. But it will not be the Controller of Patents who should exercise his judgment to decide whether a particular business concern or entrepreneur has the expertise and the know-how to manufacture it. This judgement must be made in the Ministry of Industrial Development, in the Licensing Committee where there are competent people to judge the capabilities and the capacity. Therefore, the point that he has made is taken care of. It will not be served by the amendment which he has in mind; his amendment will only weaken it by requiring the controller to exercise his judgment in these cases, and I entirely agree with what Dr. Sushila Nayar has said in this connection that it has really to be judged somewhere else. Therefore although the idea of the hon. Member is good, it is not necessary to have his amendment; in fact, it would defeat his purpose if his amendment is incorporated.

As regards the point made by Dr. Susihla Nayar, I entirely agree with the thoughts that she has expressed, but may I say to her that all these have been taken into account in the Bill itself? For instance, she talked of the licence of right in the 1911 Act. If she will see that Act, she will see

[Shri Dinesh Singh]

that this right was given to the Government only. But under this Bill it is given to everybody. Therefore, all those doubts and their relation with other clauses will be completely removed when she will appreciate that anybody could get it under this Bill while under the 1911 Act it is only Government which could get it.

DR. SUSHILA NAYAR: I think you are mixing this up. It is quite clear—I read out to you Section 94—that it is going to cause a very serious difficulty the moment you say that any person who is interested in working the patented invention in India may require the patentee to grant him a licence provided it does not adversely affect the interest of anyone already exploiting it'. How can you give it to anybody then?

SHRI DINESH SINGH: I am coming to that. I am only saying from the start as to how the licences of right can be given to anybody. Anybody who acquires the licence as of right will acquire the rights of those patents and the privileges of the patent of others will not apply in that case. Section 94 which she has in mind really describes the privileges that a patentee gets in this regard. Here, these are taken away in the licences of right and therefore, they will not apply. The person who gets the licence as of right will be able to start manufacturing without any hindrance. The only qualifying thing will be that his royalty will be for the duration for which the patent is valid. Therefore, the hon. Member need have no apprehension that there will be any difficulty; there will be no difficulty at all and he will be able to start that after he gets the industrial licence and the know-how.

Now, the points raised by the hon. Member Shri Jha and Shri Nambiar are covered by the amendment which had been moved by Shri Thakur. I am willing to accept that. Instead of 5 per cent, the ceiling may be fixed at 4 per cent. Here again, I may say that once we fix the ceiling at 4 per cent, it does not mean that he will automatically get 4 per cent. He may get upto 4 per cent. I am only clarifying the point raised by Shri Jha on the ceiling. We are willing to accept his 4 per cent ceiling.

DR. SUSHILA NAYAR: Under Section 94 royalty is fixed. Why do you want to bring in royalty again under Section 95?

SHRI DINESH SINGH: This will not apply in this case.

DR. SUSHILA NAYAR: Why do you want to keep it in the law?

MR. SPEAKER: I shall now put amendment Nos. 9 and 10 to Clause 88 to the vote.

The amendments Nos. 9 and 10 were put and negatived.

MR. SPEAKER: May I now put amendment No. 24 as modified to the vote of the House?

SHRI SHIVA CHANDRA JHA: Mr. Speaker, Sir, kindly proceed serially because my amendment No. 24 is first.

SHRI DINESH SINGH: This, I take it, is the same moved by Shri Thakur limiting the royalty to 4 per cent. We are accepting 4 per cent and not the others.

MR. SPEAKER: May I put Shri Jha's modified amendment No. 24 to the vote?

SHRI DINESH SINGH: May I request you to kindly read out the amendment as it will be very easy?

MR. SPEAKER: In amendment No. 24, 'two' is modified to 'four'.

SHRI DINESH SINGH: 4 per cent is acceptable.

MR. SPEAKER: The question is:

"Page 43, line 30,

for "five" *substitute* "four" (24, as modified).

The motion was adopted.

MR. SPEAKER: I shall now put amendments Nos. 31 and 32 to vote.

DR. SUSHILA NAYAR: It is necessary to explain them.

MR. SPEAKER: Not at this stage. She herself was Speaker at one time.

Amendments Nos. 31 and 32 were put and negatived.

MR. SPEAKER: The other amendments are barred.

The question is:

."That clause 88, as amended, stand part of the Bill."

The motion was adopted.

Clause 88, as amended, was added to the Bill.

Clauses 89 to 99 were added to the Bill.

Clause 100.— (*Power of Central Government to use inventions for purposes of Government*).

श्री शिवचन्द्र झा : वही बात जो पहले खत्म हो चुकी है । 2 की जगह पर मैंने मोडिफाई किया है 4 कर दिया जाये । यही मेरा संशोधन है । यह मान लेना चाहिए ।

I beg to move:

Page 50, line 3,—

for "five" substitute "four" 25, modified

SHRI S. KANDAPPAN: I move my amendment No. 46.

Page 50, line 3,—

for "five" *substitute* "four" (46)

I am sure Government will accept my amendment because it is only consequential. I would only make this observation. While replying to the debate on the motion for consideration, the hon. Minister said that keeping in view forthcoming inventions, for example, drugs for cancer which might come out of research, the demand for royalty would be more. I think there is some slight force in the argument. But I think it is also rather anticipating things too early If there is any such thing, it is always open to Government to come to Parliament and have it amended accordingly. When the royalty ratio is fixed at the higher rate of 5 per cent or something like that, there is always the temptation to fix it at the higher rate. Anyway I am glad Government appreciate the point and I am sure they would accept this amendment as they have already accepted the earlier one.

SHRI DINESH SINGH: I am willing to accept the change from five per cent to four per cent.

MR. SPEAKER: The question is:

Page 50, line 3,—

for "five" substitute "four" (25, as modified).

The motion was adopted.

MR. SPEAKER: The question is:

"That Clause 100, as amended, stand part of the Bill."

The motion was adopted.

Clause 100, as amended, was added to the Bill.

MR. SPEAKER: The question is:

"That Clauses 101 to 106 stand part of the Bill."

The motion was adopted.

Clauses 101 to 106 were added to the Bill.

Clause 107—(*Defences, etc., in suits for infringement*).

DR. SUSHILA NAYAR: I beg to move:

Page 54,—

omit lines 39 to 43. (34)

Sub-clause 3 casts on the accused the onus of proving that he did not infringe the patent rights, instead of the accuser proving it. This is contrary to all principles of jurisprudence. When this was pointed out in the Select Committee by some witnesses, the Chairman said it would be taken care of, but in the end we were in a hurry and somehow this has been lost sight of.

My amendment is to omit this sub-clause (3).

श्री कंवर लाल गुप्त : मेरा भी यही संशोधन है जैसा डा० सुशीला नायर ने कहा है और मेरा खयाल है कि माननीय मंत्री इसको स्वीकार कर लेंगे ।

SHRI DINESH SINGH: I agree with the hon. Members and I am willing to accept the amendment proposed by them.

MR. SPEAKER: The question is:

Page 54,—

omit lines 39 to 43. (34)

The motion was adopted.

MR. SPEAKER: The question is:

"That clause 107, as amended, stand part of the Bill."

The motion was adopted.

Clause 107, *as amended, was added to the Bill.*

Clauses 108 *to* 123 *were added to the Bill*

Clause 124.—(*Offices* by **Companies.**)

SHRI SHIVA CHANDRA JHA: I move:

Page 59,—

omit lines 16 to 19. (26)

"Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

अध्यक्ष महोदय, मेरा संशोधन है कि जो प्रोवाइजो है उसको छोड़ दिया जाये । इन बातों को लेकर के और विधेयकों के सम्बन्ध में भी वाद-विवाद हुआ है । यह बिल्कुल सुपरफ्लुअस है । मान लीजिये कोई अफेन्स इसके मुताबिक होता है । जो अभियुक्त है वह साबित करता है कि मेरी जानकारी में यह काम नहीं हुआ, मैं ने यह गलती नहीं की । लेकिन जब कोर्ट के सामने मामला आ जाता है तब उसको पता चल जाता है कि उसने गलती की है । तब अभियुक्त के कहने पर उसको नहीं छोड़ा जायेगा । कोर्ट क कहने पर छोड़ा जायगा । मामला कोर्ट के सामन जायगा । और कोर्ट फैसला करेगा भले ही मुलाजिम कहता रहे कि मैं ने गुनाह नहीं किया है । अगर आप इस प्रोवाइजो को रखते हैं तो वह छोड़ दिया जा सकता है हालांकि अगर कोर्ट में मामला जाता है तो वह समझता है कि उसने गलती की है । ऐसी स्थिति में यह जरूरी है कि अगर कोई कानून का उल्लंघन करता है, कोई गलती करता है तो उसको कोर्ट के माध्यम से सजा मिले । इसलिए मैं चाहूंगा कि इस पैराग्राफ को छोड़ दिया जाये । विधेयक में जो यह प्रोवाइजो आया है वह सुपरफ्लुअस है । कोर्ट फैसला देगा कि गुनाह है या नहीं । अफेन्डर तो कहेगा कि मैंने गुनाह नहीं किया है । अगर यह प्रोवाइजो रहने दिया जाता है तो वह छोड़ दिया जायेगा

SHRI DINESH SINGH: This is a standard provision for offences by

the companies which had been approved by Parliament in several Acts and this is in conformity with that. If a company commits certain offences then it should not be passed on to innocent officers who will be implementing it. Obviously this judgment will be made by the court. We are not taking away the right of the court. We are only providing that it should be fixed on the people who are responsible for taking decision and not those people who are working in the company. The idea of the hon. Member is really met by this. Deletion of this will only render liable innocent officials who may not know whether there is a patent or not because they are working in a factory and they will unnecessarily became liable.

श्री शिवचन्द्र झा : मंत्री महोदय कहते हैं कि इन्नोसेंट आफिसर्स पकड़े जायेंगे । लेकिन मैं कहना चाहता हूं कि वे इन्नोसेंट आफिसर्स नहीं होंगे । वह बड़े चालाक और होशियार होंगे । वह बहुत तरीकों से निकल जायेंगे । इसलिये जब वह कबूल करते हैं कि कोर्ट फैसला करेगा और सजा देगा तब उनको इस पैराग्राफ को छोड़ देना चाहिये ।

अध्यक्ष महोदय : यह तो आप मानते हैं ।

I shall put amendment No. 26 to the vote of the House.

Amendment No. 26 was put and negatived.

MR. SPEAKER: The question is:

"That clause 124 stand part of the Bill."

The motion was adopted.

Clause 124 was added to the Bill.

MR. SPEAKER: There are no amendments from clauses 125 to 137 inclusive. I am putting them together. The question is:

"The clauses 125 to 137 stand part of the Bill."

The motion was adopted.

Clauses 125 to 137 were added to the Bill.

Clause 138—(Supplementary provisions as to convention applications).

श्री शिवचन्द्र झा : I move:

Page 64, line 11,—

after "English" *insert*—

"and Hindi" (27)

मेरी जो अमेंडमेंट है वह बिल्कुल आसान और स्पष्ट है । जो कोई कागजात विदेशी भाषा में हों, उनके बारे में आप कहते हैं कि उनका अनुवाद अंग्रेजी में किया जाएगा । मेरा कहना यह है कि अंग्रेजी और हिन्दी, दोनों में उनका अनुवाद हो । इसको मानने में मंत्री महोदय को कोई तकलीफ नहीं होनी चाहिये ।

श्री दिनेश सिंह : इसको मानने में मुझे कोई दिक्कत नहीं लेकिन मेरी कठिनाई यह है कि अभी हमारे पास इसका इन्तजाम नहीं है ।

श्री शिवचन्द्र झा : क्यों नहीं है ?

श्री दिनेश सिंह : क्यों नहीं है, यह दूसरी बात है । इस वक्त अगर इसको लिख दिया जाता है तो इस विधेयक को काम में लाने में कठिनाई होगी । मैं माननीय सदस्य को कहना चाहता हूं कि हमारी यह कोशिश होगी कि जहां तक संभव हो अंग्रेजी के साथ-साथ हिन्दी में भी अनुवाद किया जाए ।

MR. SPEAKER: I am now putting amendment No. 27 to clause 138 to the vote of the House.

Amendment No. 27 was put and negatived.

MR. SPEAKER: The question is:

"That clause 138 stand part of the Bill."

The motion was adopted.

Clause 138 was added to the Bill.

MR. SPEAKER: There are no amendments to clauses 139 to 141 inclusive. The question is:

"That clauses 139 to 141 stand part of the Bill."

The motion was adopted.

Clauses 139 to 141 were added to the Bill.

MR. SPEAKER: Clause 142.

Clause 142—(Fees.)

SHRI C. K. BHATTACHARYYA: I move.

Page 66, line 10,—

for "the application for patent" *substitute*—

"filing of the complete specification". (57)

Page 66, line 12,—

for "recordal" *substitute* "recording". (58)

The amendments are accepted. So, I need not make a speech.

SHRI NAMBIAR: Sir, there is a printing error in page 66, line 12. The sub-clause reads as follows:

"Where a principal patent is granted later than two years from the date of the application for patent, the fees which have become due in the meantime may be paid within a term of three months from the date of the recordal of the patent in the register."

The word "recordal" should be corrected as "recording."

SHRI C. K. BHATTACHARYYA: That is my amendment. Had he gone through the list of amendments, he would have seen my second amendment which modifies that word and makes the verbal correction.

SHRI NAMBIAR: He could have made a speech, mentioning it.

SHRI C. K. BHATTACHARYYA: Mr. Nambiar is habituated to make a speech on all occasions. I am not. I do not want my beautiful voice to be heard so often.

SHRI NAMBIAR: Thank you very much.

MR. SPEAKER: The question is:

Page 66, line 10, *for* "the application for patent" *substitute* "filing of the complete specification". (57)

The motion was adopted.

MR. SPEAKER: The question is:

Page 66, line 12, *for* "recordal" *substitute* "recording". (58)

The motion was adopted.

MR. SPEAKER: The question is:

"That clause 142, as amended, stand part of the Bill."

The motion was adopted.

Clause 142, as amended, was added to the Bill.

Clauses 143 to 163 were added to the Bill.

MR. SPEAKER: The question is:

"That the Schedule, Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

The Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI DINESH SINGH: Sir, I move:

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

MR. SPEAKER: Motion moved:

"That the Bill, as amended, be passed." (*Interruption*)

DR. SUSHILA NAYAR: Mr. Speaker, Sir, there is plenty of time and I do not see any reason why any hon. Member should obstruct another hon. Member from making a speech. This is completely unfair.

Sir, I wish to say a few words on this third reading, and my reason for speaking is this. We have taken special trouble to have this sitting today, and we have sat here missing many other important engagements, because we thought that this Bill is important. But I wish to say that the passage of the Bill by this House alone is not going to complete the job. It is for the Minister of Parliamentary Affairs to see that it is passed by the Rajya Sabha also before the Rajya Sabha adjourns.

Further, I wish to say that even after the passage of the Bill by both Houses, it is not that the troubles on account of which we have enacted this law will necessarily be removed. It only enables the Government to take certain actions. It is giving certain powers to them. It remains to be seen how alert the Government is, how active the Government is, how soon they will take action and how correct their actions will be. They are well-known for bungling as they have done in the recent Drugs (Price Control) Order. The price control which was in force from 1st April 1963 and which had prevented rise in prices till 1967 was hurriedly removed. The prices rose. Then they reimposed the control order which was so defective that they have had to change it a number of times within a few days, causing confusion upon confusion. Every time it was confusion worst confounded. As a result, prices have risen sharply and drugs have become scarce. Therefore, unless and until Government takes very good care and uses the provisions of this Bill when it becomes an Act judiciously and expeditiously, it will not serve the purpose for which it is being enacted. I urge that the Government starts making the necessary preparations from now on in anticipation of the passage of this Bill —it will be passed by Rajya Sabha also within a week or so—so that action may be immediately taken when this becomes law and the difficulties of the public with regard to high prices and non-availability of drugs may be removed.

श्री बेनी शंकर शर्मा : अध्यक्ष महोदय, यह बिल जितना महत्वपूर्ण है उस के सम्बन्ध में दो मत नहीं हो सकते । इस बिल की कल्पना 1948 में हुई एवं गर्भाधान 1953 में हुआ और प्रसव काल 1970 में जाकर आया । अतएव इस बिल के इस समय पास कराने में जिनका हाथ है उन्हें मैं धन्यवाद देना चाहता हूं माननीय दिनेश सिंह जी को इसका श्रेय दिया जाय यह मैं नहीं मानता । मैं माननीय दिनेश सिंह जी इसका श्रेय स्वयं लेना चाहते हैं न मैं माननीय उमानाथ को ही इसका श्रेय दे सकता हूं जिनकी जल्दबाजी से आज हमें इस बिल पर विचार करने का अवसर मिला है । किन्तु वास्तव में डा० त्रिगुण सेन इसके लिए धन्यवाद के पात्र हैं जिनके ड्रग कन्ट्रोल जनित गड़बड़ी के कारण दवाइयों के दाम बढ़े और हमें इस पेटेंट बिल को इतना शीघ्र सदन में लाना पड़ा ।

अर्थ मंत्री महोदय ने क्लाज वाई क्लाज डिस्कशन के समय कुछ क्लाजेज के सम्बन्ध में जो विचार व्यक्त किये मुझे कम से कम उनसे सन्तोष नहीं होता है । क्लाज 48 के ऊपर संशोधन के सम्बन्ध में उन्होंने कहा कि 1911 के पुराने एक्ट में पेटेंट के अधिकार जिन लोगों को दिये गये हैं धीरे-धीरे खत्म हो रहे हैं । मैं उनसे पूछना चाहता हूं कि राजा महाराजाओं को प्रिवी पर्स के लिए जो अधिकार प्राप्त थे वे क्या धीरे-धीरे खत्म नहीं हो रहे थे ? तब कम से कम पेटेंट ऐक्ट में जिन विदेशियों को बहुत अधिकार मिले हुए

[श्री बेणी शंकर शर्मा]

हैं उन को धीरे-धीरे खत्म करने के लिए हम क्यों रुके रहें ? उन्हें भी हमें एक साथ ही खत्म करना चाहिए था ।

मैं एक बात और कहना चाहता हूं । हम विदेशी व्यापारियों के आधिपत्य के खिलाफ हैं । मैं और मेरी पार्टी यह नहीं चाहती कि यहां विदेशियों का आधिपत्य किसी भी अंश में रहे ।

हम विदेशी कम्पनियों के नेशनलाइजेशन के पक्ष में हैं, हम विदेशी बैंकों, विदेशी चाय-बागानों, एवं सभी प्रकार के विदेशी व्यापारों के नेशनेलाइजेशन के पक्ष में हैं । इस लिये हम यह भी चाहते हैं कि जिन विदेशियों को हमारे इस पेटेंट कानून के अन्तर्गत अधिकार प्राप्त हैं, उनका हमें शीघ्रातिशीघ्र राष्ट्रीयकरण करें। अभी माननीय सदस्यों के भाषणों में आपने सुना कि करीब-करीब पेटेंट्स का 89 परसेंट लाभ विदेशी कम्पनियों को होता है और हम ने इस बिल में ऐसा कोई प्रावधान नहीं किया है जिससे इन विदेशी कम्पनियों को जो आज तक फायदा उठाती रही हैं, और अधिक लाभ उठाने का अवसर नहीं मिले । मैं चाहता हूं कि कम से कम यह पेटेंट का कानून विदेशी कम्पनियों पर लागू नहीं होना चाहिये, अर्थात् विदेशियों को कोई भी दवा या किसी भी अन्य सामग्री के पेटेंट का अधिकार नहीं होना चाहिये । हमारे भारतीय आविष्कर्ताओं को ही इसका लाभ होना चाहिये ।

एक बात मैं और कहना चाहता हूं—अच्छा होता कि 1948 के बाद ही हम इस कानून को ले आते, लकिन जब इतने दिन लगे हैं तो कम से कम अब हमें ऐसा करना चाहिये जिससे हमारे भारतीय आविष्कर्ताओं को इस से अधिकाधिक लाभ हो । हमारे स्वतन्त्र पार्टी के मित्रों ने कहा कि जो लोग पैसा खर्च करते हैं आविष्कार करने में, उनको मुआवजा मिलना चाहिये । मैं इस विचारधारा के पक्ष का नहीं हूं । हमारे देश में जो आविष्कर्ता हैं, मेधावी लोग हैं, वे स्वान्तः सुखाय ही काम करते हैं, उनका मूल्य पैसों से नहीं आंका जा सकता । पैसे की जरूरत तो कैपिटलिस्टों को होती है । मैं चाहता हूं कि जो आविष्कर्ता हैं, इन्वेन्टर्स हैं, उन्हें आप समुचित रूप से पुरस्कृत करें, उनको नेशनल एवार्ड्स दें, उन के लिये हम नोबल प्राइज की तरह का समुचित प्राइज कोई दें, जिसके द्वारा हम उनका सम्मान कर सकें ।

इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूं ।

MR. SPEAKER: The question is:

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

The motion was adopted.

MR. SPEAKER: We have really done some very solid work today. I am so happy. And I am not sorry that we lost a holiday. Thank you very much.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, August 31, 1970/Bhadra 9, 1892 (Saka).

GMGIPND—LS II—213 Ai) LS—20-11-70—1010.