

**THE PATENTS (AMENDMENT)  
BILL, 1998 CONTD.**

MR. CHAIRMAN: Now, Mr. Biplab Dasgupta, You have only one minute.

DR. BIPLAB DASGUPTA: Sir, in one minute it is not possible. Sir, I have been saying that if this Bill is not presented before a Select Committee, or, a Standing Committee, or, a Joint Committee, or, whatever it is, then it makes a mockery of the Committee system. -This Bill is eminently suitable for being considered by a Committee and if we get it passed without it being scrutinised by a Committee, then, I think, there is no need for having any Standing Committees or Select Committees. Because it is the most important Bill that has come before the House over the last ten years.

Sir, this Bill raises certain issues impinging on the relationship between the Centre and the States. In this Bill

there are provisions which have consequences for agriculture and for health. You know, Sir, both agriculture and health are State subjects... *(Interruptions)*... Sir, before this Bill is discussed in the House, the least that the Government can do is... *(Interruptions)*...

MR. CHAIRMAN: Please don't interrupt. You are making a mockery of yourselves by laughing at each other and by interrupting each other. The whole India is watching how a Member in this House is functioning. You are busy talking with each other, shouting at each other and are taking the freedom of each other.

DR. BIPLAB DASGUPTA: Sir, before this Bill is discussed, the least that the Government can do is to call a meeting of the National Development Council. In that meeting there should be consultations with the Chief Ministers of all the States to ensure that this Bill does not harm the interests of the States or their jurisdiction in relation to both agriculture and health. This is something which should have been done before bringing the Bill before this House. That has not been done.

Sir, one of the arguments which have been advanced for rushing through the Bill without going through any Committee is that the W.T.O. Disputes Settlement Board has given a deadline that this Bill, with these two provisions on exclusive marketing rights and mailbox should be passed before 19th April. That is the fear that they have. Sir, we are now towards the end of December and we still have almost four months. We can very fruitfully devote these four months to discussing this Bill in the Committee and in the National Development Council. We can also have a national debate, because it has implications for everyone. You should take advantage of the time between now and the Budget session to put it before the Committee, before the public, before the Chief Ministers, to get their opinion.

In our amendment, we have submitted that the Committee should complete its work and report back to the House by 1st March. On the basis of that report, which

will also involve consultations with experts, scientists, technologists, lawyers and others who would understand the language the Bill can be discussed here. These will ensure that the interests of the country are fully protected in the Bill which is being presented now. None of these things have been done. Sir, the month of April is four months away. There is plenty of time in the inter-session period to get it discussed.

Sir, even if we fail to meet the deadline, is it that the heaven is going to fall on us? We violated this part of the agreement in 1995, when we allowed the Ordinance to lapse. Sir, when the W.T.O. was formed in 1995, it was the pre-condition of the WTO membership that we should have these things incorporated in the Patents Bill. But we violated these norms too and the Ordinance was allowed to lapse. For these last three years have they taken any action against us. Sir? If they can wait for three years since 1995, they can wait for some more time. Sir, what can they do to tut? They cannot throw us out of the W.T.O. Membership. That is clear and categorical. If you look at the W.T.O. rules, they cannot do this because in W.T.O. conditions for Membership is one thing and condition for expulsion is another thing. Now that you are already in the W.T.O., we can be thrown out only as per the norms and rules which are there for expulsion. These norms and rules are very difficult to be implemented. They are elaborate in procedure. It will take months and months before we can be expelled. So, the whole idea that they will want us to be thrown out of the W.T.O. because we have not incorporated this by April 1999 is totally wrong. It has absolutely no basis.

Now, I come to the point regarding the fear of sanctions. Sir, what happened after the tests conducted at Pokhran? Nothing happened. If America wants to impose sanctions on us, they have to go through an elaborate procedure. It is not

simple enough for them to say that they are initiating sanctions. America will have to go through the same elaborate procedure of giving notice; there will be a hearing on the notice, this and that. If you want to delay this, you can lengthen the process. So, there is no immediate fear of any economic sanctions being imposed. If the Americans do this, there are the Germans, there are the French, there are the Italians, who are interested in our market.

Ours is a big market, potentially a big market. No country in the world would like to leave us. So, the Americans do not impose any sanctions unilaterally on us, for the simple reason, if the Americans do it, the French will come in, the Italians will come in, the Germans will come in. In the past, it had happened many times. I can give you many examples. When the Americans have resorted to sanctions, the French have deviated from it, the Italians have deviated from it. They have not agreed to it. But, Sir, the reason I am saying is very important. The whole country should know. The TRIPS Agreement was imposed on us. In 1994, the Marrakesh Agreement. In 1995, the WTO Agreement. These were imposed at a time when the world environment was completely different. It was totally dominated by one super-power. After the disintegration of the Soviet Union, The Third World countries lost heart. Consequently during the discussion on the Dunkel Draft, not a single protest was voiced by any country of the Third World. That was the situation in 1994-95. Then from 1990 to 15th December, 1993.

MR. CHAIRMAN: That is all right.

DR. BIPLAB DAS GUPTA: I am not talking about the Bill. I am justifying why should it go to a Joint Select Committee. *..(Interruptions)..*I must be allowed to speak...*(Interruptions)..*

SHRI NILOTPAL BASU: Let us be very clear. If he is disturbed, nobody else I will speak...*(Interruptions)..*

SHRI SANGH PRIYA GAUTAM (Uttar Pradesh): He has already taken ten minutes. ...*(Interruptions)*...

SHRI NILOTPAL BASU: He will speak as long as he ...*(Interruptions)*... He is making some points...*(Interruptions)*...

SHRI SANGH PRIYA GAUTAM: He has taken ten minutes. ...*(Interruptions)*...

SHRI NILOTPAL BASU: Let us be very clear ...*(Interruptions)*...

SHRI SANGH PRIYA GAUTAM: I am addressing the Chair. I am not talking to you...*(Interruptions)*...

SHRI NILOTPAL BASU: I am making it very clear, if he is not allowed to speak, nobody else will be allowed to speak.. *(Interruptions)*...

SHRI SANGH PRIYA GAUTAM: I am not talking to you.

SHRI NILOTPAL BASU: I am also not talking to you. ...*(Interruptions)*...! am also not talking to you. ...*(Interruptions)*. ..If he is disturbed, nobody else will speak in this House ...*(Interruptions)*...

SHRI GURUDAS GUPTA: Let the hon. Chairman decide it.

MR. CHAIRMAN: Don't you think it is shameful when you say, "I will not let you speak."? You are speaking as if this is not the House. What is it?...*(Interruptions)*. ..You cannot give a threat to him. He cannot give a threat to you. What for I am sitting here? What for all of you are sitting here?... *(Interruptions)*...

SHRI GURUDAS DAS GUPTA: You kindly decide everything. We will abide by it.

DR. BIPLAB DASGUPTA: Sir, I am on my last point. Then, there will be no interruption.

SHRI M. VENKAIAH NAIDU: If somebody addressed the Chairman, is it an interruption?

MR. CHAIRMAN: No. They are addressing each other..

SHRI SANGH PRIYA GAUTAM: I did not interrupt him.

SHRI M. VENKAIAH NAIDU: I am ready to hear him for three minutes or four minutes. He is a very disciplined Member. But the Chairman said, "It is all right. Only one minute." He has taken seven minutes. If somebody reminds Him about the time he took, is it a fault?

SHRI NILOTPAL BASU: Who are you to remind him?

SHRI M. VENKAIAH NAIDU: I am a Member of this House. ...*(Interruptions)*... I am a Member of this House.

SHRI NILOTPAL BASU: He doesn't need your help. ...*(Interruptions)*. ..He doesn't need your help.

SHRI M. VENKAIAH NAIDU: You don't know even fundamentals...*(Interruptions)*...

SHRI NILOTPAL BASU: Who is he to remind? You are there in the Chair.

MR. CHAIRMAN: No Member has a right to tell the other Member, "I will not allow you to speak."

DR. BIPLAB DASGUPTA: What I was saying was this that on the 15th December, 1993 when the Dunkel Draft was agreed to by the Western powers, at that time, on that night, during the celebration there was not a single representative, not a single face from the Third World. The fate of the Third World countries was decided by the Western powers, the rich countries. They had decided everything and imposed it on us. In 1994, when the Marrakesh Agreement came, we did not raise our voice against the provisions which were against our national interests. In 1995 when the WTO was set-up, nothing was done. But now the world situation has changed. Now there is a resistance in many countries of the world against these provisions. In the year 1999, next year, there is supposed to be a review of the TRIPS

Agreement, the Trade-Related Intellectual Property Rights Agreement. That is the basis of this amendment. But this TRIPS Agreement will come up for a review—not in 1999 because the USA wanted to delay it by one year—in 2000.

But even then it is slightly more than one year away, and in that TRIPS agreement with you, we, as India, should take the initiative of the world. We should mobilise the world opinion. This thing cannot be done by Nepal; cannot be done by Bangladesh. It can be done only by the Indian Government. If we take the initiative to take the South Asians on our side, Bangladeshies, Pakistanis, all of them, and form a South Asian common market, which would be the decision of the Government that it would be done by the year 2001, if that is done, we can get a footing. On our own, we do not have much basis. Out of the total world export, our export is only 0.6 per cent. But if we are able to take the South Asian countries along with us, that will give us a base. We can negotiate with the ASEAN countries, the countries in South East Asia and in East Asia, we can talk to China, we can talk to Brazil, and we can impose some of the conditions which we are very vital for our national interests, which was not done in 1994. The 1994 agreement is not sacrosanct. We, from the third world, should never accept the injustice which was done to us in the 1994 discussions in Marrakesh and also during the formation of the WTO. But we are getting this opportunity in the year 2000. Sir, before that opportunity comes, we should not give in. If we give in, our bargaining power will do. So, we must conserve whatever we have. I know that there are very eminent lawyers like Mr. Jethmalani in the Government. They can find the tricks to lengthen it from 19th April, 1999 to 19th April, 2000. I have every confidence in Shri Jethmalani to manipulate the things in such a way that this period can be lengthened. (*Interruptions*)

MR. CHAIRMAN: Anyway, it is all right. Please conclude. I will not allow anymore time.

DR. BIPLAB DASGUPTA: I am concluding. Sir. We should not give in before 1 the year 2000. We should allow the process to continue. If the Americans can be allowed to continue for three years, they will allow us to continue for another one year. There will be no problem. I know Mr. Pranab Mukherjee and Dr. Manmohan Singh are here. When this Bill was initially discussed, what was their argument? Their argument was that we must get it passed within one month? If we did not do it, we would be thrown out of the WTO. That was obviously wrong. If we did not do it, an incalculable harm would be done to us. They had told us that it was an international obligation to which the Parliament was not a party. It was an international obligation undertaken by the Congress Government, not by the nation as a whole. Unfortunately, now we are in a situation where this Bill is being supported by the two major parties. They are in alliance on this issue. These two major parties are betraying the interests of the nation. (*Interruptions*)

MR. CHAIRMAN: Now, Mr. Gurudas Das Gupta. (*Interruptions*)... Dr. Biprab Das Gupta, please sit down. I cannot allow you to speak any more on this subject. (*Interruptions*)

DR. BIPLAB DASGUPTA: Sir, the people of India will not accept this. (*Interruptions*) I am requesting you... (*In terruptions*)

MR. CHAIRMAN: Shri Gurudas Das Gupta Dr. Biprab, you have promised to speak for two minutes and you have taken more than ten minutes. Shri Gurudas Das Gupta.

SHRI GURUDAS GUPTA: Sir, I am on a very short point. The point is, we are entering into an in known international economic arrangement. The arena is unknown, and therefore, its effect on the economy, its ramifications, are not

clear at all to us. Therefore, in order to understand as to what is likely to be its affect on the economy of ours, what is likely to be the affect on the economic structure, there needs to be a very serious scrutiny of the whole arrangement. In order to make that scrutiny, there needs to be a Committee where we can discuss and understand all these things. Secondly, it is very clear that the arrangement of patent, the arrangement of the WTO, whether we like it or not, is going to give hegemonistic grip to the multinationals over the economy of a number of nations. That is our serious apprehension. This apprehension is not within me.

The country is always being told that the Left is opposed to it. I don't believe that patriotism is our monopoly. I believe the same apprehension is there in many other parties, in most of the parties. Since the same apprehension is there in most of the parties, it is only reflecting the serious confusion and the difference of opinion that persist within the nation. The political spectrum is divided because the nation is divided. In view of the serious division in thinking, in view of the serious confusion, in view of the serious ramifications, that is bound to be the resultant of this, there needs to be a much more serious study than what we are entering into.

Sir, I will not take much time. Thirdly, what is very important is this. We are going through an economic recession and the economic recession is not only in India but also all over the world. I have an apprehension that the burden of recession is sought to be passed on to the less-developed countries like India by the advanced countries. This mechanism will give them the advantage, this arrangement will give them the advantage, to pass on the burden of recession of the developed countries to countries like India. It is because of that it is being so hurriedly pushed through. The Government of India is pushing it through because it is being asked to do it

by those Who are arranging, who are managing, who are at the helm of affairs of the international arrangement. It is doing it because somebody else would like it to do it. That is the serious j apprehension.

Fourthly, India should do nothing under duress. We should not do it under duress. India is a great nation. We have never done anything in the world under duress. The argument of the Government is "now or never". "Now or never", that is the argument. Since "now or never" is the argument, the Parliament is being asked to discuss it on the penultimate day of the current session. It could have been discussed earlier. It could have been discussed for three days or four days. There have been occasions when the Parliament had deliberated on very important issues for a long period of time. It is not allowed. I don't know whether the Government had this in mind. It may be that the BJP Government did not think that they would bring this Bill in this session. It may be that the Congress party was of the opinion that it would not like this Bill to be passed so hurriedly. But somewhere the bell is ringing. Somewhere the strings are being pulled. Somewhere the orders are being given. Somewhere it is being said that "now or never", either India do it or -get out of it. This is a serious thing. We cannot do anything infear and apprehension. India is under duress. India has never acted under duress. Mahatma Gandhi said, "it is fear that kills the nation". Mahatma Gandhi has said it. I would only like to tell my friends on both sides that it is fear which is killing the present Government. It is the fear that is the greatest danger. The Congress party should kindly understand it. In view of this, I only implore you, Sir, that the Bill may kindly be sent to a Select Committee and the Select Committee may kindly be asked to complete its deliberations in the next session. Heaven will not fall on us, ' except that we are afraid of somebody

else. Let us not do something in fear and apprehension.

**श्री ईश दत्त यादव** (उत्तर प्रदेश): मान्यवर, सभापति जी, पेटेंट अमेंडमेंट बिल विवादास्पद है और पेचीदा भी। न केवल इस सदन के माननीय सदस्यों का, विभिन्न पार्टियों का अलग-अलग मत है बल्कि सौ करोड़ के देश के लोगों के भी इसमें अलग-अलग मत हैं और शंकाएँ बहुत हैं कि यह कानून पास हो जाने के कारण, यह विधान बन जाने के बाद इस देश की अस्मिता और इस देश की अर्थव्यवस्था पर इसका प्रभाव पड़ सकता है। जब परिस्थिति ऐसी है मान्यवर और समय भी बहुत है। 19 अप्रैल, 1999 तक तो मैं चाहता हूँ कि सरकार को इस पर बहुत जल्दबाजी नहीं करनी चाहिए। इस पर गंभीरता से विचार करना चाहिए। मेरा भी संशोधन है कि इस विधेयक को एक प्रवर समिति को सुपुर्द कर दिया जाए। वह प्रवर समिति इस पर गंभीरता से विचार करके इस सदन में अपनी रिपोर्ट प्रस्तुत करे। और उसको दृष्टिगत रखते हुए सदन उस पर विचार करे, क्योंकि मान्यवर, अगर यह बिल, यह विधेयक कानून का रूप ले लेता है तो इससे देश की अर्थ व्यवस्था पर प्रभाव पड़ेगा, कृषि प्रभावित होगी, स्वास्थ्य प्रभावित होगा और हो सकता है कि यह हमारा देश इस कानून की जकड़न में आ जाए। आज न केवल इस देश में, बल्कि दुनिया के कई देशों में भी इस पर अनेक राय चल रही हैं। अब यह एक ग्लोबल प्रश्न है, पूरी दुनिया का एक प्रश्न है, देश को प्रभावित करने वाला यह प्रश्न है, यह कोई आसान विधेयक नहीं है, यह विवादास्पद भी है और पेचीदा भी है।

इसलिए मान्यवर, मैं अपने संशोधन को प्रस्तुत करते हुए और उस पर बल देते हुए, विलम्ब दासगुप्त जी और गुरुदास दासगुप्त जी ने जो भावनाएँ व्यक्त की हैं, उनसे अपने को सन्बद्ध करते हुए, मैं आपके माध्यम से नेता सदन से और सरकार से अनुरोध करूँगा कि आप इस को प्रवर समिति को सौंपने के लिए गंभीरता से विचार करें, क्योंकि आपकी पार्टी के द्वारा स्वदेशी का बड़ा ढिंढोरा पीटा जा रहा है। स्वदेशी की भाषा बोल करके विदेशी के चक्कर में न फँसिए, मेरा आपसे यही अनुरोध है।

बहुत-बहुत धन्यवाद।

**SHRIMATI KAMLA SINHA:** Sir, I have moved two amendments. My first amendment is, "That the Bill further to amend the Patents Act, 1970, be referred to a Select Committee of the Rajya

Sabha consisting of 18 Members (to be nominated by the Chairman) with instructions to report by the 1st 01 March, 1999. Why do I say that this Bill be referred to a Select Committee? Dr. Biplab Dasgupta, Shri Gurudas Das Gupta and Shri Ish Dutt Yadav have raised many points. We know that there is a time-limit by which we have to sign or abide by the WTO obligations otherwise, some action can be taken against India under the dispute settlement understanding of the WTO Agreement. It is true that this can happen. If this Bill is passed, the Patent Act will grant Exclusive Marketing Rights to agriculture, chemicals and pharmaceuticals. Articles 70.8 and 70.9 were previously applicable to India. But now they will be deleted. Now Exclusive Marketing Rights will be given in the fields of agriculture, chemicals and pharmaceuticals. As you know, Sir, most of the pharmaceutical companies in India are multinational companies. Now they are joining hands. They are merging with each other. They are becoming global players. Some corporations are trying to monopolise the whole industry. For example, Sandoz and Ciba Geigy have merged as Novartis. Monsanto and A.H.P. are also trying to collaborate. Hoechst and Rhone Poulenc are negotiating to merge with each other. Glaxo and Wellcome have a partnership. They are all global players.

Now, - they will monopolise our markets. The Indian entrepreneurs will have no role to play at all. We will be entirely at the mercy of these global players both in the field or pharmaceuticals as well as in agriculture. Sir, when there was a discussion on the terminator seed technology, we had raised this point at that time also. The terminator seed technology affects the Indian farmers. By this technology, seeds which become sterile after one or two seasons would be exported to India, and the Indian farmers would be entirely at the mercy of Monsanto and other seed

corporations of America and other countries. We cannot allow that. Our Agriculture Minister also had said in one of his statements that the Indian farmers are not seed-breeders. They have never done that. All the time, our farmers have been preserving their seeds. Sir, another thing which I would like to mention is, as you also know, that Basmati rice which has been produced in India since ages, has been monopolised and has been patented in America as Taxmati rice. So, what is this? We do not want to lose our own rights. These marketing rights will be given to the multinationals by this EMR. Sir, there are many reasons as to why this Bill should be sent to the Select Committee. It is only after we discuss this Bill in detail that we can take a view on it, and then we can suggest some checks and balances so that the Indian farmers, the Indian pharmaceutical industry, the Indian agricultural industry, and the chemical industry, do not get hurt. That is why I want that this Bill should be sent to a select committee. Thank you., Sir.

MR. CHAIRMAN. Shri S. Viduthalai Virumbi. Many happy returns of the day.

SHRI S. VIDUTHALAI VIRUMBI (Tamilnadu): Thank you, sir. Sir, will I be allowed to speak at the stage of consideration also?

MR. CHAIRMAN: This is only moving of the amendments. Are you associating yourself with the amendments?

SHRI S. VIDUTHALAI VIRUMBI: Sir, even at the time of the introduction of the amendments, I totally oppose the Bill on the ground that it affects the federal character of the nation. Firstly, it affects the pharmaceuticals and, secondly, it affects the agricultural and chemical products. Both health and agriculture come under the purview of the State List. The reflection on the outcome of this Bill, when the Bill comes into effect, will, definitely, affect the masses of this great nation. Therefore, it will affect the State Governments. They might have to bear the burden. So, since it affects the States,

since it affects the federal system and thereby it affects the Indian Constitution, I oppose this Bill and support the amendments placed before us.

**कुमारी निर्मला देशपांडेय** (नामनिर्देशित) सभापति जी, जब किसी महत्वपूर्ण मुद्दे पर ज्ञानियों के, विद्वानों के विचारों में एक दूसरों के विपरीत ऐसी भिन्न-भिन्न राय होती है, उस वक्त बुद्धिमान्नी इसी में है कि कुछ समय देकर, बैठकर बात करें और किसी कंसेंसस तक पहुंचें। इस महत्वपूर्ण बिल के बारे में हम देख रहे हैं कि पूरे देश में और इस हाऊस में भी शार्प डिवीजन है। इसलिए यह आवश्यक है कि इस पर अधिक चिंतन हो, अधिक विचार हो। इस कारण इस बिल को सलेक्ट कमेटी को सौंपने की को तरमीमें यहां पर पेश हुई है, उन का मैं समर्थन करती हूँ।

MR. CHAIRMAN: Shri Ashok Mitra. Amendment No. 3.

SHRI ASKHOK MITRA (West Bengal): Sir, I will first read out the amendment.

That the Bill further to amend the Patents Act, 1970 be referred to a Joint Committee of the House consisting of 30 Members; 10 Members from this House, namely, (to be nominated by the Chairman) and 20 Members from Lok Sabha;

That in order to constitute a meeting of the Joint Committee, the quorum shall be one-third of the total number of Members of the Joint Committee;

That in other respects, the Rules of Procedure of this House relating to Select Committees shall apply with such variations and modifications as the Chairman may make;

That the Committee shall make a report to this House by the first day of the next Session; and

That this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee and communicate to

this House the names of Members to be appointed by the Lok - Sabha to the Joint Committee.

will mention some of the points. If you kindly remember, when I spoke at the time of the introduction of the Bill last Wednesday, I appealed to all sections, "Please, let this Bill be not an occasion to divide the nation." We know that within each party—parties to the left; parties to the right—there is a division which we cannot deny; and there is a great reservation in the minds of the people. Let us think about it. Let us give ourselves a second, a third chance and a fourth chance. We are a great nation.

We are the second largest country in the world. We claim to be the biggest democracy in the world. Let us not make a plaything of our Parliament. Why do I say so? Now, Sir, I will ask you, request you, implore you, to put yourself in our position. It is such an important Bill which has implications for the economy; and yet, what does the Minister do? He goes to the Press and tells them that he is going to ram through the Bill in the Rajya Sabha in the course of today. Then, he will ram it through the Lok Sabha. Are you sure that this is the way you can treat the country?

MR. CHAIRMAN: Now,...

SHRI ASKHOK MITRA: Sir, I have certain things to say. I am not going astray, but you have to kindly listen to me. As I say we should bring ourselves together; those who are here. This is an issue on which we have to think. Just think about it. On grounds of ethics, on grounds of morality, even on grounds of aesthetics; the others who read about the kind of proceedings that are taking place, will say that what you are doing is irrational. They rushed it through; in one day, through the Rajya Sabha the next day, through the Lok Sabha. If I were occupying the slot my revered elder brother is occupying I would have hung my head in shame. That is all I can say. I cannot say anything more. Now, I come

to my second point. This House—let us remind ourselves—is a Council of States and if you go through the proceedings of the Constituent Assembly, there are miles and miles of comments that are made on the fact that this House must be extra protective of the interest of the States. It must try to advance the cause of the States. Now, what are you doing? There are six important Chief Ministers who have written to the Prime Minister. I have been told by a very responsible Member of this House that a 7th Chief Minister is writing today. What are the States? Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, West Bengal, Orissa and Tripura. Do you think that you can ignore these States? What have they done? They have made a polite request, "Before you present this to Parliament, kindly discuss it with us because there are issues which involve us, which affect us". Have you at all realised the implications of what you are doing? You are not even bothering to respond to what the Chief Ministers have stated and you are going to rush through this Bill! Let me ask you a blunt question. Assuming that you can ram through this Bill, if these half-a-dozen and more Chief Ministers said "No", you have no power on earth to implement this piece of legislation. And I want to tell this even to the friends of yours, the so-called multinationals, who are eagerly waiting for the passing of this Bill, "Brothers, you have no hopes. We will not allow you to come because this is where our interests, the interests of the States, are concerned".

Thirdly, that is why I am praying that this should be referred to a Joint Committee, as an extraordinary thing is happening. We set up our institutions and we murdered them. We set up the institution of Standing Parliamentary Committees to study issues that will supposedly be referred to it from time to time by the Government. Can you think of any Bill which is more important than this? Can you really place before us even half-an-explanation why this should not



go to a Standing Committee of Parliament consisting of all the Members, representing all the political parties?

Now, apropos to this, I would say that, after all there was a report of the Standing Committee on Commerce. The Committee gave a report on the relationship of India with the World Trade Organisation. Has any Minister even bothered to go through this report? What did this report say? It is a unanimous report given by 45 Members, representing all shades of opinion. This report was prepared by a drafting group consisting of five representing two major political parties in the country, a representative from the Left; and two representatives from the southern States. They consulted all shades of opinion, experts on this side, experts on that side, civil servants who are now serving, civil servants who have served the country over the past 10, 15, 20 years, when the negotiations were going on with the World Trade Organisation. We have talked with academics, academics belonging to the so-called traditional Left, academics belonging to the so-called traditional Right. Even those were consulted and we reached a unanimous judgment. Now, since I was associated with the report, I can honestly confess to you that on every point, as the Chairman, I asked the individual Members, "But, on this point, have you taken the views of your party" and the next morning they said, "Yes, we have taken the views of our party. Our party doesn't object and it will agree". This is true of all the parties which were involved in the drafting process. But you said that you are not going to consult. What was the view of this Committee? It was that, before any Bill, such as the present one, is presented before the two Houses, first, the Government should discuss the report of the Standing Committee; second, the Government should consult the State Governments; and, third, the Government should consult a wide body of experts, eminent men,

who could be former diplomats, eminent judges, lawyers, scientists, etc. etc., before it tries to reach a judgment.

You have not done any such thing. If this is the way you want to treat the committees of the House, why don't you dissolve them? Why don't you make a direct statement that you are wasting money because when Members come, attend and go away, you have to pay for their travel costs, you have to pay their other incidental expenses, and for a poor country like us, we have no business to make a mockery of this kind of thing. So, tell the Parliament that we are running an absolutist Government, and you are not important. Forget that. You should be honest to offer it to yourself.

My final point is with respect to the manner in which the whole issue has been handled by the Government. Again, you see, there are certain dichotomies. It is the Ministry of Commerce which handles the affairs *vis-a-vis* the World Trade Organisation. But for accident of history, it is the Minister of Industry who handles the Patents Act. I read in a newspaper that the Minister over the weekend, called some officers of the Ministry of Commerce to advise some Members of Parliament who had assembled at his House—fair enough, we were excluded, we are the Harijans, that very derogatory word says so, we are not accepted. But, again, Mr. Minister, with all respect for our civil servants—I have very great respect for them. They are excellent...

**श्री गांधी आजाद:** यहां "हरिजन" शब्द का इस्तेमाल क्यों किया गया ?

**श्री सभापति :** देखिए, इस बात को मत उठाइए।

**SHRI ASHOK MITRA:** They are excellent in their conduct and manners, but I am not sure that they know much about the World Trade Organisation. They are the birds of passage. Yesterday, they were doing, perhaps, rural development; day before yesterday, they were, perhaps, in the Ministry of defence; day after tomorrow, they will,

perhaps, be with the Ministry of Home Affairs. You have not tried to build up a cell, a memory cell, which will have a full picture of the nuances of our relationship with the WTO, i.e., what is right, what is wrong, what ought to be done in a particular situation, what ought not to be done, etc., etc.,. These birds of passage cannot serve the purpose. Which is why, if you wanted to consult the opinion, you should have consulted a wider body, those who are with the Ministry of External Affairs or the Ministry of Commerce as Secretaries or Ambassadors 10, 15, or 20 years ago at the time of the actual Dunkel negotiations. They could have helped you how this is happening.

Sir, this is my final point. We can take very serious objection. In fact, it is unfortunate of the Government that it has not taken a serious objection to it. Just look at the format. In the WTO rules and regulations, there is provision of a transitional period. And the general rule is that it is only after the transitional period is over, the regime of product patent will come in. But suddenly, at the very last stage, an exception was made. An exception was made in the case of pharmaceuticals and agro-chemicals. Why are they so important that in their case we should make an exception at the very last moment?

At the very last moment, this was inserted: Yes; transitional arrangements will be for ten years; but in the case of pharmaceuticals and agro-chemicals, immediately. Right now you must allow them product patent rights together with the rights for exclusive marketing. The American multinationals are itchy, itchy, itchy. They could not wait for ten years: "Right now, you be our slaves, right now." And why it happened and who are negotiating on our behalf? Why, Mr. Minister? This is something on which I would say that one day, the history of this country's commercial transactions will be written by somebody else.

We had a chief negotiator on our behalf for 1993-94. Suddenly, we find

that his role is changed; from being the chief negotiator for India, he has become a Deputy Secretary General of GATT. Was he negotiating to protect the country's interests? Or, was he negotiating in order to land himself a job in the GATT? Now, these are the things which we ought to go into. I could have gone on and on and on but let me stop out of deference to the Chairman, although my emotions say something else. This is an educational process and many of us do not even know that his kind of things are happening. I would, once more, appeal to the Industry Minister that there is no prestige involved. There is no issue of prestige involved. We are all children of this great nation and we are taking a decision which will affect the long-term interests of this nation. Since you can see much tension and dissension, please desist from trying to do what you are going to do. Thank you.

MR. CHAIRMAN: Mr. Ashok Mitra, there is Amendment No. 2 also in your name. It is the same as No. 1. Are you moving Amendment No. 2? You have already moved Amendment No. 3. Are you moving Amendment No. 2?

SHRI ASHOK MITRA: Sir, let me make a point which I was trying to make in the morning. When I left my residence at 10.25 a.m. the daily dak had not reached me. I do not even know what are the amendments that have been admitted.

MR. CHAIRMAN: You have already moved Amendment No. 3.

SHRI ASHOK MITRA: If I can get a copy of that Amendment, I have not got a copy.

MR. CHAIRMAN: It is the same as Amendment No. 1, which has been raised by Shri Gurudas Das Gupta. It is the same. *(Interruptions)*

SHRI NILOTPAL BASU: I have a point, Sir. This is the state of affairs.

Today morning we did not get the papers which we normally get everyday. We are not even aware of what amendments we are moving as well as what amendments the other Members are moving. In this state of affairs, I do not know how a Government, in its right senses, can go and land this kind of a Bill. *(Interruptions)*

SHRI MD. SALIM (West Bengal): It is the right of the Members. Everyday, in the morning, we receive a packet containing the list of business, amendments and everything else that we are supposed to get. Today, why there is an exception? This is not happening only today. Sir, whenever the GATT thing came up in the House, whenever the Patents thing came up in the House. Some interested quarters, including the Secretariat, have been making use of these. I am making an allegation. *(Interruptions)*

MR. CHAIRMAN: Please, do not make this allegation. *(Interruptions)*

PROF. VIJAY KUMAR MALHOT-RA: This is highly objectionable. *(Interruptions)*

SHRI MD. SALIM: I remember many occasions. *(Interruptions)* Shri Gurudas Das Gupta has got it. *(Interruptions)*

I suspect something. This is an allegation. *(Interruptions)*

SHRI T.N. CHATURVEDI: This kind of allegations can be repudiated. *(Interruptions)*

SHRI MD. SALIM: I remember the same thing came up during the earlier Government also. *(Interruptions)*

MR. CHAIRMAN: I do not think anybody would have done it. But, I will certainly enquire into what you are saying. What I am now saying is, your amendment is the same as the one which Shri Gurudas Das Gupta has moved. Are you moving your amendment?

SHRI ASHOK MITRA: If you could kindly hand over a copy...*(Interruptions)*

MR. CHAIRMAN: All right. They are in the lobby also.

SHRI MD. SALIM: Who is responsible for this...*(Interruptions)*... We would like to know as to why these papers were delayed. ...*(Interruptions)*...

MR. CHAIRMAN: No. ...*(Interruptions)*.. Mr. Gurudas Das Gutpa got the papers. ...*(Interruptions)*... The whole... *(Interruptions)*...

SHRI MD. SALIM: Sir, all the CPI(M) Members are staying at V.P. House. ...*(Interruptions)*... Sir, you are the Chairman of this House. ...*(Interruptions)*... We would like to know why these papers were not received today. ...*(Interruptions)*...

MR. CHAIRMAN: I will find out. *(Interruptions)*...

SHRI MD. SALIM: Why has this happened today only? ...*(Interruptions)*...

MR. CHAIRMAN: Anyway, I have told you that we would inquire into it. ...*(Interruptions)*... We will inquire into it. ...*(Interruptions)*...

SHRI NILOTPAL BASU: Sir, you still expect us to discuss this Bill as the Government wants and pass it. ...*(Interruptions)*... Is this the way? We must know the names of the Members who have moved the amendments.

MR. CHAIRMAN: Mr/Ashok Mitra, are you moving your amendment?

SHRI ASHOK MITRA: Sir, I move:

"That the Bill further to amend the Patents Act, 1970, be referred to a Select Committee of the Rajya Sabha consisting of 18 Members (to be nominated by the Chairman) with instructions to report by the first day of the next Session."

PROF. VIJAY KUMAR MALHOT-RA: His amendments are diametrically opposit to each other. ...*(Interruptions)*... One amendment is for a Joint Committee and the other is for a Select Committee.

SHRI NILOTPAL BASU: His party has diametrically opposite views. ...(*Interruptions*)...

MR. CHAIRMAN: Why do you in-terefere with each other? ...(*Interruptions*)... Now, the Amendment No. 4 by Shri Rama Shanker Kaushik. Are you moving it?

**श्री रमाशंकर कौशिक:** (उत्तर प्रदेश): सर मैं प्रस्ताव करता हूँ कि

“पेटेंट अधिनियम, 1970 का और संशोधन करने वाले विधेयक 31 जनवरी, 1999 तक राय जानने के लिए इसे परिचालित किया जाए।

श्रीमन, यह इतना महत्वपूर्ण संशोधन विधेयक है कि हमारा पूरे देश की राय—चाहे वह विधान सभाओं के जरिए आए, चाहे वह किसी भी प्रकार से आए—जब तक पूरी राय, जनता की और विधान सभाओं की नहीं आती है, तब तक इतने खतरनाक बिल को इस सदन के आती है, तब तक इतने खतरनाक बिल को इस सदन के सामने, विचार के लिए तो रक्षा ही गया है, लेकिन पास नहीं होना चाहिए। श्रीमन, इसके ऐक्ट बन जाने से कंपनी का उपनिवेशवाद, बहुराष्ट्रीय कम्पनियों का उपनिवेशवाद शुरू हो जाएगा और हमारी कृषि, हमारे उद्योग, हमारे और धंधे और यहां तक कि विधान सभाओं के अधिकारों में भी कटौती हो जाएगी—इतना खतरनाक यह विधेयक है। यह तो बिल्कुल सही बात है कि इस पेटेंट बिल के जरिए से जिस प्रकार की व्यवस्था बहुराष्ट्रीय कम्पनियों के लिए की जा रही है, वह हमारे देश की खेती के लिए सबसे ज्यादा नुकसानदेह साबित होगी। चीजों के जो जीन्स इकट्टे हैं—हमारे यहां के चीजों के जीन्स अमेरिका में इकट्टे हैं। उन्होंने इसके पेटेंट करा भी लिए हैं। जैसे बासमती राइस का एक कम्पनी ने, जो बहुराष्ट्रीय कम्पनी है। उसने हमारे बासमती चावल का पेटेंट ले लिया है और वह पेटेंट अमेरिका में होने के बाद हमारे देश में भी लागू हो जाएगा जिससे हमारे किसान अपने ही बीज को नहीं हो सकेंगे और उस कम्पनी के बीज को उन्हें खरीदना पड़ेगा। इसी प्रकार से उद्योगों के मामले में, पेटेंट वाले मामले में जिस प्रकार की व्यवस्था की जा रही है—जो हमारे अध्याय थे, जो 1970 के पेटेंट बिल में है जिनमें सारी चीजों को देखा जाता था कि वह किसी और का है कि नहीं है—लेकिन इसमें तो हमारे व्यवस्था की जा रही है कि केवल उत्पाद पर पेटेंट होगा। हमारे देश में प्रणाली के ऊपर पेटेंट होता है लेकिन वह उत्पाद

पर पेटेंट कर देगे और जो उत्पाद वह बनाएगे, उस उत्पाद को हमें खरीदना पड़ेगा। इसजे अतिरिक्त यह भी जरूरी नहीं है कि वह उत्पाद हमारे ही देश में तैयार हो, वह विदेश में तैयार होगा और हमारे देश में उसका आयात हमें करना पड़ेगा तथा उस आयात पर हम मूल्य नियंत्रण भी नहीं कर सकते हैं। जो मूल्य वह निर्धारित करेंगे। उस मूल्य को हमें देना पड़ेगा। हमारे किसान बीजों के लिए तरस जाएंगे और इसी तरह से सारी चीजों के संबंध में होगा। हमारी जो बौद्धिक सम्पदा है, उस बौद्धिक का पेटेंट विदेशी कम्पनियों को, बहुराष्ट्रीय कम्पनियों को देने के लिए व्यवस्था की जा रही है और इस व्यवस्था के चलते हमारा देश में चीजों का अकाल हो जाएगा। हमारे उद्योग ठप्प हो जाएंगे, हमारा दवाइयों का उद्योग विशेष रूप से प्रभावित होगा जो कि 5-7 हजार करोड़ रुपये का उद्योग है। इसमें एक यह भी व्यवस्था की जा रही है कि सन 1995 से जो दरखास्तें बहुराष्ट्रीय कम्पनियों की पेटेंट के संबंध में पडी हैं, उन पर विचार होगा।

ऐसा नहीं है कि हमारे उत्पाद बने हैं 1995, 1996, 1997 में विशेषरूप से दवाओं के मामले में, अगर हम उन पर पेटेंट लेना चाहें तो वह नहीं ले सकते हैं। चूंकि 1995 से जो दो जहान दरखास्त बहुराष्ट्रीय कम्पनियों की पडी हैं उन पर विचार होगा। उसमें इस बात जो देखा जाएगा कि कोई दूसरा उसका पेटेंट तो नहीं है यानी हमारे यहां उसका पेटेंट नहीं है, चूंकि 1995, 1996, 1997 में हमारे यहां पेटेंट को हासिल करने में सात साल लगते हैं। हमारे यहां 24 हजार दरखास्त पेंडिंग पडी हुई हैं जो कि कंट्रोलर के यहां हैं, नियंत्रक के यहां हैं। ये देशी कम्पनियों की दरखास्त है। लेकिन 1995, 1996, 1997 में जो दरखास्त है। उन दवाइयों का तो कोई प्रश्न ही पैदा नहीं होता है। 95 दरखास्त बहुराष्ट्रीय कम्पनियों की हैं पहले उन पर विचार होगा और उनको पेटेंट का अधिकार दे दिया जाएगा।

सभापति महोदय, इसी प्रकार से हमारे जीवों पर भी और हमारी जो 42 बन औषधियां हैं उनका पेटेंट विदेशों में हासिल कर लिया गया है और वह वहां लागू होगा, अगर वह एक्ट पास हो जाता है। इसलिए वह एक बहुत खतरनाक एक्ट है। यह हमारी पूरी संप्रभुता को नष्ट कर रहा है, हमारे उद्योगों को नष्ट करेगा, हमारी किसानों को नष्ट करेगा और हमारे किसान अपने बीजों को रख नहीं

पाएंगे, दूसरी कम्पनियों, बहुराष्ट्रीय कम्पनियों के बीजों को हमें खरीरदना होगा। इस ढग की व्यवस्था इसमें हो रही है।

महोदय, मानव जीन्स पर भी उनका अनुसंधान हो रहे है, हमारे देश के मानवों के जीन्स पर हो रहे है, हमारी आंखों पर हो रहे है, हमारे बालों के रंग पर हो रहे है और भी बहुत सी चीजों पर हो रहे है और वे उस पर भी पेटेंट हासिल करेंगे। तब हमारे देश की स्थिति बहुत खतरनाक होगी। इसलिए मेरा प्रस्ताव है कि इसको राय जानने के लिए परिचालित किया जाए।

MR. CHAIRMAN: There is amendment No. 5 in the name of Shri Ashok Mitra. Are you moving it?

SHRI ASHOK MITRA Sir, I move:

"That the Bill further to amend the Patents Act, 1970, be circulated for eliciting opinion thereon by the 20th April, 1999."

Sir, I will take a couple of minutes more because this is a new amendment. This is a very funny thing. Had our negotiators, during the Dunkel negotiations, been a little alert, they would have prevented all insertions in the Marrakesh Treaty which are against the interests of India and the developing countries. Why are they so? We are an original member of GATT-I, set up in 1947. The WTO has emerged out of the budding of the GATT. It is through the amending provisions of GATT-I that we arrived at the WTO. The very first article of GATT says that any change in the rules and regulations has to be unanimous. If even a single member, out of the 106 original members of GATT, says, "No, we do not agree", the WTO can be stalled. We have an ocean of opportunity before us to stall any provisions in the Marrakesh Treaty, which are against the interests of the developing countries or India. I do not know who the Minister was. I do not know what instructions were given to the civil servants. Perhaps they were told, forget about everything else, forget all these things, you just follow the American line. Whatever the Americans say you say, "Yes, Sir." You put your hand

on your heart and think that this is the regime which has been set up and this you have to continue to support this regime, (interruptions)

*The questions were proposed.*

MR. CHAIRMAN: Now, the amendment is moved. The Motion for consideration and the amendments thereto are now open for discussion. Now, Mr. Kapil Sibal.

SHRI PRANAB MUKHERJEE: Has the Minister made a speech? The Minister has to make a speech first.

SHRI VAYALAR RAVI: Sir, the Minister must explain as to...

MR. CHAIRMAN: As a matter of fact, I have said the that Motion for consideration of the Bill and Amendments thereto are now open for discussion together. So, the Minister need not reply now.

DR. BIPLAB DASGUPTA: He need not reply, but he should say something.

MR. CHAIRMAN: He need not, because the voting on the amendments will be later on, not now. He will reply in the end. He cannot speak twice. Now, Mr. Kapil Sibal.

SHRI GURUDAS DAS GUPTA: Sir, I raise a procedural point. Kindly give your ruling. My procedural point is if our Amendments on sending this Bill to the Select Committee are carried, then a large part of the discussion may be avoided. Therefore, let the House give its opinion on the procedure that you have suggested. Let the House defeat the amendments. Then you can take up the Bill.

MR. CHAIRMAN: No. I have already said that the Motion for consideration of the Bill and the Amendments thereto are now open for discussion. I have started the discussion. Mr. Kapil Sibal will start.

DR. BIPLAB DASGUPTA: How can it be? The Government is introducing such an important Bill and the Minister is not speaking. How can it be? No Bill can be discussed like this.

MR. CHAIRMAN: Hon. Members, the hon. Minister had moved that the motion for consideration of the Bill be taken up. He has already moved. No reply is required now, because it is according to the procedure we have drafted. He has moved the Bill. Then, you have moved the Amendments. The discussion will take place now. He will reply and the voting on his motion and your Amendments will come in the end.

DR. BIPLAB DASGUPTA: Sir, my point is, how can there be any motion for consideration without a statement by the Minister? How can we discuss it? The Minister has to make a statement. *(Interruptions)* While moving the Motion, the Minister did not make his speech.

[The Vice-Chairman (Shri T. N. Chaturvedi) in the *Chair*.]

SHRI KAPIL SIBAL: Mr. Chairman, Sir.....

DR. BIPLAB DASGUPTA: Mr. Vice-Chairman, Sir, you have to decide whether the amendment for sending the Bill to the Select Committee is accepted or not.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The Chairman has already explained the position. He has given his ruling.

SHRI NILOTPAL BASU: Sir, let there be a division. *(Interruptions)*

SHRI VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Four of you from the same party are speaking together. Mr. Sibal is not yielding.

SHRI NILOTPAL BASU: We are sorry, Sir.

SHRI VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): There is no question of your being sorry. The Chairman has already explained the position to you.

SHRI NILOTPAL BASU: You are the Chairman, now. *(Interruptions)*

SHRI DIPANKAR MUKHERJEE: Sir, we asked for referring the Bill to Select Committee. If there is no voting

that means, the hon. Minister has accepted our amendment of referring the Bill to a Select Committee.

SHRI PRANAB MUKHERJEE: It cannot go on. We cannot allow them to hold the entire House to ransom. *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You will have a chance to speak. Let Mr. Kapil Sibal speak. The procedure has been followed. The discussion has been initiated. *...(Interruptions)...* Please don't disturb the House. Mr. Sibal wants to say something.

SHRI MD. SALIM: Mr. Vice-Chairman, Sir, I am on a point of order.

SHRI KAPIL SIBAL: I am not yielding.

SHRI MD. SALIM: I am on point of order, whether you yield or do not yield, it doesn't matter.

जरा सुनिये । जो लोग समान बेचते हैं वह भी दाम तय कर के बेचते हैं । आप लोग तो बिना दाम तय किये बेचते हैं **(व्यवधान)**

**श्री सूर्यभान पाटील बहाडणे:** उपसभाध्यक्ष महोदय, मेरा एक प्वाइंट आफ आर्डर है **(व्यवधान)**

**उपसभाध्यक्ष ( श्री टी. एन. चतुर्वेदी):** पहले प्वाइंट आफ आर्डर उनका है , उसके बाद आपका होगा ।

SHRI MD. SALIM: Mr. Vice-Chairman, I would like to draw your attention to page number 503 of the Practice and Procedure of Parliament by Kaul and Shakhder, I will quote second last para: "An amendment for reference of a Bill to a Select or Joint Committee or for its circulation, has to be moved immediately after the motion for consideration of the Bill is moved." They are separate. Now, it has been moved. If the motion for consideration of the Bill and certain clauses thereof have been adopted by the House, Why is this question of adoption? After the mover moves, his amendment for referring the Bill to a Select Committee or a Joint Committee *...(Interruptions)...* I will complete the sentence. I "After the motion for consideration of a

Bill and certain clauses thereof have been adopted by the House, an amendment for referring the Bill to a Select Committee is out of order." If the motion by the Minister for consideration of the Bill is taken up; and voting on the amendment or motion moved by a Member for referring the Bill to a Select Committee or a Joint Committee, is taken up, if it is voted out, if it is not adopted, then, you take it up.

SHRI PRANAB MUKHERJEE: Mr. Vice-Chairman, Sir, I would like to submit the same section. This is the stage where we are considering the Bill. What Mr. Salim has said is true. But there are other words which he had missed. "Certain clauses thereof have been adopted by the House. "Then, there can't be any motion for sending it to a Select Committee because it would be infructuous. Therefore, the stage of voting the Bill for referring it to a Select Committee will arrive when the general discussion is over. After this motion for consideration and then clause-by-clause consideration will follow. Therefore, you are absolutely right in asking Mr. Kapil Sibal to speak. Before you take up clause-by-clause consideration of the Bill—that will be the stage—when Members can press their amendments for referring the Bill to the Select Committee. ...(*Interruptions*)...

SHRI MD. SALIM: I would like to refer to page 504 also. I will not read the entire portion. I will just draw your attention to the last para of the same Chapter, page number 504: "When a motion for reference of a Bill to a Joint Committee has been moved, it is not permissible to move an amendment that the Bill be taken into consideration forthwith."

Now, you have to dispose of this motion of referring the Bill to the Select Committee. Then, you can taken up consideration of the Bill. Otherwise, the whole discussion is totally inouctuous.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The Chairman has gi-

ven the ruling. I think what Mr. Pranab Mukherjee has said is in order. ...(*Interruptions*)..

श्री सूर्यभान पाटिल बहाडणे: उपसभाध्यक्ष महोदय, राज्य सभा का यह सभागृह एक वरिष्ठ सभागृह है जिसकी उच्च परम्परा है, डिग्रीटी है, एक प्रतिष्ठा है और यहां परम्परा से काम चलता रहा है। (व्यवधान) यहां का कम-काज कानून के आधार पर चलता है, संकेत के आधार पर चलता है। मेरा प्वाइंट आफ आर्डर यह है अध्यक्ष ने ....(व्यवधान)....

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : यह समझा रहे हैं। आप चार लोग एक- साथ समझा रहे हैं वह अकेले समझा रहे हैं (व्यवधान) जरा समझाने दीजिये (व्यवधान)

बोलने दीजिए उनको....(व्यवधान)

श्री सूर्यभान पाटिल बहाडणे: सभापति महोदय ने उस प्रश्न के बारे में अपनी राय दी है और उस राय को सर्वसम्माति से संबंधित सभी सदस्यों को मानना चाहिए। यह परम्परा है। यह कानून भी है। मेरा यह कहना है कि सभापति जी की रूलिंग देने के बाद भी सवाल उठाना और सभागृह के कामकाज में अड़चने डालना, क्या यह उचित है? इस बारे में आप अपनी राय बताएं। ... (व्यवधान)

SHRI NILOTPAL BASU: Sir, under which rule is he raising it? Sir, with full reverence to the Chair, I would like to say that what the hon. Member is saying is very, very humiliating for us. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Basu, you please abide by the ruling of the Chair and let Mr. Sibal speak so that there is no cause for humiliation anymore. (*Interruptions*)

SHRI NILOTPAL BASU: Sir, after the Chairman's ruling, with due respect to him, we can always raise our points of order, based on the Rules of Business and earlier precedents. But he is saying that raising such points of order is very bad. It is against the tradition of the House. Are we not protected by the Rules of Business of the House? Are we not protected by the conventions of the House?

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Nilotpai Basu, you have had enough. (*Interruptions*) I don't think there is any intention on the part of the hon. Member of humiliate you. (*Interruptions*)

SHRI NILOTPAL BASU: We will continue to raise the points of order. If there is any understanding between the Ruling Party and the major Opposition party, it is all right. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Let Mr. Sibal speak.

SHRI ASHOK MITRA: Sir, you have the reputation of being a fair-minded person. Can you quote even one incident when vote on an amendment has not been taken and you have allowed the debate to continue? You cannot do so. With all humility, you cannot even quote one incident, and you will be creating an unparliamentary history ...(*Interruptions*)

THE VICE CHAIRMAN (SHRI T.N. CHATURVEDI): The hon. Minister has already moved the motion. You will have an opportunity to speak about all the amendments which you have moved. Let Mr. Sibal explain his view-point and you will have an ample opportunity to make your view-point. (*Interruptions*)

SHRI KAPIL SIBAL (Bihar): Mr. Vice-Chairman, Sir, I rise in support of the motion and commend this motion to the hon. Members of this House.

SHRI ASHOK MITRA: To which motion are you referring to? Sir, What has happened to our motion? (*Interruptions*) I am sorry. We need a ruling on this issue. What is your ruling?

DR. BIPLAB DASGUPTA: We need a ruling on this issue. What is your ruling? Some Members have raised the issue. Some hon. Members have raised the points of order on the question of sending the Bill to a Select Committee of the House or to a Standing Committee. So, until that issue is disposed of, we cannot go on.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): That stage will come later on. Let Mr. Sibal speak now.

DR. BIPLAB DASGUPTA: The ruling has to be given.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The " Chairman has already taken this point into consideration and has given a ruling. He has permitted Mr. Sibal to speak, and I don't see any reason to deviate from that particular ruling. Let Mr. Sibal speak. (*Interruptions*)

SHRI ASHOK MITRA: Can you quote one precedent when vote on an amendment has not taken place and the motion was allowed? (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Sibal is not yielding. Mr. Ashok Mitra, you will get the opportunity. You are a very senior and experienced Member. You will get the opportunity to give vent to your feelings and express your opinion.

SHRI PRANAB MUKHERJEE: Sir, I would like to draw your attention to page 506, last paragraph, of Kaul and Shakhder. "Even when a Bill under consideration is partly debated, if the Member in charge, in deference to the wishes of the Houses, agrees to send the Bill to a Select Committee and even at that stage it can be done."

Secondly, a lot of legal points have been raised. I would like to draw your attention to rule 69. A Member, at the stage of introduction, is entitled to move only one of the four motions. Which are those four motions? One, that the Bill be taken into consideration, which the hon. Member has moved. He has not moved any other motion. Dr. Ashok Mitra has moved three motions. One motion is that the Bill be referred to a Joint Committee. The second motion is that the Bill be referred to a Select Committee. The third motion is that the Bill be circulated for the purpose of eliciting public opinion. Rule 69 clearly says that only one of these four motions can be moved by a



Member. No Member is entitled to move all the three motions or all the four motions together. Therefore, let us not go into the legalities of it. I know that the Members of this House would like to have the opinion of the House and that time for the opinion will be made available to the House. Therefore, in the first instance, that motion doesn't stand the test of scrutiny by rule 69 because a Member is entitled to move only one of the four motions which have been mentioned here.

**श्री रमा शंकर कौशिक :** श्रीमन , मैंने तो एक ही मूव किया है । ...**(व्यवधान)** मैंने तो एक ही मोशन मूव किया है । ...**(व्यवधान)**

**DR. BIPLAB DASGUPTA:** Sir, on this issue hon. Member, Shri Pranab Mukherjee, has quoted Shakhder and Kaul. Now, the book which we have here is "Rajya Sabha at Work". *(Interruptions)*... This book has been written by Shrimati Rama Devi, our former Secretary-General, and Shri B.C. Gujjar. Please look at page 502. *(Interruptions)*...

(THE DEPUTY CHAIRMAN IN THE CHAIR)

**THE DEPUTY CHAIRMAN:** Just one minute.

**SHRI MD. SALIM:** Madam, I am on a point of order. *(Interruptions)*...

**THE DEPUTY CHAIRMAN:** Dr. Biplab Dasgupta, please sit down. *(Interruptions)*... Just one minute, please. In the morning when the Bill was taken for consideration, those who have moved their amendments have spoken on it. A lot of discussion has taken place. Today is the last but one day of the session. I think in the fitness of things... *(Interruptions)*...

**SHRI NILOTPAL BASU:** Madam, we are not responsible for it.

**THE DEPUTY CHAIRMAN:** You may not be responsible for it. But you are also responsible persons to see that a proper discussion takes place on the Bill so that your point of view is also

registered. If you don't discuss the Bill, if this side or that side does not discuss the Bill, how is the country going to know what your viewpoint is? So, you speak when your time comes. Your party is allotted enough time. The Congress party I is allotted enough time. The other parties are also allotted enough time. The job of the Parliament is to discuss, not to stall. I have asked Mr. Kapil Sibal to make his speech. *(Interruptions)*...

**SHRI MD. SALIM:** Madam, there is a point of order. *(Interruptions)*...Madam, please hear me.

Mr. Pranab Mukherjee, a learned and veteran Member of this House, has referred to rule 69 and raised a point. *(Interruptions)*... The veteran Member, Pranab Mukherjee, has raised a point that, according to him, as per rule 69, only one of the four motions can be moved by a Member. When Mr. Asho Mitra was allowed to move the motion this legal point was raised. Here rule 69 mentions about the Member incharge who is piloting the Bill, the Minister. The Minister cannot move more than one motion. In rule 69 there is nothing mentioned about a Member. Rule 69 doesn't bar a Member from moving more than one motion. I will read it again.

**THE DEPUTY CHAIRMAN:** I have read it.

**SHRI MD. SALIM:** It says, "When a Bill is introduced, or on some subsequent occasion, the member in charge...." ...*(Interruptions)*...

**SHRI B.P. SINGHAL:** Madam, on this point the Chair has already given a ruling. ...*(Interruptions)*...

**श्री नीलोत्पल बसु:** मैडम, सीधी सी बात है, अगर पाइंट आफ आर्डर उठाने के दौरान कोई मेंबर इस तरह से डिस्टर्ब करेगा तो हम भी लाचार होंगे । बी आर सारी, मैडम ।

**श्री संघ प्रिय गौतम:** सवेरे से आप तीन आदमी चिल्ला रहे हो । आप को ...**(व्यवधान)** ... कोई परवाह नहीं है । ...**(व्यवधान)** ....

श्री नीलोत्पल बसु: हजार बार चिल्लाएंगे  
...(व्यवधान).....

श्री मोम्मद सलीम: संघ प्रिय जी, यह आप का मामला नहीं है।

DEPUTY CHAIRMAN: Just a minute.

SHRI ASHOK MITRA: Madam, I have a point to make. I am seeking your indulgence. This is a very serious matter. Madam, we have been allowed to move the amendments. Now the practice in all Parliamentary institutions is that at the time of introduction .....

SHRI B.P. SINGHAL: Madam, a ruling has already been given on this point.

THE DEPUTY CHAIRMAN: Now I am in the Chair. He is addressing me. I can answer it.

SHRI ASHOK MITRA: Madam, at the time of introduction, the fate of the amendments is decided first before the debate proceeds. For example, if by chance, one of the amendments that the Bill be referred to a Select Committee or a Joint Committee or circulated for eliciting public opinion is accepted, then there is no occasion for carrying on the debate. It will be infructious. I am merely pleading with you, Madam. Kindly quote one precedent from our Parliamentary history where such an amendment to a motion was not disposed of before the general debate took place. As the Minister is in a hurry, we should not trample our Parliamentary rules and regulations.

THE DEPUTY CHAIRMAN: Mr. Ashok Mitra, you are a very senior and learned Member of this House. You know these things very well. Yesterday also one of the hon. Members asked for a division knowing fully well that the division was not going to carry his voice because we could make out by a voice vote that it was going to be defeated. I am quite sure and you too are sure that

your amendment to send it to. ...(*Interruptions*). Just a minute. Have patience. I will listen to you. I have listened to you many times.

SHRI ASHOK MITRA: Madam, I have only made a gesture.

THE DEPUTY CHAIRMAN: Thank you. The main thing here is this. You know that the amendment that it should be sent to a Select Committee, may not be carried. Having said that, I feel that this House and the country has a right to know the opinion of various people. (*Interruptions*). Just a minute. Let me finish. It disturbs me. You have broken my chain of thought. ...(*Interruptions*),! will allow you. When I am speaking, there is no point in raising your hand because I will not stop and allow you to speak. The main thing is, you have a very serious objection to this Bill. Others also have their view points. Don't you think that they, for whom you are speaking, should know what your opinion is. Even if your motion is carried and the Bill is referred to a Select Committee, the country will be deprived of your valuable speech. Now I ask Shri Kapil Sibal to speak. This is my ruling. . ...(*Interruptions*).

SHRI ASHOK MITRA: Madam, is it our fault that there is not enough time? Is it our fault?

THE DEPUTY CHAIRMAN: There is enough time.

SHRI ASHOK MITRA: It is not our fault. You kindly ask the Government.

THE DEPUTY CHAIRMAN: I will sit here till tomorrow morning, till the next day for discussing this Bill. I have no objection. If you allow some people to speak, I promise that I will sit here. If you don't allow others to speak, there is no point in sitting here. ...(*Interruptions*)

SHRI ASHOK MITRA: It is a question of propriety, (*Interruptions*).

SHRI JIBON ROY: Madam,,  
...(*Interruptions*).

THE DEPUTY CHAIRMAN: I am not allowing. ...*(Interruptions)*. I am not allowing. ...*(Interruptions)*. No, ...*(Interruptions)*. *Mi.* Pranab Mukherjee's point is very clear. My ruling has been given. I ask Shri Kapil Sibal to speak. Please, let the House and the country know whatever everybody wants to say on it. We don't want to hush up the thing... *(Interruptions)*. I promise. Don't worry. We will sit the whole night and discuss it.

SHRI KAPIL SIBAL: Madam Deputy Chairperson, I rise in support of the Bill and commend the Bill to the hon. Members of this House. Madam, I have listened with rapt attention to the hon. Members of this House before I rose. I want to place on record the fact that this is certainly an issue, in which various sections of this House have different points of view. We recognise that. But this is an issue that has been debated not only within the precincts of this House and of the Lok Sabha, But also outside this House, and in various fora in the country. And that debate started in the early 1990s. It was only on April 15, 1994, that we appended our signature to the WTO which, ultimately, led to the issuance of an Ordinance at the end of December, and which, unfortunately, lapsed. And, thereafter, a Bill was introduced by the Congress Party. But, unfortunately, on the 10th of May, 1995, after the dissolution of the Lok Sabha, the matter could not be taken up in both the Houses for consideration. That is the background.

I want to succinctly place before this House my point of view and my party's point of view in respect of this piece of legislation in three phases. First, I will place before the hon. Members of this House for their consideration five broad reasons as to why we should support the Bill. Then, I will place before the hon. Members of this House for their consideration specific provisions of the TRIPS Agreement so as to allay the fears that they have voiced in this House.

Thereafter, I will deal with the specific provisions of this Bill in order to persuade the hon. Members of this House that whatever fears they have and which they have expressed in this august House are, perhaps, on account of the fact that the specific provisions of the Bill in the context of the TRIPS Agreement have not entirely been appreciated. I congratulate the BJP on this. They opposed this Bill in 1995. I remember, on March 21, 1995, Vajpayeeji in fact, walked out of the House in opposition to this Bill. Now, they have realised the wisdom of the Congress Party in having introduced this Bill... *(Interruptions)*

THE DEPUTY CHAIRMAN: Let him speak. He has a right to his opinion and you have the right to your opinion.

SHRI KAPIL SIBAL: I can only say that it is the duty of all political parties in this House and I dare say that none here, no political party, no Member of any political party, will put our sovereignty in jeopardy. There is no question about it. When we stand to speak either in support of the Bill or in opposition thereof, one thing is common amongst all of us; it is that we will not dilute our sovereignty. Madam, having said that, let me now give you the five broad reasons as to why we should support this Bill. First is that India is never known to default on its international obligations. You are aware of the fact that under the TRIPS Agreement, we had to have a law in place by January 1, 1995, which was not possible. The result was that we defaulted. When we tried to bring about a law, unfortunately, it could not be passed. Thereafter, the United States of America filed a complaint against us, and that matter was adjudicated upon by the Dispute Settlement Body. In terms of that adjudication to which India was a party, we, having opted for the transitional regime, had to enact a law by April 19, 1999. So, the first reason why

we should support this piece of legislation is that we should not be known as defaulters in the international community. India has always held its head high in the international community. So, no finger should be pointed at us that we are not a country which keeps up its international obligations. But, even more important than that is the fact that we have, in fact,

sought an adjudication of this matter at the instance of the United States. We have opposed the move of the United States and, pursuant to that adjudication to which we are a party and *qua* which there is no appeal in any forum and *qua* which decision we are bound, it will be unfortunate for this country if we do not give effect to a decision of the Dispute Settlement Body and pass this piece of legislation by April 19, 1999. But that itself is not good enough. It is not good enough for me to say that merely because we have an international obligation, that cannot be the only reason why we should pass this piece of legislation. We must be aware of the fact, and we must be convinced, that this piece of legislation is in the interest of the country, and I dare say to the hon. Members of this House that it is. We have now opted to be in the mainstream of the world economic order. We cannot get out of it. It is best, now that we are party to WTO, that we get the best deal for India while we are there. We cannot get the best deal for our country if we opt out of it. It is only when we accept the fact that we are there and we know our negotiating positions, the negotiating positions of other countries which are part of the WTO, that we will be able to get the best deal for India. So, I commend to the hon. Members of this House that it is better to negotiate from inside than to stand outside and lose everything. The fourth reason is, that today we are not considering some of the issues that the hon. Members like Yadavji and Kamlaji have raised. We are considering a very narrow piece of legislation. This piece of

legislation deals with pharmaceuticals and agro-chemicals. We are not dealing with genetics. We are not dealing with biotechnology issues. These are matters which we will deal with in times to come [ because we have to bring our laws in conformity with TRIPS by the year 2005 only. And I dare say that every Member of this House will have a chance to express his views, will contribute to the making of that legislation, and we will all be together to protect the sovereignty of this country. I have no doubt about it. But, today, we are on a very narrow issue. And the issue is 'transitional arrangements' before we have a comprehensive piece of legislation in relation to product patents. So, Sir, we are not dealing with some of the issues that the hon. Members in this House have raised in respect of biotechnology, seeds and other things. We are dealing with pharmaceuticals and agro-chemicals and that is a very narrow area. I will show to you with reference to TRIPS and with reference to this Bill that we are fully protected. The fifth reason why we should support this Bill, Sir, is... (*Interruptions*)

THE DEPUTY CHAIRMAN: He is used to proceedings in courts. So, he is thinking only of 'Sirs' and not 'Madams'. Thank God! He is not calling me 'My Lady'.

SHRI KAPIL SABIL: The fifth point that I was trying to place before this House is that this Bill provides sufficient safeguards consistent with TRIPS, and that there are enough powers with us to get rid of any exploitative regime that might be sought to be forced upon us, and that there are enough provisions in this Bill to take care of the public interest concerns that the hon. Members of this House might have. These, Madam, are the five broad reasons as to why we should support this piece of legislation.

But, Madam, let me refer to some Other specific provisions of TRIPS so that hon. Members of this House should be

aware that we really have not, in any way, diluted the rights that we otherwise have under the present Patents Act. I make reference to Article 65 of the TRIPS agreement, which is in Part VI of TRIPS. It is titled "Transitional Arrangements". Madam Chairperson, you are aware of the fact that under Article 65, the developing countries got five years to bring their laws in conformity with the TRIPS agreement. We, being a developing country, were given those five years. Unfortunately, we did not bring that law into place by 1.1.1995. Now, in terms of Article 70 of the TRIPS agreement, which refers to Transitional Arrangements, the TRIPS agreement requires us to do the following, which we are seeking to do under this Bill. The TRIPS agreement under Article 70(8) and 70(9) contemplates the following:

"If an entity applies under Indian law for a patent, that application shall be kept pending till the year 2005. However, if that company or that entity, which applies for a patent, is able to show to the Controller set up under the Patents Act, 1970 that that company has obtained a patent outside India and not only has that company obtained a patent outside India, but has also got approval for marketing that commodity outside India, then, if it files an application after 1.1.1995 and has obtained those rights outside India, that application shall be kept pending till the year 2005".

That, Madam, is the regime that is provided in TRIPS.

Now, what is it that we are required to do? We are required under TRIPS to only place the law under which those applications can be accepted in India, which is, what is called, a Mail Box provision. In other words, if we have a law in India by virtue of which an entity abroad, has got a patent and marketing rights that commodity, it is allowed to file

an application. That application will not be decided upon. It will be kept pending. That is the Mail Box provision that we were required to provide under TRIPS by 1.1.1995, which we have not provided; and by virtue of which the Americans went to the Dispute Settlement Body. All that we are doing under this legislation is to provide for that Mail Box provision.

That is number one. Number two by virtue of the fact that a foreign company has got a patent abroad, that doesn't entitle it, as of right, to get any Exclusive Marketing Rights in India. I want to disabuse the minds of hon. Members, that foreign companies have no such automatic right. Under the present regime, the Controller will refer that patent application to the examiner, under the 1970 Patents Act. The examiner will then examine that application in the context of the 1970 Patents Act. What is that? Madam, what will happen is; the examiner will see three things. Number one; is it an invention, in terms of the definition under the 1970 Act? I will just refer the hon. Members of this House to the definition clause under the 1970 Act, Section 2(j) says, "Invention means any new and useful art, process, method or manner of manufacture; machine, apparatus or other article; substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention." So, the examiner will have to examine that particular application to find out whether it falls within the definition of invention under 2(j) of the 1970 Act. But that is not the only exercise which the examiner will do. The examiner will also have to examine all such applications under section 3 and section 4 of the Act. Section 3 of the Act says, "The following are not inventions within the meaning of this Act." Section 3 prescribes what are not inventions. For example, the mere discovery of a scientific principle is not an invention. The mere discovery of a new property or new use for a known substance is not an invention. A substance obtained by a mere admixture

resulting only in the aggregation of the properties is not an invention. A mere arrangement or re-arrangement or duplication of known devices, is not an invention. A method or process of testing applicable during the process of manufacture is not an invention. A method of agriculture or horticulture is not an invention. Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings is not an invention. So, the examiner will have to give a report to the Controller that this is not an invention under section 3. In addition, he will have also to say that this is not an invention under section 4. What does section 4 say? "NO patent shall be granted in respect of an invention relating to atomic energy falling within subsection (1) of section 20..." So, what is the procedure that the examiner and the controller have to follow? Any application, even in respect of a product patented abroad in which the entity has marketing rights, will have to go through three tests. Number one; it is not patentable under section 3; not patentable under section 4 and it is an invention under section 2(j).

DR. BIPLAB DASGUPTA: Mr. Sibal, would you kindly yield for a minute?

THE DEPUTY CHAIRMAN: No, Dr. Biplab Dasgupta ...*(Interruptions)*...

DR. BIPLAB DASGUPTA: This is the way you define patents?

SHRI KAPIL SIBAL: If you don't mind; I am not yielding.

THE DEPUTY CHAIRMAN: Dr. Biplab Dasgupta, even if you want a Member to yield, it will be in the fitness of things that you go through me. If you go directly, there is going to be some direct intervention in your communication. So, you go through me, and I will settle it.

DR. BIPLAB DASGUPTA: Madam, may I go through you now?

THE DEPUTY CHAIRMAN: Yes, you have gone through me, and I say, "Please take your scat. Let him finish his speech."

SHRI KAPIL SIBAL: The reason why I am trying to explain this is to disabuse the minds of some hon. Members of this House of some predilections that they might have. They must be assured that our national interest is secure, that we are not doing anything to dilute it in any way, what is important is that all of us are really thinking in terms of the interests of the nation when we pass this Bill. We don't have any partisan interest in this. We have to do it because it is good for us. This is the procedure that has to be followed. After this procedure is followed, then that company will get what are called Exclusive Marketing Rights. Those rights also, Madam, will be available to that company for a period of 5 years. Supposing, a company gets EMR in the year 1999, that period will be over in the year 2004.

After that, they have no Exclusive Marketing Rights. Now, it is possible for us, before that five year period is over, to bring before the House a comprehensive piece of legislation.

THE DEPUTY CHAIRMAN: I am going for ten minutes to release a book. Please, let him speak and let others too speak. I will be back. *(Interruptions)* Mr. Jibon Roy, please. *(Interruptions)* The rule which applies to Dr. Biplab Dasgupta applies to you and applies to everybody.

SHRI JIBON ROY: He is a doctor and I am not a doctor.

THE DEPUTY CHAIRMAN: Then it applies more to you. The main thing is, let us have the discussion in the fitness of the importance of the Bill. Please, peacefully listen. If you do not agree with it, you have a right to disagree with whatever you like but everybody else has a right to agree with what one likes. If you disturb, nobody will know what the

real thing is. At least, I would like to know. *(Interruptions)* This is not like a debate in a school. Even in a school, everyone has a right for or against. They do not interrupt. I am just going for ten minutes to release a book and I am coming back. Please do not bother the Vice-Chairman. Please give your word.

[THE VICE CHAIRMAN (SHRI T.N. CHATURVEDI) in the Chair]

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): I am sure, Shri Jibon Roy will co-operate fully.

SHRI KAPIL SIBAL: Mr. Vice-Chairman, Sir, what I was trying to bring to the fore is to allay the fears of some of the hon. Members that it is not as if some foreign company which gets a patent abroad and files an application will be entitled, without anything more, to get Exclusive Marketing Rights. That is not the case. If their applications are to be examined in India in terms of the Act, our Controllers and Examiners are sufficiently concerned to take care of the public interest. I have no doubt in my mind that only valid and *bona fide* applications and applications will be granted Exclusive Marketing Rights. But, Sir, that is not the end of the matter. I want to bring to your notice some very important provisions of TRIPs itself which allows public interest to prevail in certain matters. I invite your attention to Article 27(2) under section V of TRIPs, which reads as follows: Members may exclude from patentability, inventions, the prevention within the territory of the commercial exploitation of which is necessary to protect order, public morality including to protect human life. These are exceptions within TRIPs itself. In other words, if there is an invention which is patentable and it is injurious to human life, TRIPs provides an exception.

DR. BIPLAB DASGUPTA: Why don't you....

SHRI KAPIL SIBAL: If you don't mind, Mr. Biplab Dasgupta, let me speak.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Let him explain now. *(Interruptions)* He is addressing the Chair. *(Interruptions)*

SHRI KAPIL SIBAL: I am trying to explain something, Sir. *(Interruptions)* If you let me explain, I will explain it. Just have patience. We listened to you with rapt attention. You had much to say. Unfortunately, it was all wrong. But, we listened to you with rapt attention. You may disagree with me, but please listen to me.

Now, Sir, I invite your attention to article 31 of TRIPs itself. Article 31 says "other use without authorisation of the rights holder where law of the Member allows for other use" We are a Member of the WTO and our law can allow for other use of the subject matter of a patent without the authorisation of the rights holder. Under Article 31, we can allow the use of a patent without the authorisation of the rights holder in India by compulsory licensing.

How, the answer to your questions. This Act allows other use even in respect of a patentable commodity. Even if a person has a patent outside India pursuant to the provisions of this Bill, the Government of India, or, another company, in public interest can seek the permission of the Controller to force that company to compulsorily licence that product or Exclusive Marketing Rights in India to that entity; not only with reference to certain aspects but also with reference to the price. It is possible, Sir, that some of the patent companies may come to India and sell a drug in urban centres in India which do not reach the rural poor. An application can be filed before the Controller saying that there is no distribution network worth the name in India by this Company. The Controller can pass an order directing that company which has Exclusive Marketing Rights to compulsorily licence that product to an Indian company and that Indian company

will have the right to distribute that product in rural India. Let me give you another example. Assuming, a company which has a patent right outside India and which has exclusive marketing rights inside India, sells the product, a particular marketable and patented drug at a very high price which is not affordable in India. Not only the TRIPs but the provisions of this Bill as well as the Patents Act of 1970 allow the Indian Government, the Central Government to force that company to sell that product at a reasonable and affordable price for the poor of this country. I will demonstrate it to you presently, Sir. So, please do not fear this. We fear because we think that we are going into uncharted territory. Yes, the territory is uncharted. But, we as a nation have to go forward, we as a nation have to compete and we as a nation must, in fact, be able to capture the international market. And we will do so. Now, Sir, let me show to you some of the provisions of this Bill which protect the public interest which I am talking about. *...(Interruptions)...* Kindly have a look at some of the provisions. Sir, if you look at section 24A, this section sets out a regime that I have already indicated to the hon. Members of this House. The regime being that if a person gets patent abroad, get marketable rights abroad, he is only entitled to file application in India which shall be kept pending till the year 2004, which is reflected in section 24A and 24A(2) says that while that applications is kept pending, the Controller will get a report from the Examiner, seeking an investigation in terms of section 3 and section 4 of the 1970 act which I have already read out to the hon. House. Then look at section 24B which is titled 'Grant of Exclusive Rights'. These exclusive rights can be given for that patentable commodity for which a patent has been obtained abroad. The application is filed here and after the report has been received from the Controller and the Controller decides to give the exclusive marketing rights. Now, Sir, what is more important is section

24C which deals with compulsory licensing. What is more important here is it says that "the provision in relation to compulsory licensing in Chapter 16 shall subject to necessary modifications, apply in relation to an exclusive right to sell or distribute." What does it mean? If you look at Chapter 16, of the 1970 Act, that deals- with how these patents and compulsory licences are to work. Let me explain to you the scheme of Chapter 16 that applies to this Bill. The scheme is the following. Supposing a company has exclusive marketing rights in India after the procedure is followed, under section 24A1, 24A2 and 24B. Once that exclusive marketing right is given, any company after a period of two years can apply to the Controller and say that these exclusive marketing rights are not being worked—in the public interest. That, Sir, is section 84 of the 1970 Act dealing with compulsory licensing. When that company applies saying that the patent is not being worked—in the public interest, then the Controller can after inquiring into that matter, make an order to the effect and I may read out, '...that the invention is not available to the public at a reasonable price and pray for the grant of a compulsory licence to work the patented invention. The 'word patented invention' is now substituted by 'exclusive marketing rights'. Therefore, any other company in India is entitled after it gets an order from the Controller to work that patent through an exclusive marketing licences and sell that particular product at a reasonable price. This is a part of Chapter 16 which applies to the present Bill. So, there should be no fear. But, that is not the only power. The other power which is even more significant is section 86 of the Act. The power under section 84 is with a company which can apply to the Controller. Over and above that, the Central Government can also apply to the Controller under section 86 and that can be done not in two years but within three years of grant of exclusive marketing rights. Sir, section 86 talks of endorsement of a patent with the words



'licensing of rights'. In other words, any company which has got a patent that patent can be endorsed by the Central Government with the statement 'licence of rights'.

[4.00. P.M.]

In other words, once that endorsement is made anybody—either the Central Government itself or any other company, in India, is entitled to work that patent as of right under an exclusive licence. There also the Central Government can, in fact, fix a reasonable price at which that drug can be sold in India. So, you have a regime under chapter 16 of the Patents Act, which allows the public interest to be protected and the prices to be protected.

Now, let me clarify one other thing. Under the TRIPs Agreement all products and patented products or other products, sold in India prior to 1.1.1995 or prior to filing of an application, will not be touched. In other words, the drugs which are being sold today to the ordinary folk of our country are not going to be touched by this regime. They will continue to be sold. This regime applies to future drugs which may come into the market. That is the application of chapter 16 to this particular Bill and the protection of public interest under section 84 and 86. But there is even a more important provision which I would like to bring to your notice and that is in the Bill itself. It is section 24(D). I would like to read section 24(D) to the hon. Members of this House. It says, "Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (I) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (I) of

section 24B, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance." But, Sir, sub-section 2 is even more important. It says, "The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf." A blanket power is there with the Central Government. I say, "A blanket power." An hon. Member was heard saying, "What happens after the period of two years or three years period because I referred to sections 84 and 86. Section 84 gives the right only after a period of two years and section 86 gives the right only after a period of three years." To take care of that problem, section 24D has been incorporated, to take care of the problem. "At any time before the two-year period or before the three-year period." In other words, the day that company is granted exclusive marketing rights in India, the Central Government, considering the facts of the case, with reference to any particular patented drug on which exclusive marketing rights have been given, may intervene, at any stage, in the public interest for the purpose of compulsory licensing to ensure that, that the drug is provided to the poor of this country at a reasonable price. Sir, that is the point that I was trying to make clear to the hon. Members of this House when I rose to speak and support this Bill. We are, here, protecting the public interest. (*Interruptions*) Now, they may have other objections because they have now been enlightened about these provision. I can understand that. They may have some ideological objections. I can understand that. But let me make it clear that all parties, here, are to protect the national interest. I am, therefore, glad that I am rising in support of this particular Bill. So, section 24(D) is a complete answer to

it. I am going to take up only two more facts. The present Bill includes two further provisions. That is, article 157(A) and 9(2). These give even greater protection. Article 157(A) deals with the security of the country—traffic in arms and such other things. I am glad that, that has been included. Article 9(2) gives protection to applications which were filed after 1.1.1995 in India. The reason for that is that the judgement of the World Settlement Body said, you please at least ensure that those people, who could have filed on 1.1.1995 and did apply those applications are at least considered and kept pending. So, it is for that reason that these two changes have been made. I endorse these changes. Only one aspect, which I want to state now is: we thought that after 24(A)(2) there should be another provision, namely, 24(A)(3), which should say that the exclusive right to sell or distribute a product will not be granted for an article or substance based on the Indian System of Medicine and which are already in the public domain because we are concerned with the Indian System of Medicine. That should not be touched by this Act. We had, in fact, requested the hon. Minister to accept this suggestion and accept this amendment so that a message must go to the people of this country that we, here in this House, are concerned for everybody. We are concerned for the advancement of technology, we are concerned for the poor of this country, we are concerned for those who practise the Indian System of Medicine, we are concerned with all sections of society. We are discussing the matter, deliberating upon the matter, and not taking any particular posture. The only concern that we have is the public interest and the national interest. And with that concern I support this Bill. ...*(Interruptions)*...

SHRI ARUN SHOURIE (Uttar Pradesh): Sir, it is a great pleasure to follow Mr. Kapil Sibal's educated exposition of this provision. With what he

has said, I doubly endorse and warmly endorse this Bill. I shall adduce the reasons that he has given. I will also put forward three or four suggestions for the consideration of the Government and for further taking into account the strong sentiments which have been expressed, that is, as to how the national interests can be fortified in this very important matter; Sir, what Mr. Sibal has just said shows us how we get trapped into slogans. Without reference to the detailed provisions we took anticipatory position. I think, this characterises the entire discourse on the World Trade Organisation in this matter. If I may just supplement one point as an illustration, to begin with ...*(Interruptions)*... An hon. Member expressed great apprehensions that the plants which were generated in India have been patented. The fact of the matter is that, that has not been done. The fact of the matter is that, that is specifically prohibited not only by the Indian Patents Act, but also by the TRIPs Agreement. An invention is defined—as Mr. Kapil Sibal was saying—as something that is new. A plant is not a new thing. Secondly, it must involve an inventive step. Taking a plant is not an inventive step. In fact, what is article 27(1). Furthermore, article, 27(3) expressly says that plants and animals cannot be patented. But this whole thing goes on. Then, an attempt was made to patent turmeric. Why do you not remember that? What happened? Some patents in this regard were declared. The Indian Government, along with others, went to the US patent office. It took just a few months. After a few hearings that patent was cancelled. Why was it cancelled? Because we were able to show, "See, medical properties of turmeric are well known to India for centuries. Here are the documents." And they cancelled it.

You get documents about the Basmati. The fact of the matter is that the Basmati has not been patented. Please get that cleared, a company taking Basmati germ

plasm not from India, but from an American gene bank, which had obtained it, not from India, but from Pakistan many years ago, cross-breeded it with a oxrc long green rice and obtained a patent. That has been challenged. As long as it is a plant, it does not involve any innovation or innovative step, that patent will be struck down. You have patents everywhere. You have people trying to circumvent laws everywhere. It is the duty of the Government, which has been well discharged not only by this Government, but even by previous Governments, that the national interests in these matters are adhered to and the law of TRIPs is enforced. The same thing is about drug. I cannot understand how this goes on. How is it that in this august House such notions or beliefs are deliberately fostered? As Mr. Kapil Sibal has said, this present arrangement applies only to innovations after 1.1.1995. That means, no drug, which is in existence in India today, is going to be affected.

My second point really is that there is a list prepared by the W.H.O. of 248 or 250 drugs that are called 'widely-used, essential, drugs' in India. I am glad to state that a study published by the Rajiv Gandhi Institute of Public Health shows that out of those 250 drugs, there were only four drugs that had patents. The patent of one of them had expired in 1995, of another in 1996, and of yet another in 1997, while of the last had expired only this year, i.e. 1998. No one has been affected by the new change that we are bringing about. But, even more important fact is that, in future, drugs, may go bad or some companies may try to enforce difficulties. They may try to market life-saving drugs at exorbitant prices. Sir, due care has been taken in this regard. Why don't you look at Section 24(D) (2) of this Bill that is before you? Kindly read that: 'In the public interest, the Central Government can intervene to regulate the price.' Our problem is that we do not want to read that. That was just by way of illustration

that this discourse has become customary. In India, we have slogans followed by stampede, thus harming a rational consideration of many issues and thereby harming the interests of the country. I also think that a lot of brave talk on these specific issues harms the country. They keep on saying 'get out of the W.T.O.' They do not see the plus points of the W.T.O. The United States was not able to impose trade-related sanctions against India after the atomic explosions. They did everything else, but could not touch trade-related matters because both the countries are members of the W.T.O. They could not touch our textile quotas for which we have been fighting for. The former Minister of Textiles sitting on that side knows that. He personally handled those matters. Our quotas rose three to four times since the W.T.O. came into effect. This was because the W.T.O.

The question is not, as Dr. Biplab Dasgupta was saying, whether any one, for our non-compliance, can throw us out; That is not required. That is not the penalty prescribed. What is prescribed is under Article 22 of the Disputes Settlement mechanism, apart from the point that Dr. Mitra had been saying for the last 30 years, was saying on grounds of ethics, on grounds of aesthetics. But you want to disregard the rulings of a dispute resolution body to which you are a party. That is the point Kapil has made. But the other ancillary point to that is short of throwing us out. The Dispute Resolution Treaty prescribes a very stiff penalty. It says in article 22, "Please don't do these things lightly." As Kapil said, please do it with your eyes open. When a case was filed against us, we have lost it. Then, we filed an appeal. We lost that appeal. Now out of great bravado if we say that we will not abide by the ruling, the consequences are spelt out in article 22 of this Dispute Resolution Treaty. I earnestly request Members to look at it. It says that the country which has filed a complaint, it can take retaliatory steps, not only on

that particular item which you have violated, but can do it on almost the entire range of goods. We are a very big country. That is true. But we do not count much in the international trade. So, please remember that a complaint was filed against Europe by the United States on a matter of banana. They said that Caribbean producers of bananas discriminate against the Latin American producers of bananas. The Dispute Resolution Board held that complaint in favour of the United States. What was the result? Even though the European Union had assured the Dispute Resolution Board that they would change their law, America had announced penalties affecting \$1 1/2 billion across the board of European Exports there. I am not saying that we should be afraid of a gun being held to our head. In addition to what Mr. Kapil has said on the moral point, I would like to say that before taking brave positions, please look at the text. Mr. Kapil also said, "You are a party."

Sir, the third point is this. Actually this Bill has been very carefully drafted. I am not claiming credit for this Government. It has been very carefully drafted by the officers and others who have guided them. It makes full use of the latitude which is allowed under the TRIPs to build in safeguards for India. Please remember that the only two options that were available at this time, were either we go in for a product patent regime at once. This also seems to be a new *hawa* for us. That is not the case. Under the Indian Patents Act, 1911 we had a product patent across the technology, old technology. It is only in 1970 that drugs, food and chemicals, specially agro-chemicals were excluded and process patents were allowed. Under the TRIPs, both have to be allowed across the technology. The process patents were also there. The process patents which our drug companies are getting are also permissible under the TRIPs. They can continue under the TRIPs. This

amendment does nothing absolutely to change that. Now the choice under the product thing is you go in for products patent just now. You will immediately be putting the entire drug industry to a disadvantage for which everybody's heart seems to be bleeding at the mercy because they have been structured to have an advantage of an alternative route through patenting. In fact, all these charges have been made—I feel in strong words—that the people have been sold out or parties or Governments have been sold out to multinationals. With utmost responsibility, may I just inform the house that there are two drug associations?

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Shourie, don't address him. You address the Chair.

SHRI ARUN SHOURIE: There are two primary drug associations. One is the Organisation of Pharmaceutical Producers of India. This is entirely a multinational company. The other is the Indian Drug Manufacturers Association. Those are the Indian companies. The OPPI has been pressing for the immediate introduction of the product patent route. By opposing this Bill and by saying that we should do the alternate, you are actually saying what they are saying. They have said in memoranda after memoranda to the Government that the route, which you are taking completely drains us of all protection. You are giving us a meaningless law. They have given a chart. They say that between our filing an application under your system for the Exclusive Marketing Right and our getting the clearance, how many years will pass? Eight to nine years will pass in this process. Even if you had given us the protection in 1995, by the time 2005 comes, our protection would have ceased. So, you are giving us nothing. They were advocating the line of following the other route. The Congress Government and the present Government have correctly resisted that pressure and went in for this

Exclusive Marketing Right. Now, the Exclusive Marketing Right is a word which seems as if something very great is being given. But kindly see section 48 of the Patents Act. When you give a patent to a person", what is it that you give him? I will just come to that point. You give him the right, to make, assign, sell, distribute through others, the product. You give him all those rights. Now, you are giving him a limited right of only to sell and distribute. You are not giving him the other right..I cannot understand how a lesser concession is being made out to be because of 'the word 'Exclusive Marketing Right' as the great invasion of a black-cloud. Like Kapil Sibal, I will just draw your attention to two or three of these small features which have been built into the Bill. Kindly turn to clause 24, sub-clause(a) of the Bill. It says specifically: "Inventions only after. Ist January, 1995, firstly, inventions that are patentable" That means, no plants. After 1.1.95 means, all those essential drugs continue. Kindly see this inconsistency in our minds. I know, having followed debates in this House for 30 years now, that in this very House, the drug companies were being traduced. The Hathi Committee report used to be discussed; that they were subverting the law, that price fixation was going on. Mr. Bhardwaj is a senior Member. He will recall this. That we have only 117 drugs which are true drugs and there are over 70,000 formulations by these drug companies. That is how they are cheating the consumers. These things are stated here. "Now, suddnely, all our drug companies are going to go bankrupt." So, the plants are protected by the fact that is must be a patentable invention. Drugs are affected by the fact that your are not going to add anything till it is a new drug after' 1.1.95 Secondly, Mr. Kapil also drew our attention to this fact, if requires re-emphasis. Section 24(c)---- -Compulsory licensing provisions which apply under section 84 of the Patents Act are now being put here.

Compulsory licensing means; somebody takes the Exclusive Marketing Right to send you a product. Let us say, it is required for our defence. But he does not sell it to you.

You are stuck. You give him the Exclusive Marketing Rights Now, he doesn't bring it. Our defence forces are suffering. So, the new section 24C says on Exclusive Marketing Rights that the Government has a right to say, "No, not you. But so and so will compulsorily be allowed. You have to compulsorily hand over the licence to so and so". What greater protection do you want for the consumer? Chapter XVI of the Patents Act says not just about compulsory licence. It says that the person must meet the reasonable requirements of the public in a reasonable time at a reasonable price. Who is to determine all this? Your Controller of Drugs has to determine it. I can't understand where this phobia is built up. Section 24D (1) says, if the Government is satisfied that it is necessary or expendient, not even necessary, in public interest to sell or distribute that product by itself or through any person, the Government shall have full right to do so. Section 24D(2) says, the Government may notify in public interest and for reasons to be stated that it should be sold at a price determined by our authorities. So, that product shall be distributed here and you can determine by whom it should be distributed and at what price it should be distributed. Not only that, as Mr. Kapil Sibal has incidentally mentioned towards the end of his speech because of shortage of time, it is really to be noticed that a very important provision has been made at the suggestions of our defence scientists, that is, clause 8-----section 157A Now, there is one new ground on which the patents can be cancelled, not modifying, not fixing the price. The patents can be completely revoked in the interest of the security of India. It allows you to take action including revocation of any patent, which you consider necessary,

in the interest of security of India. This is also extended to Exclusive Marketing Rights. I will give you an example which was given by the scientists and you will see the gravity of those words. We should consider it with that seriousness. Let us say, an American company is producing a Component that is required for our rockets. Let us say, in the separation stage of the rockets a particular component is required. You can give him the Exclusive Marketing Rights because of this rule that we have chosen. He will say, "Yes, I will give you that. Then he doesn't give you saying, "No, under my laws I am not allowed to export this particular component because it is a dual-use component. It may be used by you for rockets or to send up space satellites and it may be used for missiles. So, I can't give you this component." Earlier we didn't know what to do under the Act. Since it is likely to affect the security of India, this clause has been made. You can revoke the licence and proceed on your own. Actually people should be complimented for having fought these things through and come to this. I would like to make one request to specially those Members who are strongly agitating since morning. Kindly look at the world around. We are still debating the first principle. When this debate started in the early nineties, I had written that we will be bogged down in slogans on the first principle, while the rest of the world will run ahead with the patents. An example, perhaps, which will be persuasive to some persons, is this, I am sure, Sir, you know that China has enacted its patent laws in 1992.

It gives more protection to these fellows than even TRIPs allows. It has already given product patenting. We are not going to give it till 2005. They had given it in 1992. Secondly, they have given product patenting for all technologies, including agricultural processes. The processes for the production of animals can be patented by

foreigners in China. Thirdly, we keep debating why the patent life being extended from seven years or fourteen years to twenty years and that there is American pressure. China has given it for twenty years in 1992. Shri Kapil Sibal quoted a provision — he said compulsory licencing to a third party, the Indian party—a stronger provision called 'the licence of right'. It means if you don't obey these conditions as a right, it will belong to so and so who will be more inclined to act in the country's interest. Do you know, Sir, the Chinese law provides for no provision of licence for that? China today processes — I have looked at the figures — 67,000 patent applications in a year. We process 2,500 applications. Our patents are so badly worded that Dr. Mashelkar, one of our scientists and a head of the CSIR, in an address to the National Science Congress in 1996 said, "it is so easy to invent around Indian patents." He also said. "We are a country of patent illiteracy." He also gave a figure. If we contrast it with China ..... (*Interruptions*). Just a minute.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): He is not yielding. You will also get a chance to speak.

SHRI ARUN SHOURIE: How many training institutes has China set up for patents? Since 1992, China has set up 5,000 technical institutes for reading and writing patents. In India we have no institute, not one institute in this field. Therefore, please look at the future. Today in the world, the number of patent applications is two million in one year. We are stuck with 10,000 applications. We are able to process only 2,500 applications. When our Governments are actually able to exercise their mind, built-in all the safeguards that Shri Kapil Sibal and I have narrated to you, we just don't look at the safeguards and still keep arguing on the first principle. In fact, we should look at these drug companies about which you are also concerned. I have already stated what their technology

has been and how the Indian Drug Manufacturers Association today in a formal letter to the Government has asked for the EMR regime. The foreign multinational drug companies are asking for what you seem to be pleading for, a product patent regime. Apart from that, look at where the country is. I am so alarmed at times that this House, all our houses are just oblivious that the country is actually graduated to a new stage. We are today in the frontier of technology on space. Today we are amongst the principal exporters of software. In space technology, in atomic explosions, we have demonstrated our capacity in materials technology. In making the super-computer in cryogenic engines within a short time, we have demonstrated our capacity in hardware. We are now in industries in which we require intellectual property rights. You are going on only about drugs, drugs and drugs. We are in frontier technology industries. Why don't you think of protecting those industries?

(Interruptions)

**एक माननीय सदस्य:** दो साल पहले क्यों विरोध किया था ?...(व्यवधान).....

**श्री संघ प्रिय गौतम:** कोई बात नहीं, देर आए, दुरुस्त आए।

SHRI ARUN SHOURIE: Sir, I will end with just a few suggestions for the consideration of this House. I feel that this is an excellent Bill. We should support it with confidence as Mr. Kapil said, not only because we are obliged to support it; but also because it has taken care of our national interests. But I feel that some other things should be done, and I will just list them and then I will take my seat. Sir, the Swadeshi point of view is not to heckle, why is somebody taking a patent on turmeric? “आयुर्वेदिक ड्रग्स में कोई ले जाएगा” The Swadeshi point of view is to ask: why are you not taking? (Interruptions) Just a minute. I would plead with the Government, when we spend Rs. 800 crores towards the MPLAD Scheme, that is, Rs. 1 crore per

M.P. per year scheme, we should set up a fund of, say, Rs. 1,000 crores or Rs. 5,000 crores. to help the Indian inventors acquire world class patents. It should be a fund which is a revolving fund. Say, 'X'

requires a patent abroad, we help him and finance it. When it is

commercialised, he repays the loan into the particular fund. My second suggestion is to document our wealth and the inherited knowledge about which we are all so concerned. In turmeric, when the case came up in the U.S. patents office, what succeeded? These old manuscripts about which you will be able to say, this manuscript and that manuscript narrate the medical properties of turmeric. This is within the public domain in India. So, for that reason, all our bio-technology and bio-diversity systems, the medical properties of plants, as we know them, the formulations in Ayurvedic and Unani systems, about which we always kept agitating, we must document them with speed. The Government should arrange them, put them on internet, put them on CDS, and you can make it freely available to every other patent office in the world. So, when an application on that comes to them, they will first refer to it and say, "No, no, Indians already know this. It is not an invention", and the patent application will be stuck up. The third suggestion is, please, you have the time now. There are still six years. Immediately modernise your patent office so that all the drugs that you are worried about, may be patented before 2005. The fourth suggestion is, as China has done, if not 5,000 institutes, set up at least five or ten institutes to introduce the reading and writing of patents in India. That skill should be introduced. My fifth suggestion is, there has been a plan, for a long time, ever since the Earth Summit and when the discussion on patents started, of taking plants out of the Patents Act, and we said that we would bring in this legislation for the *sui generis* protection of plants and things derived from plants. My information is that that Bill is actually ready. That Bill is also absolutely

essential for protecting the bio-diversity and other things which our Members are very concerned about. I would urge upon the Government to kindly bring in that Bill swiftly.

One of my last suggestions is that we must swiftly move to set up special appellate courts. Mr. Bhardwaj and Mr. Mishra are sitting here. Just as we don't have in industry and outside the skill to assess, to read and to write patents and to protect ourselves by patents, our judges also do not have the skills in settling patent-related cases. In the United States, with all their experience in patent law, which is one of the biggest litigation factors there, in 1982 they set up special appellate courts to try patents cases. So, I would urge the Government to set up these special appellate courts and I would request Justice Mishra and others to guide the House in this regard.

Two of my last suggestions are as follows. One is this I don't blame the BJP or CPI(M) or anybody, but the fact of the matter is that ever since the late '80s, a lot of absolutely wrong information about patents and WTO and all that has been spread by all sides to confuse the people of India, to alarm them and to discourage them. I would urge that we should get the experts on the TV and propagate the truth so that the confidence is restored. We are not going with closed eyes into an abyss. We should be future-minded. This is a great opportunity for India. Formerly, we were handicapped because capital determined the competitive advantage. Today, it is the cerebral power which is the one thing which we have in great abundance. With that confidence, let us go ahead.

My final suggestion is for the Government and for the industry to set up task, forces to take advantage of the apertures which the TRIPS agreement allows the country. Unfortunately, because we have just been denouncing it, we have not seen what the ambiguity in it is, which we can

take advantage of. The Japanese are doing it. Why aren't we doing it? I will give you an instance, Sir. Do you know that in Article 1 members are left completely free to determine the appropriate method of implementing the provisions of the agreement, within their own legal system and practice? That gives us great latitude. Articles 7 and 8 spell out the objectives and aims of the treaty. For instance, one of the aims is dissemination of technology and removal of poverty. You can easily show that so and so patentee or so and so EMR-holder is operating in such a way that he is preventing the transfer of technology and harming the public health. That gives you the complete right to modify his conditions and impose other conditions. As per Article 27 (2), you can refuse patents, if doing so is necessary to protect public order, morality, human, animal and plant life or health. You have to say that this patent or the EMR, given to such and such company, is working in this particular way that it is endangering public health. Article 27(2) of TRIPs itself allows you the full freedom to put every condition on him, including the revocation of his licence, article 31 (k) and (1) say that if the holder of a patent is using it to create, what they call, an anti-competitive situation, you can have any restriction. You can remove his licence at at any time. It is the treaty,\*and not only our Patents Act, which says this. Article 40 says that you can impose conditions to prevent the abuse of a patent or an EMR to restrict competition. It is not only in an anti-competitive situation, even if he is doing something restrictive, you can move against him to the maximum extent.

So, my point here is that we should stop a generalised debate. Let us first stop accusing everyone and suspecting everything by saying it is a sell-out. An advance has been made, not under duress, but in the interest of the country. These agreements, as I have just illu-



trated, and as Mr. Kapil Sibal has just illustrated, allow us a large room for manoeuvre.

Set up task forces for those to take advantage in that way. Look ahead. Thank you very much, Sir.

SHRI ASHOK MITRA: Mr. Vice-Chairman, Sir, my distinguished friend, Shri Arun Shourie, has mentioned that he has been reading me for the last 30 years. I wish he had added that he has also violently disagreed with me during these 30 years, and I can assure him that from what I will just now say, there will be every reason for his feeling confident that our differences will persist ...*(Interruptions)* ...

We are discussing, in effect, the property of Exclusive Marking Rights. Shall I remind all of us that the East India Company started its activities in India on the basis of grant of exclusive marketing rights to them? Let me mention something else. In our part of the country, we have two tribal heroes, Kahno and Sidho, and we have another dalit hero, Titumir. They were active in the 1820's, 1830's. In our part of the country, we mark the history of the freedom with the rising that was organised by Titumir and the rebellion of Sidho and Kahno. Why do I mention them? From 1820 till 1947, during the span of, roughly, 135 years, what the East India Company did to us through the preliminary device of exclusive marketing rights, we fought and fought and fought for 135 years, and finally, we were able to free the country. I feel that I am myself ashamed that in this Parliament, after, 51 odd years of independence, we are discussing Exclusive Marketing Rights, and we are allowed only six hours. This should be a mark in history of something infame. I would say that this is a day of infame. I am a little puzzled. Why this sudden scare as if the heavens would fall, collapse, if by 19th of April, 1999, we don't pass this legislation? There is a lot of disinformation involved. What I have been told is; if we don't keep that date,

then the United States, Western Europe, the European Community will move against us and throw us out of the WTO, and then, it will be the death of the Indian nation. This is the kind of thing what I have read in newspapers. This has also been told to some of my, M.P. friends by the officialdom. All I can say is, it is rubbish, rubbish and rubbish. What is it? What are we worried about? First, the European Community has not filed any appeal against us, has not complained against us. It is only the United States. The United States is just one country out of the 150 odd member countries of the WTO.

We are shivering in our shoes merely because the United States has got a verdict against us. At any given moment, within the WTO, there must be, at least, 200 cases going on with respect to disputes settlement. Some against the United States, some against the countries of West Europe, some against this or that developing country. Judgements come on this side, judgments go to that side but there is no question of any Member-country being thrown out of the WTO because a particular judgement has been ignored. I think, the US itself has some, there have been judgements delivered on the U.S. The U.S. has not bothered; it has gone on record that where rules and provisions of the WTO are in conflict with the contents of the US Trade Act, it is the US Trade Act which will prevail and not the WTO. Has the US been thrown out of the WTO? This is something, I feel tempted to ask of our Ministers. Have they dared to file a petition with the WTO that this is what they have done? They have enforced Special 301. They have enforced several other regulations which go against the spirit and the provisions of the WTO and let the US be penalised. No, we have not done anything and why worry? Nothing will happen to us by 19 April, 1999 if we are not able to pass this legislation, if we have not been able to pass the legislation. In any case, this is the point which was

made by my friend and colleague Biplab Dasgupta, in the morning. It is no longer a Western hegemony as it was in 1993-94. But, as we have seen, it is the business of Iraq. It is the international outlaw, the USA and that is all I can say. Till about two-three days back they had some support from countries in Europe but today, with the exception of just one faithful lackey, the U.K., they just moved away. Germany has moved away; France has moved away. In fact, amongst Members of the Europe, we have many friends for example, France and Germany, who think along the same lines with respect to some of the issues involving WTO. So, let us not be threatened with this sort of mythological attack from the WTO. There is no such thing. So, we should have been given the time to go through the contents of this Bill with a fine tooth comb so that we could have offered our judgement and advice on the basis of our slightly more detailed thinging but, unfortunately, this Government has chosen not to give the time. History will judge this Government of what they have done and the public at large will judge of what the Government has decided. I have no comments. In any case. I do not have the hope if the two principal political parties have decided to take a particular line of action. Those of us, who believe in principle, who believe in certain norms of behaviour, are helpless. We can merely register our protest but let us go into the details of the Bill. I have listened to Mr. Sibal, I have also listened to Mr. Shourie about the good things they say in the Bill.

But, they have not once referred to the pernicious element, namely, the whole issue of exclusive marketing rights on the basis of which if somebody has patented his invention and that invention traverse to a third country, so-called Convention country, it could be Raunda, it could be Fiji, it could be — I do not know — Nepal and says, I have patented this particular commodity with Fiji because I

have done that', this Bill say, this amendment says" that we have to grant him immediately the exclusive marketing rights for five years or till the examination of the product application is over. Now, you think, about that in your senses. If you are normal human beings and in you senses, will you agree to do this and give the exclusive marketing rights? this is also indicated in this report. Therefore, we have to oppose this and in some of our amendments we are saying that if you are going to consider the exclusive marketing rights, you consider only the cases of those applicants who have been granted a patent in their own country and not otherwise. Now, this is something which we have to harp over, over and over again. But, perhaps this is a heart of the matter as far as the Government is concerned, that somebody from somewhere is pressuring the Government that we must give then in easy way out. they have taken out a patent in *timbaktoo*, therefore, they must have the right to mulct the consumers of India. This really brings me to the context of the Indian Patents Act, 1970. Many of us had wide areas of disagreement with Shrimati Indira Gandhi when she was the Prime Minister. But, at least, on this issue, on this particular legislation, we take pride that she took the leadership, showed the initiative to pass the Indian Patents Act, 1970. This Act has three major features. One, in the matter of food and life-saving drugs, we Indians never accept foreign patents. Secondly, this 1970 Act says that under no circumstances, we Indians will allow foreign monopolists to mulct our consumers, our Indian considers in the name of patenting rights. The third one is double comprehensive point which has been mentioned in the Act and which says that India will not recongnise any foreign patents if such patents interfere with our economic or industrial development— a clear and concise declaration on which our interests exist. The entire' purpose of this Bill is to demolish that structure which the 1970 Act has built. I . will give you some very specific instances.

We find that section 39 and 40 are proposed to be scrapped. What do these section say? No resident of Inidan would be allowed to solicit a foreign patent on the basis of a purported invention in our country.

[5.00 P.M.]

Some may say that. This particular statement goes against the grain of liberalisation. But, this is, exactly what is happening. If a foreign multinational entity wants to steal our bio-diversities and our micro-organisms, what does it do? It sets up an agent of his in the country. This is what, in the literature of exploitation is known as 'compradon', a compradon is set up. He totters around and quietly walks out of the country. Mr. Shorie mentioned that our Indian inventors should be subsidised so that they could have up new inventions etc. all over the world. He made such a proposal. But, Sir, this is the regime of liberalisation. The Government will say that they have no funds. So, you go to the multinationals for funds. The multi-nationals will say with these funds you take micro-organisms and bio-diversities. This is American money, they will say you develop these, but, we will make use of them.

Sir, in this connection I would like to pay a tribute to three ladies of this country, who, for the last six or seven years, have tirelessly tried to draw the attention of the countrymen on this very grave danger. I am mentioning the name of these ladies on the floor of the Parliament because I think the nation owes them a gratitude. They are: Vandana Shiva, Suman Sahai and Usha Menon.

Sir, this controversy will subside but these ladies have fought and fought for the sake of the nation to save our resources from being exploited by the foreigners and multi-national corporations.

Sir, I may point out that the Government did not touch Sections 39 and 40. Why? Is it that you wanted to get rid of

them. It was just to ensure that the multi-national corporations have an easy access in the country.

Sir, there are some other amendments, which we intend to move later, if we are allowed to do so. The way things have gone in the House since morning, does not give us a surety that we will be able to do so. In case we are allowed, we will certainly insert clauses and provisions, which will see to it that our bio-diversities and micro-organism receive due protection in this new regime.

Secondly, when they are talking about licensing or exclusive marketing rights, you can stop somebody from sales and distribution, but what about manufacturing. So, the government should have the right to stop even the manufacturing on the part of some foreign parties in this country, who you know it goes against our national interests.

Sir, neither Mr. Sibal, nor Mr. Shourie referred at all to the protest notes and suggestions from the State Chief Ministers. I think they are living in a fool's paradise, if they think that by merely not referring to them, they can save their Government. I will repeat what I said two hours ago: You cannot ignore Tamil Nadu, you cannot ignore Andhra Pradesh, you cannot ignore Kerala, you cannot ignore West Bengal, you cannot ignore Assam and you cannot ignore Tripura. May be, twenty years hence, if you were in power and if you had an absolute majority in the Lok Sabha, you would have said so, but not now. You might with a different kind of bargain, pass a piece of legislation today in this House by hook or by crook; and maybe by chance you can do so tomorrow in the Lok Sabha. But, this will not help you, because we are going to give a notice to the multi-national corporations that they should not be impressed by this kind of a hustled decision on the floor of the House. Sovereignty of this nation has now to be shared with the States. If this lesson does not sink into you, there will be plenty of trials and tribulation that

you would have to face. Why do I say so? Why are the States so important? As the World Trade Organisation one of our Finance Ministers had signed the Marrakesh Treaty in April 1993. It was said: oh! it is an international treaty and the Government of India has a right to sign an international treaty. But, no, this is a very special kind of a treaty. This Marrakesh Treaty affects our international structure of production, our international structure of distribution and our internal structure of pricing. Sitting in Geneva how can they decide how much of the commodity we are supposed to produce and under what conditions; what kind of seeds are we allowed to plant and up to what proportion; what is the amount of subsidy that we can offer either to our producer or to our consumers? Who are they sitting there and telling us what we should do or what we should not do? This is absurd. And this absurdity has been accepted. I do not blame the international organisations. I blame those who are in charge of our Government that they allowed this kind of a thing. Maybe, some of them continue to accept it. It is because there has been so much of inferiority complex that has been injected into us that anything that an American says in right and proper and anything that we Indians might offer as a piece of advice is not worth bothering about. It is a very pitiable sight that septuagenarians or octogenarian Ministers or businessmen or industrialists sitting in a convention at the FICCI or at some such body are not given any importance but some youngster, an Assistant Professor in Economics from a University in the United States of America, is given all the consideration. His words are treated as the words of God. This is exactly what is happening here. Since they have said so, you have to accept it. Why don't you change that attitude? The international situation has now changed significantly. Yesterday, the Russian Prime Minister, Primakov made a very prospective statement that from now on, Russia, China and India should

form a concordance. Just imagine if we form a concordance what a tremendous impact it will have on the rest of the world. The W.T.O. and its rules will be swept away. Nobody would even bother about them, except, of course, some Ministers and civil servants sitting in Delhi. They do try to tell fables to the nation.

They are just fables, nothing will happen to us. But it is a fact that you cannot ignore the State Governments any more. The State Governments will resent your attempt through the WTO to tell them how much they should produce, that commodity they should produce and what kind of subsidy they can offer, etc. That is the regime which belongs to us and we will decide what is to be done and what is not to be done. I would not like to add further to that has already been stated in the course of two speeches in the morning. I think that should be enough. But I would like to make one last appeal to the Government. You will not lose anything. Now you have the other principal party to support. You have votes. We may prevent casting of votes by raising procedural issues, here and there, for half-an-hour. Finally, I would say you will be creating such an acute bitterness in the political system that it will be very difficult for anyone who rules at the Centre to take control of the situation. Thank you.

DR. RAJA RAMANNA (Nominated): Mr. Vice-Chairman, Sir, the patents business is a very complex one as has been made clear from the speeches, of Mr. Sibal and Mr. Arun Shourie. It has not simply legal aspects, political aspects, agricultural aspects, but certainly it has deep scientific aspect on which I will concentrate a little more. This aspect was not referred to in the excellent speeches of the previous speakers. You will recall in the British days, there was a Patents Office in India; and some well-known scientists were put in charge of it. But there was not much of industrial activity. Even after Independence, there was little activity in the Patents Office. Later on it

was relegated down, down, down, to something very low. The scientists thought that patents was a third rate contribution and they did not work for getting patents. Instead they worked on publishing papers. So, we can find scientists from national laboratories producing a large number of papers for their future prospects or for going abroad; and very few patents of quality were filed. The attitude of the powers that be had decreased the importance of patents. However, I am, glad to say that our present Minister of Industry, seems to be seized of the problem and had appointed a committee; with no less than a person like, Dr. Abdul Kalam, Dr. Mashelkar, and I happened to be its Chairman and Secretaries and other people involved there. So, the point that all the patents law that is going on now is not after particular study is not correct. This committee had its sitting several times in the last few months discussing every detail. I will not claim that we have assisted the Ministry in the work done by them. But certainly guidances have been given. For instance, I think, for ten years the Paris Convention was withheld. Nobody could take a decision. But within a few hours we were able to say that it was of great value to us because we don't have to go from place to place. They are all centralised at one place to get information and such other things.

Now again we have come to this stage where we have to modify old patent laws, whatever it is, to whichever party it may by suitable. I am glad to say that some consensus is coming about in this process.

Now, much has been said about the multinational, that they are overpowering us. This has happened in the past and could happen again. But we, in India, have found a solution that if you watch their activities, they will come down; and some of them have closed down and gone away because of various actions in the pharmaceutical field. For instance, CIBA had a big research laboratory. When it was pointed out that they were taking all

the research out, well, it got closed down. So, it seems to be the result of the watchfulness, and certainly, it has been exhibited in time. It is possible to control it. But our main aim should be that the scientists should be properly appreciated. Whenever they do something, we all say nice things about them. But we never realise that there is no such thing in Science, as happens in agriculture or other areas rich agriculturalists, rich, lawyers and rich doctors where you hear of a rich scientist. He just rolls along doing work for other people. He does the discovery and he is never appreciated. Therefore, I think this question of TRIPS, the intellectual property right, is a step in the right direction. The man who has exercised his intelligence, must also have a decent life; and we are working towards that. I don't know whether my old friend, Shri Ashok Mitra, likes all of us to be rich or not. But I know that we must have some basic standards and the scientists must also live properly. If they contribute to a particular industry, their work must be recognised financially also. It is no use just patting them on the back or giving them Bharat Ratna for their work. I don't think he can go free in a train, as we, parliamentarians, can go. So, I will not take much time of the House because most of the important things have been said by the previous speakers, with great eloquence. I will say that we should get this Bill through quickly. The word 'quickly' is the most important part. We are always Indians, too little and too late. To delay it further will be disastrous. If we will do so, we will be nowhere. This Bill has been discussed at great length in this House. It has been considered by various experts also. Therefore, I would strongly recommend that this Bill should be passed immediately. I am not a Member of any group here. But having seen the scientific scene for a long time, I would recommend that we should get into the patent business. I would request the Minister to put in a great accelerated effort in improving our patent office. He should get the

right type of people; the right collection of people is very important. In that event, it will be possible for us to see that our patents are not only of good quality but are of international quality and the big people abroad will look forward to the scientific activities because they have respect for us in our scientific contribution. There are speaker who have spoken thrice. But I will speak only once. The computer industry, the software industry, is making such an impact that people want to take our people abroad. Now, if you have got such people, then the world should be flooded with Indian patents. But there was hold up somewhere. We should make use of all the help that we can get from abroad, being careful that we are not home-flooded, and all this is possible within or means and I wish good luck to the Bill. Thank you.

SHRI VAYALAR RAVI (Kerala): Sir, this legislation has been debated very much in our country even after the signing of the treaty and even after coming into being of the WTO. This matter has not only been discussed in our country but all over the world. All developing countries have debaed it. But a lot of controversy still exists.

The matter before us today is very limited. One of the obligations has to be fulfilled that before April, 1999 we must have an enactment offering Exclusive Marketing Rights to the applicants who have not got a product patent. This is the very limited purpose. So, this Bill has been brogut here and there are a lot of doubts herd. Naturally, in such a matter, a lot of concern was expressed by people from different walks of life. I would have been very happy if we could get the people convinced and get more public opinion on this matter. By resorting to certain procedures and Parliamentary methods, we can get public opinion. I don't want to go into that matter because we have taken a decision on that today. Naturally, the confusion will remain. I want to correct Mr. Ramanna. He has

stated that there is no patent legislation in the country, or, it is not considered. I disagree with him. He has said that about the previous Government.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): He said that it got downgraded since then.

SHRI VAYALAR RAVI: No. He has stated that we have to go abroad. Till the new Act of 1970 came, our Act was in existence and even Pakistan continued to follow this Act for a long time. You know the history of the 1970 Act. Two Judges, Shri Bakshi Tek Chand and Shri Rajagopala Iyengar, went very deep into it and then the enactment came. It is a very important matter. So, you can understand the importance of this enactment, that is the existing 1970 Patents Act. As I understand it, at that time, the Rajagopala Iyengar Committee had recommended that the Government should not attend the Paris Convention for the time being because we had to include certain clauses in this Act; and we were out of the Convention. That is why section 5 of the Indian Patents Act has been incorporated on the advice of the Iyengar Committee Report. This is the background.

Now, I will come to the other points. Now, this Bill is confined to the Exclusive Marketing Rights. A question is raised whether we could protect the national interest as we expect, or, as we envisage. The Drug Manufacturers' Association also demands the same thing. If

I may quote it, it has stated:

"EMR would be detrimental to the national interest including those of consumers and domestic drug industry without these safeguards built into the legislative and administrative systems, which is permissible under this agreement."

So, it is very clear that its demand is for safeguards. It is not opposing the EMR. It only wants safeguards. I would like to know, or, to seek a clarification, from the Minister whether this Bill pro-

vides for, those safeguards and to what extent it does that is the main point. The Treaty 70 is very clear. This Bill has conic because of the Treaty 79. We have an obligation on us, or, we have no options, or, it is very limited. I admit it. There arc certain clauses which are given in the Treaty itself. We have to find an escape route under them. That is the method. Take clauses 7 and 8 of the Treaty. I think it is necessary for me to quote them. Clause 8(1) says:

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

This is what section 8(1) says. It gives a right to make an enactment with certain provisions to protect or safeguard our interests. Section 8(2) is also equally important and let me quote it.

"Appropriate measures, provided that they are consitent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."

These are the two provisions which they have given. While we are adopting this legislation, we are offering the Exclusive - marketing rights. Even the TRIPS Agreement gives so much of flexibility. I would like to know whether we are adopting that or not. My fear is, the provision that you are offering is not enough.

Now I would like to quote Article 7. It says:

"The protection and enforcement of intellectual property rights should

contribute to the promotion of technological innovation and to the transfer of dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance or rights and obligations."

These are the most important clauses in the Treaty itself. What is preventing us to adopt our legislation quoting this framework? The hon. Minister can argue with me. I will quote the law and say where it goes wrong. Therefore, it is necessary that we must have some protection on this. I would like to know whether that protection is available here.

Sir, befre I come to the Bill, I would like to mention one thing. As Shri Arun Shourie mentioned, it is true that the American Government fought a case for the American multinationals. We lost the case. How we should contest a case, I am not arguing on that. But we have got a case. India has got a case. Everybody has to make a law consistent with the TRIPS Agreement. Since a reference was made to that case, I would like to quote it. Did the country which had gone against India, adopt the principles of the TRIPS Agreement, WTO Agreement? I would like to quote only one sentence of the Uruguay Round Agreement which has passed by the US Congress. What did they adopt? They adopted a public law number 103. How did they enact it? The people who went against the morality, who went against the principles of implementing the international Treaty, what did they do? It says, "No provision of the WTO or its application that is inconsistent with any law shall have the effect..." What does the Treaty say? It must be consistent with the Treaty, our law. They say whatever they do, it must be consistent with their law. It is just opposite. It says, "State laws in consistent with the WTO Agreement even after such findings by the

Dispute Settlement Body or the Appellate Body of the WTO will not be invalid unless and until so declared by the US court in a subsequent proceedings." In further says, "In any such proceedings the decisions of the WTO Board will not be binding and shall not be accorded..." The fourth is the most important. It says, "Powers under the VSTR for action under Section 301 not affected by the WTO Agreement". The persons who went against the decision of the court, instead of making a commitment to WTO they had an enactment to protect their Constitution and their law. Those persons went against the court. I don't know how we lost the case.

Now I come to the Bill. I have an amendment to move. Here clause 24A is about Exclusive Marketing Rights Application for Grant of Exclusive Rights. Sir, I would like to explain it. It says, "Notwithstanding anything contained in sub-section (1) of section 12..." What does section 12 say? I will explain it.

Section 12 (1) says: When complete specifications have been laid in respect of the application for a patent, the application on the specifications relating thereto shall be referred by the Controller to an examiner for making a report to him in respect of the following matters...." So, under this provision of the existing Act, we have to refer an application for examination. I quite understand that. I don't dispute it. But it further says: "...where an application for grant of exclusive right to sell or distribute an article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer an application for patent to an examiner for making a report to him." What is the basis of the report? When you refer it under Section 12 (1), it is obligatory on the part of the examiner to resort to Section 13. Section 13 is mandatory for examination when the matter is referred to him. Section 13

is very clear. I don't want to take the time by reading out all the Sections.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): I know that you have to take note of the time. You will yourself exercise self-restraint.

SHRI VAYALAR RAVI: Section 13 becomes an obligation only when it is referred to under Section 12 (1). But here we are prohibiting it being sent for examination under this clause. Then, what happens? Can the examiner send any report? Who is there is question him? The only option before the public is judiciary. But there is a provision in the Act, which is Chapter 5. Under Chapter 5 of the Patents Act of 1970, even the public can resist; they can file a complaint. But we are not including this in that clause which would have entitled the public to file complaints against granting of even the exclusive marketing right. So, the question is before you, Mr. Minister. When Clause 24-A begins with the prohibiting of Section 12 (1), by that, you are prohibiting the examiner to resort to Section 13 of the Patents Act of 1970. You are giving a very big right to the examiner. The examiner may even be a corrupt person. He can send any report. Nobody can question him. The public cannot question because you are not incorporating Chapter 5 in this. If Chapter 5 is included, I can file a complaint and say, "It is a bogus one, and I want an examination". So, wide powers have been given to the examiner to recommend any case he wants. Is it right? That is why I have given this amendment. I may move this amendment or I may not move it. But Chapters 4 and 5 should have been inserted there so that a safety-valve, a safeguard, as is already given by the TRIPS Treaty would be given to us. Then, Sir, as regards my next point, what will happen to indigenous medicines. What is the fate of our own Ayurvedic and Unani medicines? In this connection also, I moved an amendment. And you are good enough to circulate it with a little changes in its wording.

Mv



amendment says: "Provided that an exclusive right to sell or distribute will not be granted for an article or a substance which is based on Indian system of medicine and already in the public domain."

Of course, you were good enough to accept what we had suggested and the wording has been changed. I appreciate that. So, my first point is over.

The second point is that you are arguing for compulsory licensing. My friend, Mr. Arun Shourie, was arguing for compulsory licensing. Compulsory licensing was protective. But how can compulsory licensing be useful for distribution and sale without a product? Where is the product? That product will be imported into this country. The Drug Price Control Order derives its strength from the Essential Commodities Act. That is the law for goods produced in India. Today, you are importing. You are allowing EMR for imported goods. That is a very important factor. So far as imported drugs are concerned, compulsory licensing will have no meaning. I don't mind. You have it there. But there is no meaning in it. It is only an eye-wash. Only if you give the production right, it has meaning. My friend, Mr. Arun Shourie, said that as per Article 24 (d) (2), we can control the price. That is why I said the Essential Commodities Act comes there. But this compulsory licensing doesn't have any meaning. Now, as per Article 24 (2) (d), we may not be able to control the price. Sir, price is a factor. I agree that it is one of the major factors because it concerns the people. But it is not to help the manufacturers in India. We are concerned about the consumers in India. I have the figures here. In 1976, the per capita price of drugs used in India was 0.8 in dollar terms. In China it was 2.7, in Japan 35.6 in USA 36.2. In 1990, in India it was three, in China seven, in Brazil 16, in UK 97, in USA 191 and in Japan it was 412. The cheapest medicines

are available in India. That is why we are arguing. We are not arguing for the 21,000 manufacturers or the 250 big manufacturers. We are arguing only for the poor people of this country. So, you have no right to put this clause. I have no doubt that it will be taken to the Dispute Settlement Body in Geneva because, even though we may pass a legislation, it will not give you the authority or the right to control the price. Imported goods cannot control the price. That is my view. You can dispute it. Then, you look at the other points.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You are making your points very forcefully. But please be brief. (*Interruptions*) He is going to wind up. You please do not bother and let him speak.

SHRI VAYALAR RAVI: So, Sir, compulsory licensing has no meaning because it is distribution and sale, without a product. Without a product, there can be no compulsory licensing. It is only an eye-wash. It has no value because it can be taken to the Dispute Settlement Board in Geneva, as we have no authority to control the price of a product made in America and distributed in India. Our Drug Price Control Order will not be applicable to this product because it is not manufactured in India. That is the problem. Sir, the safety valves that have been given to us by the TRIPS agreement have not been incorporated here.

The last point that I want to raise is that my friend, Mr. Arun Shourie, said that this security aspect is something new. It is nothing new. There is nothing new in it. It is a provision which is already given under the TRIPS, clause 157 (a), that is, section 8 of this Act. Article 73 of the TRIPS agreement is the same. There is nothing new in it. You are only incorporating it here. Of course, it is good that you have done it. I appreciate that. I agree with you on this safety .. valve.

Lastly, I come to section 4. I have already given some amendments. I want to know the relationship between Exclusive Marketing Rights and section 4. Section 4 is an amendment to the parent Act. Will quote only one sentence from the parent Act. The parent Act in

section 39(1) says .....(*Interruptions*)... Why do you want to delete it? Section 39 says, "No person resident in India shall, except under the authority of a written permit granted by or on behalf of the Controller make or cause to be made any application outside India for the grant of a patent for an invention unless.." So, any scientist in India including Mr. Ramanna, of course, can reach, without the knowledge of India, for filling a patent abroad. After a concerted thought given by Rajagopala Iyengar and others, this Act was made. This specific section was incorporated at that time. Sir, the Minister can argue with me ...(*Interruptions*)... Our friend, Shri Hedge, will take note of it. So, Sir...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Don't bother. The Commerce Minister is taking care of it. In any case, you are now concluding.

SHRI VAYALAR RAVI: My question to the Minister is this. What is the relation between deleting this clause and Exclusive Marketing Rights? I want a specific answer for it. Why is it so? I have my own doubts about it. By deleting the consequential provisions, namely, 5,6 and 7, who is going to be helped? It is not the Indian scientists. Today, if anybody wants to file a patent abroad, he should file it with "the Government of India.

The argument put forward by certain people is that if somebody files it here, then, it will be leaked out, and people abroad will steal it. The Paris Convention and the Patents Co-operation Treaty take care of it. Any scientist in India need not be afraid that his thesis or his invention will be stolen by somebody else. The Patents Co-operation Treaty is there. So

far as that Treaty exists, we need not be afraid of that. Even if it is so, why do you delete it? You are deleting it for the multinational corporations. These corporations of America believe that Special-301 is more important than the WTO. These multinational corporations want to take away what has been achieved by our scientists. It is in the knowledge of the Government of India.

Sir, there are many scientific institutions, like the ISRO, the Defence Research and Development Organisation, etc. I want to know what assurance we can have that our national security will be protected even by our scientists. Somebody can make an invention, use it in the Government facilities he may get provoked, as Shri Ramanna got provoked when he said that our scientists are the poorest persons. ...(*Interruptions*)... We should not get provoked. But Shri Ramanna made an observation that our scientists are poor people and our doctors and engineers are rich. ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): We should not question their loyalty to the country.

SHRI VAYALAR RAVI: I am not accusing anybody. It is not an allegation against him.

THE MINISTER OF COMMERCE (SHRI RAMAKRISHNA HEGDE): Don't you think that his observation is true?

SHRI VAYALAR RAVI: It is true. Our brain-drain is due to that. ...(*Interruptions*)...-

SHRI N.K.P. SALVE (Maharashtra): Sir, it cannot be his exclusive right to exaggerate. ...(*Interruptions*)...

SHRI VAYALAR RAVI: I agree with him that our brain-drain is because of the non-availability of facilities in our country. What I am saying is, any scientist in India is provoked by the quantum of amount.

Now, you are giving an opportunity for him to smuggle out.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): It is not fair on our part to doubt the scientific community in general. *(Interruptions)*

SHRI VAYALAR RAVI: As an implication only. I agree with the Vice-Chairman. If they believe that this clause is innocent and they have deleted it, then an explanation must come from the Minister. By deleting this clause, you are giving away one of the authorities of the Government; Whenever somebody files something abroad, let the Government of India know what it is. What is wrong in it? If you delete this section, it means, you are enabling anybody to take away whatever he wants and file it, without the knowledge of the Government. *(Interruptions)* My fear is that it will give room for the multinationals to make our scientists as their instruments, using this soil and take away whatever they like. We are giving a wider scope. It has a wide scope for espionage. You see, espionage is a big thing. There is espionage in trade, etc.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You have covered a wide range of points. Please wind up.

SHRI VAYALAR RAVI: Sir, it can create problems. My fear is that there is espionage in different forms in the world today. We are giving room for encouragement of espionage. I want an explanation from the Minister. I want specific reason for not incorporating this clause in this Bill. Sir, I will not take much of your time. I am concluding with only one more remark. We have a limited option. We have to go in for Patents Act, I admit. I am a realistic person. The parameters of the TRIPS Agreement allow incorporating as much safety valves as possible to see to it that the people of the country are satisfied to the maximum possible. As I said in the beginning, it would have been better if we would have got more public opinion

but, unfortunately, we are not doing it today. With these observations, I conclude.

SHRI SOLIPETA RAMACHANDRA REDDY (Andhra Pradesh): Thank you for giving me this opportunity. Many learned friends have spoken scientifically, politically and from many angles. In the beginning, I want to state, through you, to the House that we are not opposing the Bill. At the same time, we are unable to support this Bill at the moment, without taking all the aspects and implications of the Bill into consideration. I understand that there is a compulsion for passing this Bill. *(Interruptions)* I will not yield to our hon. Members. I understand that it is a compulsion under the WTO Agreement. I also understand that there is a lot of time up to the end of April, 1999. Sir, I do not say that it goes against the national interest. I also cannot say that the national interest would be taken care of by this Bill, but there are a lot of apprehensions among the hon. Members of the House, among the political parties. Not only this; there are apprehensions throughout the country and even among the scientists, particularly, among agricultural scientists. Sir, I feel, instead of bringing this Bill at the fag end of the Session, it should have been discussed in the earlier days of the Winter Session. Sir, I want to make two points.

One is, by bringing this Bill, the Government is giving an opportunity to the foreign multi-national companies, who have patents, to register their products in our country.

The second point is that the Government through this Bill is giving an opportunity to those companies who have exclusive marketing rights in the field of pharmaceutical and agro-chemicals which these companies do not have at present. Sir, there is a lot of apprehension throughout the country since importation is made equal with the working of patents in the country. The multinational com-

panies who have taken these rights will avoid manufacturing those medicines within our country. They will try to import it from abroad into our country.

This may not be in tune with our national interests. When the patenting companies are required to manufacture in our country, it will enhance employment opportunities as well as the availability of drugs. The second thing is that the patenting of seeds, agro-chemicals and micro-organisms under the patents regime may cause an enormous damage to the agricultural sector. There is a lot of apprehension that this Bill will particularly adversely affect our indigenous industry and scientific research. Sir, the common man has also to bear the burden of high prices in terms of medicines and pharmaceuticals. Our domestic industry may suffer. This Bill is going to lead to a tremendous increase in the prices of medicines. Sir, in 1970, when the Patents Act was made, even before that there was a high-powered committee which was constituted when Pt. Jawaharlal Nehru was the Prime Minister. This committee continued for 15 years when Shrimati Indira Gandhi was the Prime Minister. Even during the Prime Ministership of Indira Gandhi, it was referred to a Select Committee. What I mean to say is that the discretion of the whole country had been used in formulating the Patents Act of 1970. It was based on a national consensus, above partisan considerations. In the past also, this Bill was brought before the House for passing. In the same House, in the wisdom of the House, it was felt appropriate to refer this Bill to the Parliamentary Standing Committee. Unfortunately, the standing Committee could not submit its report because of the dissolution of the Lok Sabha. Our party feels that the idea of referring this Bill to the Parliamentary Standing Committee is as wise even today as it was at that time. This Bill can be passed in the early days of the Budget Session, in order to comply with the deadline set by the World Trade Organ-

isation. The dead-line is up to 30th April, 1999.

Sir, agriculture and health are the subjects which are in the Concurrent List and the States deal with these subjects exclusively. Without taking the States into confidence, it will not be possible to implement this Bill. I feel that in view of the wider ramifications of this Bill, it needs an exhaustive discussion. The deadline set by the WTO is April 1999. We will be sitting again for the Budget Session in the second fortnight of February. Therefore, I appeal to the Government that this Bill should be referred to the Parliamentary Standing Committee. I also feel that this Bill should be placed before the National Development Council in order to take the views of the Chief Ministers so that this Bill can be passed with a national consensus. Thank you.

**श्रीमती कमला सिन्हा :** उपसभाध्यक्ष महोदय, इस विधेयक पर मैंने सवेरे भी कुछ संशोधन पेश किए थे, और जब क्लॉजवाइस संशोधन आयेगे तो उसमें भी मेरे कुछ संशोधन हैं। मुझे जो बातें कहनी थीं उसमें से बहुत सारी बातें हमारे पूर्ववर्ती वक्ताओं ने कहीं हैं, मैं उनको बार-बार दोहराना नहीं चाहूंगी और सदन का समय लेना नहीं चाहूंगी। मैं केवल एक ही बात कहना चाहती हूँ कि यह एक ऐसा विधेयक है जो न केवल भारत के वर्तमान, बल्कि भविष्य के ऊपर भी बहुत गहरी छाप छोड़ेगा। इसका हमारी अर्थ नीती के ऊपर, हमारे देश के बायोडायवर्सिटी के ऊपर, हमारे विज्ञान के ऊपर, हमारी प्रकृति के ऊपर एक बहुत गहरा असर होगा। साथ ही हमारी खेती-बाड़ी के ऊपर और हर चीज पर इसका बहुत असर होगा। इसलिए इस विधेयक को इतनी जल्दबाजी में पास कराने का कोई औचित्य मुझे समझ में नहीं आता है। उपसभाध्यक्ष महोदय, मैं आप के सामने कुछ तथ्य प्रस्तुत करना चाहूंगी। 21 नवम्बर, 1996 को यहाँ फोरम आफ पार्लियामेंटेरियन ऑन इंटेलेक्चुअल प्रॉपर्टि नाम के एक अन्तराष्ट्रीय सम्मेलन हुआ था। इस सम्मेलन की समाप्ति के बाद एक डिक्लेरेशन तैयार किया गया था जिस के सारे कागजात उस समय के लोक सभा अध्यक्ष श्री पी. ए. संगमा को सम्बोधित किए गए थे। उपसभाध्यक्ष महोदय, उस सम्मेलन में अर्जेंटीना, आस्ट्रेलिया, बांग्लादेश, कोलंबिया, ईजिप्ट, इटली, मलेशिया, नेपाल, नीदरलैंड, पोलैंड, सिंगापुर, श्रीलंका, यू.के., यू.एस.ए. और इंडिया ने भाग लिया था।

सर, मैं इस बात को इसलिए आप के सामने रखना चाहती हूँ क्योंकि इस पत्र के सिग्निफिकैन्स में से दो व्यक्ति ऐसे हैं जो आज सरकार के बहुत बड़े मंत्री हैं: एक डिफेंस मिनिस्टर श्री जॉर्ज फर्नांडिस और दूसरी एच. आर. डी. मिनिस्टर डा. मुरली मनोहर जोशी जी। उन सिग्निफिकैन्स ने उस पत्र में क्या लिखा था, वह मैं पढ़कर सुनाना चाहती हूँ और केवल लास्ट पैरा को ही पढ़ना चाहती हूँ।

Facing the WTO Ministerial Meeting at Singapore in December 1996:

उसी के संदर्भ में उन्होंने बात कही है:

"The available indications suggest that the agenda of the WTO Ministerial Meeting would be a very heavy one...

We are strongly convinced that the work programme set out for the WTO is already a heavy load on the international agenda. The acrimony and the unresolved conflicts of the Uruguay Round, we had imagined, would have led to a sobering attitude on the part of the developed countries. And they would have opened up the long-stalled North-South dialogue to begin an in-depth consideration of the faltering global economy, mounting debts, spreading poverty, mal-nutrition and unbearable inequities. But this was not done."

उपसभाध्यक्ष महोदय, मैं श्री सिकन्दर बख्त जी का ध्यान चाहूँगी क्योंकि आप के दो साथी एच. आर. डी. मिनिस्टर और डिफेंस मिनिस्टर के इस कागज पर दस्तखत हैं।

"Many of the existing rules—especially under the TRIPS regime—seek to strike at the roots of 'human rights', especially in the area of health care, of employment opportunities, of a minimum level of living in the developing countries." And, Sir, India is a developing country. It further says, "These are essential ingredients of the very Right to Life. We are convinced that these need immediate redressal."

We have profound misgivings on any enlargement of the scope of the WTO. The inclusion of non-trade issues would

only carry the danger of turning the WTO into a new leviathan, which could be crushed under its own weight. The instruments of trade policies do not lend themselves to addressing social issues. During the last couple of years we have, therefore, been strongly resisting any consideration of these additional issues.

The proposal to include investment in the work programme of the WTO causes us even greater disquiet. Investment policy after all addresses to a whole host of complex and inter-related matters of national importance. These include regional disparities, income inequalities, employment, environment, taxation and social justice to name only a few."

यह काफी लंबा पत्र है। उपसभाध्यक्ष जी, अब मैं ट्रिप्स पर आती हूँ:

"Moreover, the TRIPS must not be allowed to become a basis for monopoly rights for Trans National Companies (TNCs) in multilateral trade and put national industries in the developing countries at a disadvantage."

6.00 P.M.

"The transitional period in the TRIPS Agreement must be taken advantage of in developing self-reliance in particular for production and supplies of medicines for health care and chemicals for agriculture. The Investment Agreement which guarantees unconditional rights of entry to TNCs in the domestic market must be firmly rejected."

**श्री दीपांकर मुखर्जी:** आप जले पर नमक मत छिड़किए। ..... (व्यवधान).....

**श्री संघ प्रिय गौतम:** थोड़ा सा समय अपने पर भी दीजिए।

**श्रीमती कमला सिन्हा:** उसके बाद उन्होंने जो आपरेटिव पार्ट कहा, वह यह कि

"The developed countries will bring into play their bargaining skills" .... जिसके बारे में वायालर रवि जी ने कहा।

identity of the developing countries. They may even try to trade-offs by setting aside for the time-being the contentious issues of labour, environment standards, and press for acceptance of the proposed Multilateral Agreement on investment."

**श्री दीपांकर मुखर्जी:** यह सीपीएम लीडर का भाषण तो आप नहीं पढ़ रही है?

**श्रीमती कमला सिन्हा:** नहीं, यह सिगनेटरी है डा. मुरली मनोहर जोशी जी और जार्ज फर्नांडिज साहब। .... (व्यवधान)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** वह तो आप कह चुकी है। उसमें मत जाइए। आपका समय सीमित है।

**श्रीमती कमला सिन्हा:** उसके बाद इन्होंने अन्त में कहा है -

"We decide that where the greed becomes the law, the people should bring such actions to the attention of the Peoples' Court, or, a Truth Tribunal. The People's Court, or, the Truth Tribunal judges the consequences of such greed." Thereafter it is said, "invite the participants of the conference to establish in their own country organisations of like-minded persons to deal with the questions pertaining to the Intellectual Property Rights, obligations and the implications of the activities of WTO."

The last line is, "to call upon the governments of the developing world to oppose any move to enlarge the scope of the WTO through the introduction of new issues in the forthcoming Ministerial Meeting at Singapore." So, at that time you were not in power. I understand your compulsions. Now, you are in power. When this Bill was piloted, the Congress was in power. So, both of you have joined your hands, to get this Bill passed. But the close rapport that you are having now, I can understand it. About the situation, they have cautioned. Dr. Murli Manohar Joshi, Shri George Fernandes, Shri Jaipal Reddy; Dr. Ashok Mitra; I have been a Member of this organisation,

and there were a few others who were the signatories, (*interruptions*). So, I would like to say that even today, the Government should be cautious about the issues that are involved in this TRIPS Agreement and the amendments that we have brought. The Government should accept these amendments; otherwise, the Government should withdraw this Bill and send it to the Joint Select Committee, or, a Select Committee of the House. Let the nation discuss this issue, and thereafter you bring this Bill in the next session so that we can decide. Thank You.

**DR. L.M. SINGHVI:** Mr. Vice Chairman, Sir, after this storm earlier in the day, we have had a welcome shower of some debating points, particularly, in the speeches of my friend, Shri Kapil Sibal, my distinguished friend Shri Arun Shourie, Dr. Ramanna and many others. I hope that the quotation, in extenso, from Dr. Murli Manohar Joshi and Mr. Fernandes is something which would impel my good friends Mrs. Kamla Sinha to follow them in all other respects. The debate has often been very tangential and the apprehensions and anxieties have often been exaggerated. There is no doubt that some of the anxieties to which Mrs. Kamla Sinha just gave expression by reading that letter are anxieties of a legitimate nature. But if one looks at the Bill, if one looks at the Legislation, then one would realise that those anxieties, those apprehensions are unduly exaggerated. The objections to this Bill are latently ideological, patently impractical and blatantly political. If I may say so, it is quite clear that the objections which have been made are not objections which could arise, on a clear and a careful reading of the legislation which has been very carefully drafted in order to provide for the concern which we all share. It seems that emotional exaggeration is put forward as a substitute for rational argument. That emotional exaggeration may be very appropriate and evocative. But if it is not found to answer the criterion of

rationality, we would have to brush it aside. Nothing works, unless it works for the people of India. On that we are one. There is no question of any surrender of the sovereignty of India. There is no question of doing anything which would be to the detriment of public interest. But it does appear to me that in this Bill, there is no abrogation of sovereignty of any kind. There is no surrender to multinationals of any kind. The national interests have been carefully safeguarded by the provisions which have been put in

#### Chapter. 4.

Mr. Vice-chairman, 32 years ago, I happened to have appended the minute of dissent to the Patents Bill which ultimately became the Act of 1970. At that time also, I had said that we need to take a forward-looking view on the issue of intellectual property. At that time also, I had said that the world will not wait for us.\* We must move forward in order to participate in a more vigorous regime of patents. That unfortunately was to-headed to. We live in a world of our own creation." We thought that we were an island upto ourselves. Therefore, the attention that we paid was scanty.

I remember one highest officer of the WIPO, the World Intellectual Property Organisation, told me "India's voice was seldom heard when the issue of intellectual property arose." This is so because India marginalised itself by neglect of the issue and the concern that we have in this Bill.

Mr. Vice Chairman, long ago, we did make our trust with destiny. But in later years, it seems that we did not reckon with the global economic realities which were emerging all these years. In all these years, the global economy was changing its shape. We continued to turn either a blind eye, or, very little attention has been paid to the realities of global economics. Now, if we neglect those realities, we will invite further

marginalisation of our economy. That we cannot afford in the national interest.

Mr. Vice-Chairman, Dr. Ashok Mitra invokes the ghost of the East India Company and goes back to the spectre of the 19th century which tends to haunt some of us and warp our thinking. I believe that it is time to look not into the past but to the future. Look to the present with a sense of confidence and with a sense of enterprise in the world in which we live in. I am bold to say that the WTO is not our enemy. We can turn it to our purpose, if only we participate in it vigorously. Our enemy is our complacency. Our enemy is our lethargy. Our enemy is our incapacity to compete in the world in which we live. Therefore, it is important that we do not wish away a reality which we know exists. To wish that reality away, would in reality, mean to live in the 'fool's paradise' which is what Dr. Ashok Mitra characterised this Bill to be. It has to be understood that we cannot escape from the reality. We cannot run away from that reality;

My friend who has spoken before me has pointed out that globalisation has come to stay. Let us now work in such a way that we make it work for us, not that we are only sulking and sounding victims of a regime. There is no need for us to be diffident about the regime of free change. We have to understand that this organisation has to be made in such a way that the weak are made strong and the strong are made just. If we do not participate in it vigorously, we would not only fail our own causes and interest but we will fail the causes and interest of the so-called third-world countries, because they are not our third-world countries. They are, in a sense, our first world countries. It has to be done with a forward looking resolve and if we have to move in the direction of globalisation, we must see that globalisation does not become a prescription for the survival of the fittest. There is a scope within this legislation for us to fend for ourselves, to protect ourselves, -to safeguard our

interests, and that is where the legal muscle of this legislation is to be applauded for the craftsmanship with which it has been created and put forward. We must move now on to the mainstream by making full use of this legislation. I must say that my friends, Mr. Kapil Sibal, and Mr. Arun Shourie, have pointed out to us that the Bill really safeguards the question of obligation for grant of the EMR being exempted. It is not as if an automatic Exclusive Marketing Right will be conferred, as was suggested by one of the hon. Members. It is not as if the EMR will arise as soon as somebody enters into the mainstream of the mail box. This is not so. In fact, there is a dual control over it and the control over patents is expected to exercise that legislative and administrative control over it. Compulsory licences in this legislation is a very salutary feature for protection of public interest. Equally, the use of "in public interest" of some of these patents is very important. While the Government itself can do it and if it sees that the public interest is not being served in a particular manner, the Government can step in and not leave things to take their own course. Similarly, the fixation of price is a very important and far-reaching provision, and it is well within the scope of TRIPS agreement. Now, the fixation of price is something which is vital to the public interest and it has been preserved in clause 24(d) (2) of the legislation which is before us. Equally, the security of India is upheld in this legislation and it is provided as a ground for intervention by the Government. The removal of restrictions for inventors who are resident in India is also a welcome provision. What is very welcome and wholesome is the offer of the Minister to include an explanation which would protect the Indian indigenous medicines, unani, ayurvedic and others. It seems to me that the bio-diversity and genetics will have to be protected by a separate legislation, and I hope that this Bill will be brought forward very soon. We have to see the legislation in terms of what that

legislation does. Legislation is what legislation does, and in this case, I feel that this legislation is intended to and will assuredly deliver the objectives that we had in mind, consistent with our international obligations which we cannot renege from. The international obligation came from 1994-95 and those obligations are obligations which the successor Government is bound to respect and carry out. It is unfortunate that all four years have gone by without any further debate here except that it was sent to the Committee, it was not taken up and it got lapsed. But we have held sufficient discussions, we have held wide-ranging discussions throughout the country with regard to various pros and cons of this legislation and it limits the damage that can arise to India. It enables us to go into the 21st Century with a certain sense of self-confidence in our own innovative and inventive capacity. This is where I think it is important for us to harken to the example of China and Russia. Many people have held a latent ideological objection to this piece of legislation. But they need to be reminded that the other countries have found it useful and they have turned it into a good account. My friend Mr. Arun Shourie, has pointed out that China has nearly 35 number of times more applications than that we have and they made patents a source of prosperity and industrial expansion.

The last point is that the patents are linked to research, the patents are linked to the industrial use of inventions. It is important that we build the muscular strength of India to promote inventions, to promote inventiveness, which is part of the genius of India. We must show that it is protected and it is facilitated and we can go out in the wide world with a sense of confidence and hold our heads high. It seems to me that we have to learn to build the sinews of strength not only in terms of intellectual properties but also in terms of their commercial exploitation. We have to learn also to create a certain industrial and commercial competitive resilience in the world market and, for



that, this legislation provides us breathing space. The mail box has started. It is only in the year 2005 that we are required to do something more. I hope we will not lose that period. We will not miss the opportunity of making the Indian industry the pride of India, the Indian innovations of science and technology the pride of India. Thank you.

**श्री रमा शंकर कौशिक (उत्तर प्रदेश):** माननीय उपसभाध्यक्ष महोदय, इस पेटेंट संशोधन विधेयक के जरिए से हमारी आर्थिक व्यवस्था पर दुष्प्रभाव पड़ने वाला है। हमारी खेती जिस पर हमारे 70 फीसदी लोग निर्भर करते हैं उस पर बड़ा विपरीत प्रभाव पड़ने वाला है। इस संशोधन विधेयक का समर्थन करते हुए हमारे काबिल सहयोगी श्री कपिल सिब्बल साहब ने बहुत अच्छा भाषण दिया। लेकिन भाषण के बाद उन्होंने एक बात कही कि इससे हमारी इंडियन मेडिसिन को बचाया जाए। अगर खेती इसमें रहकर फायदेमंद हो सकती है और अगर हमारा औषध उद्योग इसमें रहकर इस पेटेंट बिल के जरिए से अच्छा हो सकता है तो इंडियन मेडिसिन क्यों नहीं अच्छी हो रही है। इंडियन मेडिसिन को क्यों निकाल दिया गया है उसमें से? वह भी अगर उसको अच्छा मानते हैं। लेकिन इसको अच्छा नहीं मानते हैं। तभी उनका जितना भी भाषण था एक घंटे, डेढ़ घंटे का वह सारा का सारा खाली इसी सुझाव से यह बात कह गया कि इस पेटेंट बिल के जरिए से हमारी आर्थिक स्थितियां सुधरेंगी नहीं, हमारी आर्थिक स्थितियां और खेती की स्थिति बदतर होगी। श्रीमन, हमारे यहां जो पेटेंट कानून है वह बहुत ही साफ-सुथरा थी कि किसी दूसरे ने तो उसका उत्पादन नहीं किया है या सामरिक दृष्टि से हमारी जो महत्वपूर्ण चीजें हैं उनके ऊपर तो कोई दरखास्त पेटेंट की नहीं है। और भी बहुत सी बातें देखी जा सकती हैं। लेकिन इस पेटेंट बिल से उन बातों को निकाल दिया गया। केवल दो बातें रखी गई हैं कि किसी ऐसे उत्पाद पर दरखास्त न हो जिस उत्पाद पर पहले से पेटेंट है या हमारी परमाणु ऊर्जा के ऊपर उसका संबंध पड़ता हो। ऐसे पेटेंट के लिए पाबंदी लगाई गई है, बाकी जो दूसरे अध्याय थे जिनमें पेटेंट की व्यवस्था को देखा जाता था उस सब खत्म कर दिया। हमारे पेटेंट बिल में प्रणाली पर था। औषध उद्योग के मामले में यह बात तो बिल्कुल स्पष्ट हो जानी चाहिए कि हमारे देश में जो औषध उद्योग है वह जहां भी दूसरी जगहों पर दवाईयां

बनती है उन दवाईयों को बनाने का हमारे लोग, हमारे उद्योगपति उसका काम करते हैं और वह दवाईयां बन जाती हैं और बहुत सस्ती बन जाती हैं। हमारे यहां प्रणाली के पेटेंट की व्यवस्था थी। यह उत्पाद की व्यवस्था कर रहे हैं कि उत्पाद पर ही, जो उत्पाद होगा, उस पर ही पेटेंट हो जाएगा, प्रणाली पर नहीं। नतीजा यह होगा कि कोई दूसर व्यक्ति अगर दूसरे तरीके से उस दवा को बनाना चाहे तो बना नहीं सकता क्योंकि उत्पाद पर ही पेटेंट मिला है, प्रणाली पर नहीं मिला है। हमारे यहां प्रणाली की छूट थी, प्रणाली के जरिए हम उसको कर सकते थे। अभी बात हो रही थी — मैंने शुरू में सुबह कहा था और शौरी जी ने उसका जवाब दिया कि वह पाकिस्तान का जीन है जिसके बासमती का किया है। मैं शौरी साहब को बताना चाहता हूँ कि हमारे देश के जिनतें भी बीज हैं और जितने भी जीव हैं, उनमें से 90 फीसदी दवाओं और बीजों के प्लाज्म पर उन्होंने पेटेंट ले लिया है। उसमें क्या होगा? जब उन्होंने सारी चीजों पर पेटेंट ले लिया है तो बीजों की स्थिति क्या होगी? और वह पेटेंट यहां लागू होंगे। असल दिक्कत सन 1994 से हुई है। गैट वाला मामला बहुत दिनों चला आ रहा था। बहुत बहस हो रही थी। हमारी सरकार भी हमारी जनता की आकांक्षाओं को पूरा करने के लिए आकांक्षाओं के अनुरूप अपनी बात को वहां रख रही थी और उसका कोई विपरीत असर नहीं हुआ लेकिन 1994 के जरिए से एक सुपर पावर बन गयी जिसको डब्ल्यू. टी. ओ. कहते हैं। वह कहते हैं कि हमारे आयात आपके यहां खुले करिए। हम हर चीज उसमें भेजेंगे और आपको लेनी पड़ेगी। वह कहते हैं कि आपके यहां गेहूं की पैदावार है, आपके इस्तेमाल करने के लिए पर्याप्त है फिर भी आपको आयात करना पड़ेगा और यह भी शर्त है कि हर साल उस आयात को 8 प्रतिशत से बढ़ाना पड़ेगा यह डब्ल्यू. टी. ओ. के जरिए से ही सारी चीजें हो रही हैं। हमारे देश में पूरे तरीके से छाने की बात हो रही है — बासमती पर ही नहीं, और भी सारी चीजों पर। जो वन औषधियां हमारे यहां हैं जिनमें आयुर्वेदिक दवाइयां बनती हैं, जिनमें यूनानी दवाईयां बनती हैं, उनके प्लाज्म पर भी उनको पेटेंट हो गये हैं — चाहे वह अदरक हो, चाहे वह तुलसी हो, चाहे और दूसरी कोई वन औषधियां हैं — उन पर यह पेटेंट हो गये हैं। इस हिसाब से अगर आप देखेंगे तो निश्चित रूप से हम बीजों के मामले में — अभी टर्मिनेटर वाला मामला था। सदन में उन्होंने कहा कि हम इन बीजों को नहीं आने देंगे। बीज कोई बनाएगा नहीं, दूसरा बीज कोई इस्तेमाल कर नहीं सकता। आपको बहुराष्ट्रीय कम्पनियों के बीजों को लेना

पड़ेगा। अगर वह टर्मिनेटर वाले बीज को ही देते हैं तो आप क्या करेंगे? आप कहते हैं कि हम प्राइस को कंट्रोल करेंगे। कैसे कर लेंगे? जब आप मैन्युफैक्चर करने के लिए, जब आप उत्पाद पैदा करने के लिए किसी को पेटेंट दे देंगे, तब आप कीमतों को कैसे कंट्रोल करेंगे? आप केवल यही तो कर सकते हैं कि हम आपकी दवा नहीं लेंगे। लेकिन जब वह दवा आपके यहां होगी नहीं। जब वह मैन्युफैक्चर दूसरे देश में करेंगे, आपके देश में वह आयात करेंगे, आप उसे बना नहीं सकते हैं क्योंकि पेटेंट नियम लागू हो गया तो उस दवा की दवा को आप बना नहीं सकते। ऐसे में पैसे को कैसे आप कंट्रोल कर लेंगे। आप चाहे उसमें कितना डाल दीजिए, आप उसमें व्यवस्था कर दीजिए कि हम मूल्य नियंत्रण करेंगे लेकिन आपके बस का मूल्य नियंत्रण नहीं होगा। या तो आप मूल्य नियंत्रण करेंगे या आप लोगों को उस दवा से महारूम करेंगे। अगर आप मूल्य नियंत्रण करें तो वह दवा लोगों को नहीं मिलेगी। आज भी दवाईयों की कीमतों में — जहां पेटेंट नियम लागू है, उसकी एक मिसाल आप देख लीजिए। एक ग्लैको की दवा है जो यहां 29 रुपये की है वही दवा पाकिस्तान में पेटेंट की वजह से 290 रुपये की है। इसी तरह से दूसरी जगहों पर भी है। हम लोग दवाओं के मामले में, बीजों के मामले में और बहुत सी बातों में हमेशा पिछड़ते चले जाएंगे। हमारे देश में सात हजार करोड़ के करीब का औषध उद्योग है, वह बिल्कुल चौपट हो जाएगा। उसका आप कैसे संभाल पाएंगे, यह आप बताइये — जब आप उनको दवा बनाने नहीं देंगे? आप कहते हैं कि 1995 की उनकी दरखास्तों को आप मंजूर करेंगे। नियम में आपने लिखा है। जो दरखास्तें 1995 की पड़ी हुई हैं, जो विदेशी बहुराष्ट्रीय कम्पनियों की अर्जियां हैं, उन पर आपको पेटेंट देना पड़ेगा। इस प्रकार 1995, 1996 और 1997 में जो आपके यहां दवाएं बनी हैं, उन दवाओं पर भी वह पेटेंट लेंगे। आपने तो उन्हें पेटेंट दिया नहीं है। आपके यहां पेटेंट में सात साल लग जाते हैं। 24 हजार एप्लीकेशन्स आपके देश में आपके देश के लोगों की पेटेंट के लिए पड़ी हुई हैं लेकिन अभी तक उनका निपटारा नहीं हुआ है। यहां पर पेटेंट के लिए सात साल का समय लगाता है। वर्ष 1995, 1996, 1997 में जो दवाएं बनी हैं, उनका पेटेंट नहीं हुआ है। वर्ष 1995 में 28 दवाएं बनी हैं, वर्ष 1996 में 53 दवाएं बनी हैं और वर्ष 1997 में 39 दवाएं बनी हैं।

महोदय, आप जानते हैं कि ये जो दवाएं नये-नये प्रकार की आती हैं वे नये लोगों के लिए होती हैं या

उनमें विशेष बात होती है और ये ही विशेष दवाएं होती हैं। यह नहीं है कि जो दवा आज से सौ साल पुरानी है या पचास साल पुरानी है या पच्चीस साल पुरानी है वह चल रही है। ये दवाएं ऐसी हैं कि जो आम आदमी की आम बीमारी में, ज्यादा बड़ी बीमारी में इस्तेमाल होती हैं। इन दवाओं पर आपसे पेटेंट दूसरी कम्पनियां, बहुराष्ट्रीय कम्पनियां लेंगी। आपकी जो 1995, 1996, 1997 की दवाएं हैं उन दवाओं पर आपने पेटेंट दिया हुआ नहीं है। आप 1995 से उनकी एप्लीकेशन को मंजूर करेंगे और उनको पेटेंट देंगे को निश्चित रूप से आपका यह उद्योग ठप्प पड़ जाएगा।

महोदय, इनकी दो हजार एप्लीकेशन हैं और 11 हजार एप्लीकेशन अन्य बातों के लिए पड़ी हुई हैं, उन सब को भी आपको 1995 से कंसीडर करना पड़ेगा। अगर आप इन सारी चीजों को देखेंगे तो निश्चित रूप से यह हमारी पूरी अर्थ-व्यवस्था, हमारे उद्योग, हमारी खेती, हमारे किसानों को बिल्कुल फटेहाल बना देने वाला है। इस दृष्टि से मेरा जो प्रस्ताव था, मैंने यह कहा था कि इसको राय के लिए परिचालित किया जाए और उसी से सब लोगों की राय जाएगी क्योंकि इसमें सब लोग हैं, सारे लोग इसमें आते हैं। आप सुपर-301 के डर से ये सारे काम कर रहे हैं, डब्ल्यू. टी. ओ. के डर से ये सारे काम कर रहे हैं और कहते हैं कि हम भय-मुक्त समाज मेरे प्रस्ताव को परिचालन के लिए भेज दिया जाए धन्यवाद

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Dr. Ramendra Kumar Yadav Ravi....

SHRI ASHOK MITRA: Sir, can I take half a minute? Hundreds of our young scientists, technologists and experts are, at the moment, assembled in the CSIR building. They are praying for a message from Parliament that the country will not be sold short. I want to know if somebody would go and talk to them.

डा. रमेन्द्र कुमार यादव रवि (बिहार): माननीय उपसभाध्यक्ष महोदय, मैं पेटेंट बिल के विरोध में बोलने के लिए खड़ा हुआ हूँ। कभी पढ़ा था, उसे दोहराता हूँ:—

निगाहे बदल जाती, अफसाने नहीं बदलते।

साकिर रिश्ता टूट भी जाए, मयखाने नहीं बदलते।”

? लेकिन आज मयखाने बदलते हुए लिख रहे हैं। तीन वर्ष पूर्व जिस पार्टी ने जो आज सत्ता में है इस पेटेंट बिल का विरोध किया था। यह बहुत बुरी परिपाटी है चाहे किसी सदन की हो, हां पक्ष वाले हां कहते हैं, ना पक्ष वाले हां सकते हैं, ना पक्ष वाले ना कहने की बातें करते हैं। लेकिन यहां एक बड़ी दुविधा की स्थिति है। अभी प्रमुख विपक्षी पार्टी हां के साथ भी हां कर रही है, ना नहीं कर रही है। तर्क दिया जा रहा है कि पेटेंट बिल से भारत की स्वायत्तता पर, अधिकार पर, सम्प्रभुता पर कोई असर नहीं पड़ेगा। मेरा मत इसके खिलाफ है। खासकर के जिसकी सरकार है, जिन्होंने स्वदेशी जागरण का शंख फूँका, स्वदेशी आचरण का मंत्र बोया और वह यह दावा कर रही है। आज बहुराष्ट्रीय कम्पनियों के सामने, विदेशी तंत्र के सामने, बड़ा अच्छा कहा अभी-अभी आदरणीय अशोक मित्र साहब ने, मैं वायालार रवि साहब को भी कोट करूंगा, शौरी साहब को भी कोट करूंगा, रमण्णा साहब को भी कोट करूंगा, अगर मुझे समय मिलेगा।

**श्री सनातन बिसि:** आप बोलिए, आपको समय मिलेगा।

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** आपकी पार्टी का समय 14 मिनट है और आपने तीन वक्ताओं के नाम दिए हैं।

**डा. रमेश कुमार यादव रवि:** अभी-अभी मुझसे पूर्व के अंतिम वक्ता आदरणीय कौशिक जी थे। उन्होंने कहा.....

1995, 1996 और 1997 में 53, 28 और 39 दवाएं यहां आईं जिनका पेटेंट होगा। जो दरखास्त हम लेने जा रहे हैं, 95 के बाद लेंगे। मैं विरोध इसलिए कर रहा हूँ —

1. The controversial Bill seeks to amend the 1970 Patent Act to grant exclusive marketing rights to internal agro-chemical and pharmaceutical companies for five years.
2. The Bill seeks to "make the Indian Patent system at par with advanced countries of the world.
3. It provides for grant of product patent among others in agro-chemical and pharmaceuticals giving exclusive marketing rights and establishment of mail-box for receiving patent applications in accordance

with trade related Intellectual Property Rights agreement of the WTO.

सर, मैं यह कहना चाहता हूँ कि इस मुल्क की एक व्यवस्था रही है। हम आत्मनिर्भरता की बात करते रहे हैं, स्वावलम्बन की बात करते रहे हैं। हमारा मुल्क संसार में ज्ञान, विज्ञान, ज्योतिष, खगोल और भूगोल के लिए जाना जाता है। हमने किसी को दिया है, लिया नहीं है। सच कहूँ तो भारत के वेदों, शास्त्रों, पुराणों और रूचाओं में जिस आयुर्वेद की लोग बात करते हैं, होम्योपैथी दवाओं की बात करते हैं, एलोपैथी की बात करते हैं, वे सब यहीं थी। यहीं से लोगों ने इनको लिया है। यहां तक कि जिस रोमांटिसिज्म की बात आज लोग करते हैं, बायरेन शैली कीट्स की बात करते हैं, हमारे मुल्क में यह रोमांटिसिज्म, यह स्वच्छंदवाद, यह छायावाद भी बहुत पहले था। हमारे यहां मेघ दूत का काम करता था, स्पेशल मेसेन्जर का काम करता था। हम उसी पृष्ठभूमि, उसी संस्कृति के पोषक हैं, और बीजेपी इस मुल्क में यह कहती रही —“ हर खेत को पानी और हर हाथ को काम”। अभी कौशिक जी ने कहा कि इस मुल्क में एक अरब लोगों के दो अरब हाथ बेकार होंगे। हमारे यहां जो नेच्युरल रेसोर्सज है, संभावनाएं हैं हम उनको एनरिच करें। इसी प्रकार आदरणीय अशोक जी, गुरुदास दासगुप्त जी, डा. विप्लव दासगुप्त जी, कमला सिन्हा जी और ईश दत्त यादव जी ने कहा कि इस बिल को सलेक्ट कमेटी या ज्वाइन्ट सलेक्ट कमेटी जो भेजा जाना चाहिए। मैं समझता हूँ कि यह बिल यहां पर जल्दीबाजी, हैरानी और दबाव में लाया गया है। हमारे पास जबकि समय है और हम इसको अप्रैल में भी ला सकते हैं तथा सत्र के प्रथम दिन हम इस पर विचार-विमर्श कर सकते हैं। बहुत से माननीय सदस्यों को शिकायत थी कि उन्हें संबंधित कागजात भी उपलब्ध नहीं कराये गये। यह नीलोत्पल जी का ग्रिवॉस था। मैंने कहा और लोगों ने भी कहा कि अगर “मिया-बीवी राजी तो क्या करेगा काजी।” जब रूलिंग पार्टी तैयार है और कांग्रेस के लोग तैयार हैं तो हम लोग तो बेकार बहस में भाग ले रहे हैं।

**श्रीमती कमला सिन्हा:** इसमें कौन मियां और कौन काजी हैं, बता दीजिए।

**श्री राजेन्द्र कुमार यादव रवि:** अभी माननीय कमला जी ने इसी सरकार के दो काबिना और काबिल मंत्रियों का उल्लेख किया — माननीय जार्ज फर्नान्डीज साहब और माननीय डा. मुरली मनोहर जोशी जी। मुरली मनोहर जोशी ज्योतिषी भी हैं और भौतिक शास्त्र के प्रकांड पंडित भी हैं। जार्ज साहब अपने को एक पुराने

समाजवादी कहते हैं। मैं यह जानना चाहता हूँ कि अपने ही द्वारा लिये गये निर्णय को पुनः पलटने का अधिकार, यह कौन सी राजनीतिक व्यवस्था है। मैं तो सदन में बहुत कम बोलता हूँ। आज से लगभग चार साल पहले कमरा नम्बर-63, में, इसी पार्लियामेंट में बैठा था।...

यूनाइटेड फ्रंट की सरकार थी, वी. पी. सिंह प्रधानमंत्री हुआ करते थे। उस समय काम को मौलिक अधिकार का दर्जा दिया गया था। उसी पर बहस हो रही थी। दल के राष्ट्रीय संयुक्त मोर्चा के सहयोगी दल थे वघ लोग पार्टी में सरकार में एक्टिव पार्टिसिपेशन हो रहा था, फंगशन, डेलीबरेशंस में गहरी रूचि ले कर भाग ले रहे थे लेकिन जनता दल उन दिनों पेशिव था। सब लोग बोले। मेरा वक्त आया। मैंने कहा, मैं समझ नहीं पाता हूँ कि अपने ही लिये गये निर्णय को हम लोग आज क्यों पलट रहे हैं? देश में जैसा मैसेज जाएगा, लेफ्ट के लोग सपोर्ट कर रहे हैं, वह लोग साथ थे और आज हम लोग क्यों पलट रहे हैं। ठीक उस दिन यही शेर मैंने कहा था और आज मैंने फिर कहा-निगाहें बदल जाती हैं, अफसाने नहीं बदलते, साकी रिश्ता टूट भी जाए, मयखने नहीं बदलते। उन दिनों राजा साहब ने कहा था, रवि जी साकी बदल गई, मैं समझत हूँ कि आज साकी बदली है इसलिए उसका ईमान, उसका धर्म, स्वदेशी जागरण, स्वदेशी चेतना, सारे संस्कार धूमिल पड़ गए हैं। यह कांग्रेस जिस के साथ मसविदा है, एक मिलीभगत है, एक अंडरस्टैंडिंग है। इसलिए कांग्रेस के सहयोग के बिना यह सरकार एक दिन भी नहीं चल सकती है। कांग्रेस वाले उनकी विवशता का नाजायज़ फायदा उठा रहे हैं और अपने को उस नाजायज़ निर्णय में शामिल कर रहे हैं। कहना चाहता हूँ....(व्यवधान)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** समय समाप्त हो रहा है आपका (व्यवधान) पार्टी के समय जे लिहाज़ से यह होगा (व्यवधान)

**डा. रमेन्द्र कुमार यादव रवि:** पिछले वर्ष विश्व व्यापार संगठन में भारत के विरुद्ध यह शिकायत दर्ज की थी कि वह अभी तक अपने पेटेंट कानूनों में संशोधन नहीं कर सका है। इसी शिकायत को ध्यान में रख कर विश्व व्यापार संगठन ने भारत को पेटेंट कानून में संशोधन करने का निर्देश जारी किया है। हम जब आत्मनिर्भरता की बात करते हैं कम से कम जो वायालार रवि साहब ने कहा, पब्लिक ओपीनियन, इंटेलेक्चुअल ओपीनियन, मुल्क का पार्टीसिपेशन होना चाहिये था, पोलिटिकल पार्टीसिपेशन, इंटेलेक्चुअल

लज़ पार्टीसिपेशन होने के बाद इस बिल को लाया जाना चाहिए था। इसलिए हम सब लोग आज जो इस सदन में रह रहे हैं, कल उस सदन में कहेंगे, हमारी जवाबदेही इस मुल्क में रहने वाले एक अरब लोगों के लिए है। हम एक अरब लोगों के हितों के प्रति जवाबदेह हैं। लोग कहते हैं जैसे कि कहा गया ग्लेक्सो यहां 29 रूपये में मिलता है वह आज अमरीका में ढाई सौ रूपये या दो सौ पच्चीस रूपये में मिलता है। वायालार रवि ने जिनकी पार्टी समर्थन नहीं रख सकते हैं। जब हम मूल्यों पर नियंत्रण बर्करार नहीं रख सकते हैं। जब हम मूल्यों पर नियंत्रण बर्करार नहीं रख सकते हैं, हम विश्व के 150 सदस्यों में से एक सदस्य होंगे, यह हमारी विवशता रही है चाहे गैट हो, चाहे डंकल हो, चाहे सी. टी. वी. टी. हो, हम को हस्ताक्षर करने हैं। जो ग्लोबल पॉलिटिक्स है, जो ग्लोबल मार्किट है, जो ग्लोबल फाइनेंशियल फिनोमेना है, उसके साथ अगर हम को रहना है, मैंच करना है, सरवाइव करना है तो हमारा सरवाइवल उसके बिना नहीं हो सकता, उसके बिना ऊपर दबाव है। यह सच है कि हम भी इस व्यवस्था के साथ, विकास के साथ बहना चाहते हैं, आगे बढ़ना चाहते हैं, अच्छा मजबूत भारत बनाना चाहते हैं लेकिन इतनी जल्दबाजी में यह बिल क्यों लाया जा रहा है? विरोध का कारण और कुछ भी नहीं है। आज अगर वह लोग यह कहते हो, कपिल सिब्बल साहब ने जो कहा, वे विधिवेता है, शौरी साहब मुल्क के जाने माने पत्रकार है, रामण्णा साहब जाने माने वैज्ञानिक है, एक वैज्ञानिक की धारणा क्या है? एक अनुभव प्राप्त व्यक्ति माननीय मित्र अशोक मित्र साहब की जो भावुक अभिव्यक्ति थी, करुणा से ओत-प्रोत अभिव्यक्ति थी, क्या वह एंटीनेशनल है? नहीं है। इनके अन्दर भी वही भाव है जो उधर पलते हैं, जो भाव इधर पलते हैं। राजनीतिक विरोध हो सकता है लेकिन मुल्क के साथ, मुल्क के विकास के साथ, मुल्क की स्वायतता के साथ, संप्रभुता के साथ, नेशनल इंटीग्रिटी के साथ सब के वही जज़बात है जो हम पालते हैं, कोई भी लोग पाल सकते हैं। जिस भावना से आज बाजपा के लोग ला रहे हैं, कांग्रेस के लोग ला रहे हैं, हम लोग भी लाना चाहते हैं। लेकिन कल को कांग्रेस के लोग ला रही थी। आज क्या हुआ? क्यों भाजपा विरोध कर रही थी? आज क्यों यह कंप्लेशन है, यह बाध्यत क्यों है?

यह अनबुझ पहेली हम लोगों को बाध्य करती है कि नहीं यह जल्दबाजी में लाया गया बिल है। हमारी रसायनिक शक्तियां हैं, भौतिक शक्तियां हैं। कृषि है,

उद्योग है और अन्य दवाइयों के है जो हम तैयार करते हैं। यही कारण है कि इस मुल्क से बौद्धिक सम्पादाओं का, इंटेलेक्चुअल प्रापर्टी का पलायन हो रहा है। पलायन हो रहा है कि उसको काम नहीं है। उसको वह अधिकार नहीं है, उसको वह स्वायत्तता नहीं है। उसको वह साधन नहीं है जिसको हम मुहैया करा सकें। इस मुक्ल में एक से एक अनेक समस्याएं हैं। बेरोजगारी की समस्या है। इस पर सरकार पहल करती। विदेश से ही पूछ लेती। बेरोजगारों को रोजगार देती। सरकार यह काम नहीं करेगी। कुछ चीजें कंपलशन में होती है। तो यह कंपलशन मुल्क के साथ नहीं होना चाहिए। मुल्क में रहने वाले बेरोजगार नौजवानों के साथ में नहीं होना चाहिए। एक दिन पेटेंट वालों ने कहा था कि डिब्बे में जो दूध है उससे आयु बढ़ती है। जीवन रक्षक है। आज वे ही वैज्ञानिक, वे ही विदेशी कहते हैं कि मां का जो दूध होता है उससे अधिक जीवनदायी कोई चीज नहीं होती है। क्या कारण है कि आज मां के स्तन का दूध चाहिए? वह डिब्बे का दूध बीमारियां फैलाता है। मैं तो यह मानता हूँ कि यह गरीब मुक्ल है— हालांकि हम संसार में किसी मुल्क से गरीब नहीं हैं जहां तक हमारी जनशक्ति का सवाल है, हमारे संस्कारोम का सवाल है, जहां तक इस मुल्क में जो मेधा है, किसी भी क्षेत्र में, जीवन के किसी भी महकमें में जो इस मुल्क में मेधा है वह अन्य देशों में नहीं है, चाहे उसका सवाल है। सवाल है कि हम खबरदार हो सके। हम सावधान हो सकें। हर मामले में घुटना टेक राजनीति, ग्लोबल पोलिटिक्स में, ग्लोबल कल्चर में ग्लोबल डेवलपमेंट में अपने को फिट करने के लिए— नगीने की अंगूठी में लोग में पहने तो अच्छी चीज नहीं है। स्वयं वायाला रवि जी का आग्रह है, लेफ्ट के तमाम लोगों का आग्रह है, उस बेंच का आग्रह है कि इसको सिलेक्ट कमेटी को, ज्वायंट सिलेक्ट कमेटी को भेजा जाए .....(व्यवधान) किसान विरोधी तो है। भारत विरोधी तो हैं। भारत विरोधी है। भारत में तो 80 प्रतिशत लोग किसान ही है। मजदूर है या गरीब है। कौशिक साहब को कोट करना वक्त जाया करना होगा। इसलिए मैं माननीय उपसभाध्यक्ष जी से निवदेन करना चाहूंगा कि देश हित में, अवाम हित में, बुद्धिजीवियों के हित में विधि वक्ताओं के हित में, अधिवक्ताओं के हित में, पत्रकारों और वैज्ञानिकों के हित में है कि इस बिल को सिलेक्ट कमेटी को या ज्वायंट सिलेक्ट कमेटी को भेजा जाए। इस पर गहन विचार विमर्श हो— एक्सटेंसिव कमेटी को या ज्वायंट सिलेक्ट कमेटी को भेजा जाए। इस पर गहन विचार विमर्श

हो—एक्सटेंसिव और इंटेसिव, और मार्च के प्रथम सप्ताह के प्रथम दिन में इस बिल को लाया जाए। तब तल दोनों सदन और मुल्क में डायलाग से, आपसी ...**(व्यवधान)** विवाद से कम्यूनिकेशन गैप नहीं रहे। इन्हीं शब्दों के साथ में अपनी बात समाप्त करता हूँ।

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** रविजी, बहुत-बहुत धन्यवाद।

There is a pleasant surprise for the hon. Members. The Minister for Parliamentary Affaris has arranged dinner for you tonight.

आप बता दें कहां पर होगा ...**(व्यवधान)** जो खाना चाहेंगे, जाएंगे....

**श्री जीवन राय:** खाना घर पर खाएंगे ...**(व्यवधान)** आपकी सरकार का खाना नहीं खाएंगे।

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** इसमें कोई जबर्दस्ती नहीं है ...**(व्यवधान)** कोई जबर्दस्ती नहीं है। स्वेच्छापूर्वक है। आप बता दें कहा पर होगा—कितने बहे और कहां पर ...**(व्यवधान)**

The details about dinner are available on the Table of the House.

**श्री दीपाशंकर मुखर्जी:** जनता का पैसा बरबाद नहीं होने देंगे। आप खाइए...**(व्यवधान)**

**श्री जीवन राय:** आप एडर्जन कर दीजिए।

SH RIM ATI KAMLA SINHA: Sir, you adjourn the House.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): There is compulsory licensing, but there is no compulsory invitation for joining the dinner.

**श्री दीपाशंकर मुखर्जी:** पेटेंट्स खाना नहीं खाएंगे ...**(व्यवधान)** हिंदुस्तानी स्वदेशी खाना खाएंगे... यह खाना नहीं खाएंगे।

**प्रो. विजय कुमार मल्होत्रा:** इनके कहने में उन्होंने खाने का इंतज़ाम किया। ...**(व्यवधान)**

They asked for it. *(Interruptions)*

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** अगर वे नहीं खाना चाहते और उनका खाने का कहीं और अच्छा इंतज़ाम है तो उनको कोई जोर-जबर्दस्ती नहीं है। ...**(व्यवधान)** बैठ जाइये, कमला जी, बैठ जाइये ...**(व्यवधान)** कमला जी, जाइये। ...**(व्यवधान)**

Please, (*Interruptions*) Resume your scats. (*Interruptions*) please take your scatas. (*Interruptions*) The House is continuing. (*Interruptions*)

DR. BIPLAB DASGUPTA: Please adjourn the House till tomorrow. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): the House is continuing.

DR. BIPLAB DASGUPTA: Please adjourn the House. Take the sense of the House. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): This is the decision taken by the Business Advisory Committee and the Chairman. (*Interruptions*)

**कुमारी सरोज खापर्डे (महाराष्ट्र):** सर, आपका बहुत-बहुत धन्यवाद । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** कोई जरूरी नहीं है । ...(**व्यवधान**) सरोज खापर्डे जी को बोलने दीजिए । ...(**व्यवधान**) जिनका अपना कोई वैकल्पिक इंतजाम है उनके ऊपर कोई जोर-जबर्दस्ती नहीं है । ...(**व्यवधान**)

**श्री जीवन राय:** इन लोगों का बिल है । ...(**व्यवधान**) मजबूर होकर तुम लोगों को बिल पास कराए पड़ते हैं । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** पार्लियामेंटरी अफेयर्स कोई जोर-जबर्दस्ती नहीं करना चाहते । आप सरोज खापर्डे जी को बोलने दीजिए । ...(**व्यवधान**)

SHRI SATISCHANDRA SITARAM PRADHAN: Shri Gupta requested Mr. Malhotra for arrangement of dinner. He said that he would talk to the Parliamentary Affairs Minister. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): They might have made a request and they have changed their mind. Maybe, they have a better arrangement elsewhere. (*Interruptions*)

**कुमारी सरोज खापर्डे:** उपसभाध्यक्ष महोदय, सदन के इस शोरगुल में आज मुझे बेहद खुशी इस बात की है । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** देखिये, बोलने दीजिए । सरोज जी बोल रही हैं । ...(**व्यवधान**)

**कुमारी सरोज खापर्डे:** आज मुझे इस शोरगुल में बेहद खुशी इस बात की है जो विधेयक कांग्रेस ने बनाया और लोक सभा में प्रस्तुत किया था उस वक्त जिन लोगों ने उसका खुल कर विरोध किया था आज वही लोग इस बिल को पारित कराने में जुटे हुए नज़र आ रहे हैं । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** उनको बोलने दीजिए । ...(**व्यवधान**) बोलने तो दीजिए । ...(**व्यवधान**)

**कुमारी सरोज खापर्डे:** महोदय, इसमें कोई शंका की बात नहीं है, इससे तो कांग्रेस की एडमिनिस्ट्रेटिव विण्डम को पता चलता है । ...(**व्यवधान**)

**श्री नीलोत्पल बसु:** रहने दो । ...(**व्यवधान**)

**श्री संघ प्रिय गौतम:** यह संशोधन भारत सरकार ने बनाया था और भारत सरकार बना रही है । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** आप बैठ जाइये, बैठ जाइये । ...(**व्यवधान**) सरोज जी को बोलने दीजिए । ...(**व्यवधान**)

**कुमारी सरोज खापर्डे:** मुझे आज इस अवसर और एक शेर याद आ रहा है ।

“वह राह दिखाते हैं हमें हजरत-ए-रहबर,

जिस राह पर उनको कभी चलते नहीं देखता ।”

...(**व्यवधान**)

**श्री नीलोत्पल बसु:** हज़म तो हो रहा है । ...(**व्यवधान**)

**उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी):** सरोज जी, विप्लव दासगुप्त जी की तरफ देख रही थीं जब पढ़ रही थीं । ...(**व्यवधान**)

**श्री नीलोत्पल बसु:** सरोज जी अन्जुभवी हैं, जानती हैं कि कहां देखना है । ...(**व्यवधान**)

**कुमारी सरोज खापर्डे:** महोदय, पेंटेट (संशोधन) विधेयक, 1998 आज फिर एक बार राज्य सभा में चर्चा के लिए लाया गया है ।

जैसाकि हम सभी जानते हैं कि इस विषय पर एक विधेयक 1995 में राज्य सभा में लाया गया था और उस विधेयक को सदन के सलेक्ट कमेटी को विचार हेतु सौंपा था, परंतु उसके पहले कि समिति अपनी रिपोर्ट दे

पाती, दसवीं लोक सभा भंग हो गयी और जो विधेयक लाया गया था, वह लैप्स हो गया। महोदय, आज स्थिति यह है कि भारत डबल्यू. टी. ओ. की स्थापना के लिए हुए समझौते को ऑकरेडी रेक्टिफाय कर चुका है और इस समझौते में ही एक समझौते ट्रिप्स का है जोकि के तहत भारत को अपने पेटेंट कानून में कुछ संशोधन करने हैं जोकि हम ने नहीं किए हैं। इस समझौते पर हस्ताक्षर करने का एक अंतर्राष्ट्रीय उत्तरदायित्व भारत आ पड़ा है जोकि हमें निभाना है और जिसे निभाने में हम अभी तक असमर्थ रहे हैं। खैर, इसके कारण कुछ भी रहे हों, परंतु हमारे देश की प्रतिष्ठा पर निश्चय ही एक आघात हुआ है। अब जबकि यह उत्तरदायित्व एक बार फिर विधेयक की शक्ति में हमारे सामने आया है, हमें इस पर अर गंभीरता से विचार करना चाहिए और इस उत्तरदायित्व को बिना विलंब निभाने की कोशिश करनी चाहिए। हम विश्व में किसी प्रकार का गलत संकेत नहीं चाहते हैं कि भारत इंटेलेक्चुअल प्रॉपर्टी राइट्स में विश्वास नहीं करता है और न ही उसे सम्मान देता है। हमें इस बात का भी ध्यान रखना चाहिए कि एग्रीमेंट की शर्तों का पालन न करने पर हमें व्यापार जगत में अनेक तरह की विपदाओं का सामना करना पड़ सकता है जिस से विशेषकर हमारे निर्यात पर विपरीत असर पड़ सकता है।

महोदय, आज मैं एक बात जरूरत कहना चाहूंगी कि सरकार ने इस विषय पर जनता को ठीक तरह से अवगत नहीं कराया है जिस के कारण यह विशेष मुद्दा जब कभी भी संसद में आया तो देश में अलग-अलग वर्ग के लोगों ने इस पर अपनी-अपनी प्रतिक्रियाएं दी हैं। किसान वर्ग आशंका व्यक्त करता है कि खाद के मूल्य कई गुना बढ़ जाएंगे अर खाद के मूल्य ही कई गुना नहीं बढ़ जाएंगे बल्कि उन्हें बीजों के लिए भी विदेशी कंपनियों का मुंह देखना पड़ सकता है। इसी तरह दवाईया बनाने वाली कंपनियों भी समझती हैं कि नई पेटेंट रिजीम आने पर वे विदेशी कंपनियों के मोहताज हो जाएंगे दूसरी तरफ अगर देखें तो जनता भी यह समझती है कि नई पेटेंट व्यवस्था आने पर दवाईयों के दाम आसमान छूने लगेंगे। महोदय, जब देश के विभिन्न वर्ग और विभिन्न स्तर के लोग इस तरह के विचार प्रकट करा रहे हों तो मैं समझती हूँ कि सरकार का फर्ज बन जाता है कि वह इस विषय पर आम जनता को वास्तविक स्थिति से अवगत कराए जिस से हम बिना समय नष्ट किए एक सही नतीजे पर पहुंच सकें। महोदय, सब से ज्यादा चिंता यह जताई जा रही है कि दवाईया बहुत

महंगी हो जाएंगी, परंतु मेरे विचार से दवाईयों की कीमतें कई कारणों पर निर्भर करती हैं।

जैसे कि बाजार में खरीदने की जो क्षमता है, स्वास्थ्य बीमा प्रणाली है और इतना ही नहीं अल्टरनेटिव नान पेटेंट ड्रग की उपलब्धियां हैं। इन सारी चीजों पर दवाईयों कीमतें भी निर्भर हैं। डबल्यू. एच. ओ. के अनुसार केवल 10 प्रतिशत दवाईयों की नए पेटेंट कानून के तहत आएंगी। इसलिए इस पर मुझे नहीं लगता कि बहुत ज्यादा हमें चिंता करने की आवश्यकता है।

महोदय, इस अवसर पर मैं डबल्यू. एच. ओ. की फंक्शनलिंग के बारे में भी कुछ अपने विचार व्यक्त करना चाहूंगी। जैसा कि आप जानते हैं, डबल्यू. एच. ओ. की जो कार्य-पद्धति है, वह काफी निष्पक्ष है। आप जानते हैं कि नीम और हल्दी पर अमरीकी कंपनियों द्वारा पेटेंट कराए जाने पर हमारे द्वारा दायर किया गया मुकदमा हम लोगों ने जीत लिया है। इसलिए स्पष्ट है कि डबल्यू. एच. ओ. इतना निष्पक्ष है कि जिसने अमरीका जैसी बड़ी कंपनियों के विरुद्ध फैसले दिए हैं और इसलिए हम इस बात से निश्चित रहें कि डबल्यू. एच. ओ. केवल बड़े-बड़े देशों का ही वर्चस्व रहेगा।

महोदय, अभी कुछ समय पहले मैंने किसी अखबार में या किसी मैगजीन में पढ़ा था, मुझे याद आता है, कि अमरीकी कंपनी ने बासमती चावल को पेटेंट करा लिया है। उस कंपनी ने बासमती चावल को एक चावल की किस्म बताया है, एक जात बताया है, जबकि बासमती एक बायोलोजिकल एंटिटी नहीं है बल्कि एक ज्योग्राफिकल स्पेशलिस्ट है, तो एक विशेष वातावरण में हिमालय की तराई में पैदा होती है और इस किस्म का चावल एक विशेष खुशबु और स्वाद भी देता है। मुझे यकीन है, विश्वास है कि इस विषय पर भी अमरीकी कंपनी का पेटेंट रद्द हो सकता है। इसलिए हमें इसमें चिंता का कोई कारण नहीं लगता है।

महोदय, मेरे विचार में नई पेटेंट व्यवस्था आने से सबसे बड़ा फायदा टेक्रोलोजी ट्रांसफर के बारे में होगा। किसी भी देश में नवीनतम टेक्रोलोजी आसानी से उपलब्ध हो पाएगी, जो कि आने वाले समय में किसी भी देश की उन्नति के लिए एक मील का पत्थर साबित हो सकती है।

महोदय, इन सब बातों के देखते हुए और यह देखते हुए कि भारत विश्व का एक दूसरा ऐसा देश है, जहां सबसे अधिक प्रतिभाशाली वैज्ञानिक, इंजीनियर मौजूद हैं, हमें इस विधेयक को पारित करने में और अधिक विलंब

लगाने की आवश्यकता नहीं है। यह सोचना कि नई पेटेंट व्यवस्था आने पर हम नुकसान में रहेंगे, मुझे लगता है कि एक यह ऐसा निराशावाद का विचार है, जिससे मैं सहमत नहीं हूँ। हमें अपनी सामर्थ्य को कम नहीं समझना चाहिए और हमें इस चीज की एक चुनौती के रूप में ले लेना चाहिए। मेरा अपना यह मानना है कि आने वाले लंबे समय में हम इससे खोने के बजाय बहुत पाएंगे। इसी सारी सोच को दिमाग में रखकर, उसके ऊपर बहुत गहराई से विचार करने के बाद सिब्ल जी ने और वायालार रवि जी ने अपने विचार व्यक्त किए, मैं खुद भी विचार के बाद इस विधेयक के समर्थन में यहां खड़ी हुई हूँ और मैं भी कहूंगी कि इस विधेयक को पास करना अत्यन्त जरूरी है।

इन्हीं शब्दों के साथ बहुत-बहुत धन्यवाद, महोदय।

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now, there is a message from the Lok Sabha.

#### MESSAGE FROM THE LOK SABHA

##### The Appropriation (No. 4) Bill, 1998

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Appropriation (No. 4) Bill, 1998, as passed by Lok Sabha at its sitting held on the 21st December, 1998,

The Speaker has certified that this Bill is a money Bill within the meaning of article 110 of the Constitution of India."

Sir, I lay a copy of the bill on the Table of the House.

7.00 P.M.-

#### THE PATENTS (AMENDMENT) BILL, 1998—CONTD.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now, Mr. Chitharanjan. (*Interruptions*)

SHRI DIPANKAR MUKHERJEE: Sir, till what time has the House been extended? (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The House has already expressed its sense that it will continue, and arrangements for contingency of hunger have already been taken care of.

SHRI DIPANKAR MUKHERJEE: Till what time has the House been extended? What is the duration of the discussion? Is there any time-limit? (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): It has already been decided in the Business Advisory Committee, where your party leaders were also present, that it will be for six hours or beyond.

SHRI DIPANKAR MUKHERJEE: Already six hours are over. Then why... (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): We will sit beyond six hours or till the Business regarding the Bill is finished. It can be either way.

SHRI DIPANKAR MUKHERJEE: There should be some time limit. How long will it take? (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You ask your leaders.

SHRI DIPANKAR MUKHERJEE: I am asking you (*Interruptions*) Beyond six hours... (*Interruptions*)

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The Business Advisory Committee has taken a decision. Now, let Mr. Chitharanjan... (*Interruptions*) Do not disturb Mr. Chitharanjan. (*Interruptions*)

#### (THE DEPUTY CHAIRMAN IN THE CHAIR)

SHRI DIPANKAR MUKHERJEE: Madam, for how long has the House been extended?

THE DEPUTY CHAIRMAN: For one hour we will have discussion, then we will