

**Protecting Indian System of Medicines from being Patented by foreign Companies**

**\*104. SHRI TRILOKI NATH  
CHATURVEDI:  
DR. MURLI MANOHAR  
JOSHI:**

Will the Minister of COMMERCE be pleased to state:

(a) whether Government's attention has been drawn to the news-item captioned "Neem patent may sour Indo-US ties" published in the 'Times of India' of 30th October, 1995 and to state the steps taken by Government to protect the Indian trees, vegetation, herbs etc. from patents to be acquired by foreign companies; and

(b) what steps are being taken to protect Ayurvedic, Unani and Siddha system of medicines from being patented by foreign companies under changed nomenclature or slightly changed formulations?

**THE MINISTER OF STATE OR  
THE MINISTRY OF COMMERCE  
(SHRI P. CHIDAMBARAM):** (a) and (b) A Statement is laid on the Table of the House.

**Statement**

(a) Patents granted outside India are not applicable in India. Plant varieties are not patentable under Indian laws nor are they required to be made patentable under the TRIPS Agreement (which provides, inter alia, that Members may exclude plants and animals from the scope of patentability). The convention on Bio-diversity of which India is a signatory provides for regulating transfer of genetic material across national boundaries. In order to regulate the outflow of genetic resources, Ministry of

Environment & Forest is preparing a regulatory framework.

(b) Systems of medicines cannot be patented. The Indian Patent Act at present does not provide for the grant of product patents for medicines. Patents in other countries are governed by the laws of the concerned countries. Under the TRIPS agreement patents are required to be available for inventions that are new, involve an inventive step and are capable of industrial application. Grant of patent in any country for an invention which does not fulfill these conditions can be challenged.

**SHRI TRILOKI NATH  
CHATURVEDI:** Madam Chairperson, this issue has aroused a lot of apprehensions in the country. I am really surprised to find that the knowledgeable Minister has come out with a reply which is absolutely inadequate. In the first place, I would like to point out that he has not at all referred to the news item which I mentioned and which contains certain things. What is the reaction of the Government to that news item? There is no reference at all to that because the supplementaries and other questions flow therefrom. The second thing, Madam, that I would like to point out is, there is a particular reference in the (b) part of the reply. It has been mentioned that the systems of medicines cannot be patented. That is, of course, well known. But I just want to know what steps are being taken to protect Ayurvedic, Unani and Siddha systems of medicine from being patented by foreign companies under changed nomenclatures or slightly changed formulations? This is what I have asked. This creates apprehensions in the minds of the people. The reply has been given in a different way and an attempt has been made to cover it up. Under the TRIPS agreement, patents are required to be available for inventions that are new, that involve an inventive step and are capable of industrial application. I myself wanted to know from the Government as to the steps being taken to overcome this

<sup>†</sup>The question was actually asked on the floor of the House by Shri Triloki Nath Chaturvedi.

kind of threat which Ayurvedic, Unani and Siddha systems are facing. I hoped he would provide the facts and figures. In the absence of the information required what kind of supplementaries can I put?

**THE DEPUTY CHAIRMAN:** Now, let him answer first.

जो आपने इतनी क्वेरीज पूछी हैं, उनका जवाब दे दें।

**SHRI TRILOKI NATH CHATURVEDI:** Madam, the reply is an indication of the inadequacy of approach. The answer is presented to us in a routine way.

**SHRI P. CHIDAMBARAM:** Madam, with great respect to the hon. Member I want to say that I do not think it is quite right to charge me with having covered up anything. The answer is quite clear. It is a complicated subject and I have tried to answer to the best of my ability. A system of medicine is not patentable. I have read the *Times of India* report. The thrust of the question is that a company in America has taken neem extract and has evolved or invented or claimed to have invented a pesticide adding other chemicals and has sought and obtained a patent for that. Now, what is our reaction to that? My reaction to that is set out very clearly in parts (a) and (b) of my answer. Patents granted outside India are not applicable in India. So, that is a very clear answer. A system of medicine is not patentable. That is also a factually correct statement. That is a clear answer. Now, what does the TRIPS agreement do to a problem of this kind? Now, the TRIPS agreement recognises the three fundamental principles of patentability. It must be new, it must be inventive and it must be capable of industrial application. So far as plants are concerned and of which we are talking about now, neem is a tree, a plant variety. We are not obliged to provide the patent. We have taken a decision that we will only provide a *sui generis* system. A law is being drafted. It will come to Parliament, you will have to consider the law and we will take you into confidence, we will seek

your support and adopt a law which is appropriate to protect India's national interest. I have explained this part we well as I can. The other part is about biodiversity. I say, yes, we are a signatory to the Rio Convention on Biodiversity. India has ratified it. One hundred and thirty three countries have ratified it. Again, a law has to be made. That law is being drafted by the Ministry of Environment and Forests. They will come to Parliament and they will seek your support. At that time we can decide what law should be made to protect our biodiversity and our genetic material. At this stage, I am giving the facts. I am giving the position emerging from the TRIPS Agreement. I am giving the factual position.

**THE DEPUTY CHAIRMAN:** Mr. Chaturvedi, I think you are quite satisfied.

**SHRI TRILOKI NATH CHATURVEDI:** No, Madam. I am satisfied only in the sense that the hon. Minister says that he is giving the factual position as he...

**THE DEPUTY CHAIRMAN:** As a biologist, I am.

**SHRI TRILOKI NATH CHATURVEDI:** But Madam, the problem is that most of the people in the country are not botanists or biologists. They are merely ordinary citizens. They want to be reassured.

**SHRI SURINDER KUMAR SINGLA:** His own party think-tank Mr. Arun Shourie is there. He should read what he has written. He would be fully satisfied.

**PROF. VIJAY KUMAR MALHOTRA:** Why are you popping up, Mr. Singla?

**SHRI TRILOKI NATH CHATURVEDI:** Madam, as regards biodiversity, the hon. Minister says that it would be the Ministry of Environment. There are many other Ministries involved; not only the Ministry of

Environment. His own Ministry is involved. Also, the Ministry of Agriculture. The Ministries of Industry and Commerce are concerned with the TRIPS and the patents law. As I said, biodiversity is dealt with by the Ministry of Environment. So far as the question of impact on the evolution and epistemology of Ayurveda, Unani and other Indian systems of medicine is concerned, it would be the Ministry of Health and so on.

May I know, in this connection, whether any effort has been made to ensure that there is a convergence of thinking among the various Ministries so as to take care of this kind of a situation?

Part (b) of my first supplementary is: has the Ministry tried to evolve, or a rather, has the Government of India tried to evolve or design any system for getting information from the various developed countries which are trying, in a way—if I may use that word at some kind of a piracy, so far as our systems of traditional knowledge are concerned, thus posing a grave threat to India. It is not only neem. Tomorrow, it may be haldi, turmeric and so many other things which are derived from the plants and which are being used in our country.

**THE DEPUTY CHAIRMAN:** And Intellectual Property Rights.

**SHRI P. CHIDAMBARAM:** Madam, the answer to the first part of his question is: 'Yes'. The Ministry of Environment and Forests is in close consultation with our Ministry. In fact, a multi-disciplinary group has been set up to draft this legislation and we will have our inputs into that group.

In regard to the second part of his question, the answer, again, is: 'Yes'. Now, the Convention does not provide for any mechanism to implement the Convention. It is a Convention at this stage. Each member-country would have to develop its own mechanism. I accept whatever the hon. Member has said. We will have to gather information and, I am

sure, the Ministry of Environment is gathering information about how the other countries propose to make a law to implement this Convention. Our law would not only adequately protect our interests, but it would also take into account the mechanisms adopted by the other countries who are member-signatories to this Convention.

**THE DEPUTY CHAIRMAN:** Dr. Murli Manohar Joshi.

**SHRI TRILOKI NATH CHATURVEDI:** What about my second supplementary, Madam?

**उपसभापति:** आपके दोनों हो गए हैं। जोशी जी को अभी बोलने दीजिए। जोशी जी पृच्छिए आप।

**डा० मुरली मनोहर जोशी:** महोदय, सवाल बहुत महत्वपूर्ण है और मंत्री महोदय ने इसको बहुत साधारण ढंग से, बहुत सरल ढंग से समझाने की कोशिश की है, जैसे कुछ हो ही नहीं रहा है। मैं आपसे यह निवेदन करना चाहता हूँ कि इस रिपोर्ट, जिसका हवाला दिया गया है, उसमें डब्ल्यू.आर० ग्रेस जो यू०एस० कंपनी है, उसका एक सब्सिडियरी है, एग्रोसेटिस। इस एग्रोसेटिस ने यह एनाउन्स कर दिया है कि उसका कंपलीट कन्ट्रोल है दो राइस के स्टेन्स के ऊपर, इंडिका और जैपैनिका। इस कंपनी ने हमारे यहां से स्टेन्स लिए और उसमें थोड़ा सा जैनेटिक ट्रांसफॉर्मेशन किया और यू०एस० में पेटेंट कर लिया और आज ये दोनों राइस की स्टेन्स या वैरिटीजो जो है यह वहां पेटेन्टेड है और इसके ऊपर उनका अबसोल्यूट कन्ट्रोल है। सवाल यह नहीं उठता कि वह उसे यहां पेटेंट कर रहे हैं कि नहीं कर रहे हैं। वहां का ला यहां एप्लीकेबल है या नहीं है? आपने जो अब लोक सभा में कानून पेश किया हुआ है और जो राज्य सभा की सलेक्ट समेटी में दिया हुआ है, उसके अन्तर्गत जिन देशों की आप सूची प्रकाशित करेंगे, उनमें से अगर एक भी देश में पेटेंट हो गया तो यहां भी पेटेंट माना जाएगा। यह कानून आप स्वयं ही बनाने जा रहे हैं। आज के कानून में यह नहीं है। लेकिन नया कानून जो आप पेश करने जा रहे हैं, उस कानून के अंदर आपने यह व्यवस्था की है जो भी इस यूनियन के सदस्य हो जाएंगे उनमें से अगर किसी कन्ट्री में कोई पेटेंट हो जाएगा, तो अपने देश में भी वह पेटेंट हो जाएगा। तो इसलिए यह कहना कि वह आज अमेरिकन पेटेंट यहां एप्लाई नहीं करता, वह कल भी नहीं करेगा यह बात सच नहीं है।

दूसरा, 1999 में तमाम सुवि-जनेरिस और सारे पेटेंट ला का रि-एवेल्यूएशन होगा, रि-एसेसमेंट होगा, रिव्यू होगा और उस वक्त आपके सामने जैसे आपने अभी गेट में संरंडर किया है सिवाय डवलप-कंट्रीज के पेटेंट कानून के सामने संरंडर करने के और कोई चारा नहीं रहेगा, क्योंकि आप जिस रफ्तार से चल रहे हैं आप उनके सामने झुकते चले जा रहे हैं और यह कानून डवलप कंट्रीज का आज की जो पेटेंट रिजीम है वह आप अपने यहां लागू करेंगे। इसलिए मैं आपसे यह पूछना चाहता हूँ बहुत विनम्रता के साथ कि आप यह बताएं कि आप भारत की सम्पत्ति को प्रोटेक्ट करने के लिए क्या करेंगे? 1999 तक क्या आप ऐसे ही बैठे रहेंगे या आपके पास कुछ ऐसी ताकत है कि आप दुनिया भर के तमाम कंट्रीज को इस बारे में एक साथ लाएंगे, एक इंटरनेशनल ऑपिनियन बनाएंगे जिससे यह तमाम जो हमारी बायो-डॉयवर्सिटी है, हमारी सम्पत्ति है, हमारा खजाना है वह बचा रह सके। आपने यह तो कहा कि सिद्ध सिस्टम और आयुर्वेदिक सिस्टम पेटेंट नहीं होते, यह तो सब जानते हैं। सवाल यह है कि हमारी दवाइयों का जो आज हम एक्सपोर्ट कर रहे हैं कल अगर वह फार्मुलेशन वहां पेटेंट हो गए तो फिर आप उसका एक्सपोर्ट भी नहीं कर सकेंगे। यह कठिनाइयां हमारे सामने आएंगी। आप कॉमर्स मिनिस्टर भी हैं और मैं यह बताना चाहता हूँ विनम्रतापूर्वक कि हिन्दुस्तान की इन दवाइयों का बहुत जबरदस्त एक्सपोर्ट मार्केट है। क्या आपने इन सब बातों को एनेलाइज किया है और अभी भी यू०एस०ए० ने तो रिओ-कंवेशन का जहां तक मेरी जानकारी है रेटिफाई नहीं किया है। तो आप इन सारे हालात का मुकाबला कैसे करेंगे? .....(व्यवधान)

श्री चतुरानन मिश्र: यू०एस०ए० सिटीजन ने केस फाईल किया है।

उपसभापति: लैट हिम आंसर। समय के अंदर जवाब दे दें।

डॉ० मुरली मनोहर जोशी: आप इस सवाल को इतना आसान नहीं समझें कि आपने बिल्कुल पैक्वुअल जवाब दे दिया है। यह गहरा सवाल है। आप इसके बारे में विस्तार से हमें बताएं, आश्वस्त करें कि भारत की सम्पत्ति को, भारत की बायो-डॉयवर्सिटी को, भारत की एथ्नोकल्चरल सम्पत्ति को आप कैसे बचाएंगे और सरकार ने अभी तक जो कुछ किया है उससे तो वह बच नहीं

रही, क्योंकि एग्रो-सेक्टर ने दो स्ट्रेन्स पर पेटेंट ले लिया। 500 सीड कम्पनियां बड़ गई हैं चार सालों के अंदर और वह किसी हिन्दुस्तानी के साथ कोई समझौता करने को तैयार नहीं है, कोई कॉलेबोरेशन करने को तैयार नहीं है, क्योंकि सीड मार्केट में वह प्रोफिट शेयर नहीं करना चाहती। रिओ-कंवेशन अगर यू०एस०ए० ने साइन नहीं किया है तो फिर आपकी सम्पत्ति का सारा फायदा वही उठाएंगे, हमें उसमें से कुछ नहीं मिलेगा। आप इन सवालियों पर क्या करने जा रहे हैं और देश की सम्पत्ति को कैसे बचाएंगे?

SHRI P. CHIDAMBARAM: Madam.....

THE DEPUTY CHAIRMAN: I hope you will be brief so that I can ask one more Member to put a question.

SHRI M. A. BABY: This question cannot be replied to in brief.

THE DEPUTY CHAIRMAN: There is another Member. He is a doctor. He wants to ask a question.

SHRI P. CHIDAMBARAM: Madam, Dr. Joshi has touched upon a number of subjects. With great respect to him, they are really two separate issues. They do overlap to some extent, but they are really two separate issues. One is patentability of plant varieties. There, I say, we are not obliged to introduce patents for plants. We are required to either introduce patentability or a *sui generis* system, or a combination of both. We have decided that we will not introduce patentability for plants; we will introduce a *sui generis* system. That will take care of plant breeders' rights as well as rights of consumers, farmers and researchers. The law will come; there is no problem. That is one issue.

The other issue which Dr. Joshi touched upon is the Biodiversity Convention. That deals with genetic material of all kinds, germ plasms, the transfer of genetic resources and materials from one country to another—

how it should be regulated. That is the subject of the Biodiversity Convention. We have not taken any decisions on that yet. It is too early to take any decisions. We ratified the Convention only in 1994, other countries have ratified it. It has to be studied very carefully. There is a multi-disciplinary group—a large number of scientists are involved. We will study that very carefully.

There is a third aspect which I sensed Dr. Joshi's question, and I am very happy that that is his position. He wanted to know whether Ayurvedic drugs would be protected. They can be protected only if they are granted product patents. The Indian law today does not grant product patents to any drugs or pharmaceuticals. If it is Dr. Joshi's position that sometime or other we would have to grant product patents to our Ayurvedic, Unani or Siddha drugs, I think that is a welcome development, and I would welcome it. When the law comes let us respond to that, with whatever amendments you propose, and let us pass the law.

**DR. MURLI MANOHAR JOSHI:** Public domain need not be patented.

**THE DEPUTY CHAIRMAN:** Dr. Masthan.

**DR. MURLI MANOHAR JOSHI:** Just a minute. I am seeking a clarification.

**THE DEPUTY CHAIRMAN:** That is, another supplementary.

**DR. MURLI MANOHAR JOSHI:** Just a clarification, Madam. Most of the Indian medicines—Ayurveda, Siddha or Unani—come in the public domain. They are for normal, common use. They are beyond the purview of any patent law. Have you any system under which you have codified all these drugs in a pharmacopoeia so that if there is any attempt anywhere in the world, you can go and check it?

**THE DEPUTY CHAIRMAN:** Mr. Minister, let Dr. Masthan also put his supplementary. Then you can answer them.

**SHRI P. CHIDAMBARAM:** But how? Will it be the same question, Madam?

**THE DEPUTY CHAIRMAN:** Let us see. You can reply to them together.

**SHRI SUNDER SINGH BHANDARI:** Madam, it will be different.

**THE DEPUTY CHAIRMAN:** Let us find out. It is his maiden question.

**DR. D. MASTHAN:** Madam, I understand that efforts are being made by an American institute to patent a popular medicinal herb called "Kiranalli". I am sure, the Minister of Commerce will be aware of this because he is also from Tamil Nadu. This herb, Kiranalli, is being used for effective indigenous treatment of viral hepatitis which causes Jaundice. All of us are aware that there is no specific, effective, proper treatment in allopathy for viral hepatitis and Jaundice. This herb, Kiranalli, has been used since ancient times for effective, indigenous treatment of viral hepatitis and jaundice. I understand that efforts are being made to patent this drug by one of the American institutes. I ask of the Minister whether any steps are being taken to prevent it. And, I insist upon the Minister that steps should be taken to prevent this.

Secondly, in the name of commercial globalisation and economic liberalisation, our doors are wide open to multinational companies to open their shops here, which is definitely going to cause underemployment and unemployment in this country because of mechanisation. I do not know whether this portion is relevant to this question, but, I feel that this question is relevant to the Minister of Commerce.

**THE DEPUTY CHAIRMAN:** This does not come under him.

**DR. D. MASTHAN:** But, I would like to ask.....

**THE DEPUTY CHAIRMAN:** There should be time for him to answer this.

**DR. D. MASTHAN:** Has any

percentage been fixed for repatriation by multinational companies out of their profits?

**SHRI DINESHBHAI TRIVEDI:** Even neem is being patented.

**THE DEPUTY CHAIRMAN:** I think you are behind time.

**SHRI P. CHIDAMBARAM:** Madam, both Dr. Joshi and Dr. Masthan, I believe, are raising a fundamental question which I will answer. Also each one has to answer it himself. Are we going to allow product patents for our Ayurvedic, Unani and Siddha medicines? The question is: if it is already in the public domain, what is the impact of a patent law?

As I said, Madam, what you can patent is only something which is new, which is inventive and which has an industrial application. Something which is already in the public domain is not new, it is not inventive and it cannot be patented.

In regard to Dr. Masthan's question, it is difficult to answer it in a hypothetical situation. What have they done with this extract? If it is new, if it is inventive and if it is for an industrial application, the law of another country could well provide for a patent. Our law today does not provide for a patent for it.

Responding to Dr. Joshiji, I think, there is an Indian medicine pharmacopoeia—I am not very sure—a rudimentary pharmacopoeia which does record all our Ayurvedic and other medicines, but, I will find that out and let him know about it. If there is no pharmacopoeia to that effect, we should have a pharmacopoeia. If anyone tries to take something which is already in the public domain, calling it new or invented, surely, we must resist that approach. But, I think eventually, what Dr. Joshi seems to think—I gather that that is his line of thinking—is that we have to protect our researchers, our inventors. We will have to move some day or the other in some form or the other to protect our research, the efforts of research and the results of research by our own researchers.

**SHRI NILOTPAL BASU:** Madam, I can concede that the Minister's statement is, perhaps, a half-truth because he says that products are patented outside and that they are not recognised in this country. But, I think, as part of the GATT, we have recognised exclusive marketing rights. So, whether it is recognised in this country as a patent or not is really immaterial. So, what the Minister is saying here is a half-truth. I want him to respond to this.

**SHRI P. CHIDAMBARAM:** Madam, these are matters of perception. The point is whether our law allows patenting today. I have said that our law does not allow product patents for drugs. Our law does not allow systems of medicines to be patented. If the laws of other countries have such provisions, it is their sovereign right. Let us not mix up pipeline protection with the law as it stands today. We are a signatory to GATT. We have a ten-year transition and in return for the ten-year transition, we have to provide a certain limited protection of a mail box. This has been explained many times. I do not think this comment really arises from the answer that I have given to this question.

**THE DEPUTY CHAIRMAN:** Question Hour is over.

## WRITTEN ANSWERS TO QUESTIONS

### चीन के कोयला क्षेत्र में भारतीय सहायता

\*103. श्री अनन्तराय देवशंकर दवे: क्या कोयला मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या चीन ने अपने देश में कुछ कोयला खनन परियोजनाओं के विकास के लिए भारत सरकार की सहायता की मांग की है;

(ख) यदि हां, तो तत्संबंधी ब्यौरा क्या है; और

(ग) इस संबंध में सरकार की क्या प्रतिक्रिया है?