

1.00 P.M.

Now, the 2-G spectrum never went to big telecom players at the international level. The manner in which you allotted it was – you went to the corridor and lobby and distributed letters, followed first-come-first-serve basis, and, the cut-off date of 1st October was pre-dated to 25th September. It is mostly the small operators and real estate players, and not the large global telecom companies, who have got the 2-G spectrum. They, then, inducted some of them as joint-venture partners. Now, for the 3-G spectrum, your range of aspirants is going to be inadequate. Those who don't have the 2-G spectrum are not going to come out and say, 'I will operate the 3-G service in India'. It is obvious that those who have the 2-G spectrum will be the ones to take the 3-G spectrum. So, the number of people who will bid for it is going to be less. There will be less interest of any international big player. There is a larger question of how many players, and, when it is a larger question of how many players, there is an issue amongst some of your own colleagues. And, here, interlocution is not required between allies in the UPA, it is also required amongst your own colleagues because there is a difference amongst them as to who favors how many number of players. So, under this, we take Rs. 35,000 crore as money which we are getting from the 3-G spectrum. ...(Time-bell rings)...

MR. DEPUTY CHAIRMAN: Jaitleyji, you can continue your speech on Monday. The House is adjourned to meet at 2.30 p.m.

The House then adjourned for lunch at one minute past one of the clock.

The House re-assembled after lunch at thirty-four minutes past two of the clock.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN) in the Chair.

PRIVATE MEMBERS' RESOLUTIONS

Need to enhance the role of Parliamentary sovereignty in the sphere of international treaties entered into by the Government of India

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Hon. Members, on 11th December Dr. Natchiappan did not conclude his speech while participating in the Resolution. Dr. E.M. Sudarsana Natchiappan.

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Thank you, Sir. I am very happy that I am continuing this debate which is on a very important issue. It was brought by the hon. Member, Shrimati Brinda Karat.

Sir, I was submitting that nowadays there are many international conventions and agreements and after the formulation of the World Trade Organisation, every country is coming forward to

sacrifice its own sovereign rights in different ways. When we had initiated the institution of the World Trade Organisation, our Supreme Court had sovereign power to give final verdict on any issue. But, that power is also taken away. In the matter of anti-dumping laws, the World Trade Organisation's Dispute Resolution Body is the supreme authority. Similarly, the United Nations Security Council and other international bodies, then and there, interfere with each and every issue of a particular country. In certain ways, it is a way of living in a globalised society where sovereignty is divided among the nations and the sovereignty is now gradually going upward to create an international government. We see that the Constitution of India already has created three-level governance. At every level, whatever the Government says, whatever the formulation or policy is made by the Government, it has to be discussed with the people and their participation is very much needed. The transparency is the very talk of the present-day administration. That is why, we have included it in the Right to Information Act. I am quoting Section 4(1)(vii) which says, "The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof." So, Sir, the expectation is that whatever policy or programme is formulated by the Government, it should have the involvement of the people for whom it is made. Therefore, when the international commitments are there, we should have the dynamism to put forward our thoughts at the international forum. But, when we go through various proceedings of the international forum, Sir, we find that the Government of India, whoever may be the Government at that time, the bureaucrats who are representing the Government of India are showing a lukewarm attitude in the international forums. They are not ready to commit themselves. We have so much of humanitarian laws. Human rights are very much protected in India. Sir, when you compare with other countries, I can say that they are even more in India than the USA. We have so much liberty for Press and individuals. But, we are not bold enough to say in the economic forums that our country has so much liberty for the people. We have to bind themselves by way of putting forward our ideas which were created by Mahatma Gandhi, freedom fighters and leaders like Pandit Jawahar Lal Nehru, Indira Gandhi, Rajiv Gandhi and Sonia Gandhi. Everybody has given lot of ideas

which have international acceptance. But, our presentation at the international level is lagging behind. We are not having that boldness to say that these things have to be the order of the day at the international level. Similarly, in many cases, we are participating but we are not abiding by their resolutions. In certain cases, we are sitting as observers and coming back. In certain cases, we are boycotting the convention itself and going back. These are all things which tell upon a nation which is to be accepted as a super power to take up a role at the international level. For taking up a role at the international level, we have to create acceptance of each and every policy at the grassroot level. Sir, when we had the Panchayat system at the national level in Vedic days, all the villages used to assemble at one place.

And that will decide it, and that decision is binding on the entire society. A similar system was given by Rajiv Gandhiji when he was dreaming how the panchayati raj institution has to come. We have made the law, we have amended the Constitution providing that each and every voter is having the right to decide the policy where they are living as a gram sabha. They have to decide what policy they want, they have to decide how to implement it, who the participants are, how to regulate it, what are the punishments if there is any violation of it. Are we doing it throughout India? If we are doing it, then even for a climate change, we will consult the gram sabha. I know the hon. Minister, Shri Jairam Ramesh, is the hero at the international level in climate change. He is having a capacity to speak with the ordinary people through the media. Such a communication is needed now. Therefore, when you are going for FTA with the neighbouring countries or any other country having any trade agreement, you have to consult the stakeholders. There should be a meeting of the stakeholders who are the agriculturists, who are the industrialists, who are the small-scale industrialists. We have to consult them, we have to allow them to speak about it, and then only we can come to the conclusion. When our officials are going for international conferences or conventions or any other consultations, they should be equipped with this information that we had the consultation at every level, from the gram sabha to the State Assembly at the State level and then at the national level, parliamentary debate in the Parliament, and then the Cabinet, and then we have come with all the particulars. If such is the way of presentation of our people at the international conference, we will be bold enough to say that we are the leaders in the international body. Sir, I am sorry to say that even now, more or less, our policies are controlled by more than 5340 Indian Administrative Service

people. We are happy to find that we are having an excellent Indian Administrative Service. They even chair the public sector undertakings and all economic policies are formulated by them. But at the same time, we are no more administering anything. We are managing the situation. Therefore, Indian Administrative Service or Indian Forest Service or other Services should have the feeling that they are getting the strength from the people and they are serving the people. Therefore, our policy and the implementation of that policy should be with that view. Therefore, we have to equip ourselves with the knowledge from the ordinary people and we should not shut the doors for the ordinary people to say that I am a specialist, therefore, I need not have any other consultation. That is the attitude nowadays which is coming up that I will decide some policy and I will impose the same on you. That is why agitations are taking place. People are having unrest. If we start from the bottom to the top, then the pyramid will be a proper one. When we are doing it in a topsy turvy manner, there is a gap between governance and the people.

Sir, this Resolution is telling about how the USA and other countries are giving powers to bring the international conventions being ratified by the concerned Parliaments. But the Founding Fathers of our Constitution have already told that the Government is having the wisdom through the people, and therefore, to whatever they agree, that will be binding upon the Government of India. But they felt that the freedom and the Republic of India will give ears to the ordinary people's ideas. Therefore, we have to hear the people before taking any decision. If we do that, the Constitution mandate need not be amended. There is no need for a new interpretation. The present interpretation is sufficient that the Central Government and the Executive can represent our position at the international conventions and they can give back the information to the Parliament, and in turn, we have to give it back to the State Legislatures, and I can say, even at the gram sabha level, we have to go for that. When we are binding ourselves on any issue, whether it is climate change or whether it is policy of trade or whether it is policy of freedom, everything is binding on the citizens on the basis of the discussions which are made at the international level.

Therefore, Sir, I feel that this Resolution is very important and the Government will take a full acceptance of all these issues. I see that a specific focus is placed on telling us - I am just quoting it, Sir, from the Resolution - "the legal validity and binding nature of international treaties in most cases goes beyond the tenure of the Government which signs such a treaty, and given the possibility in the parliamentary democratic framework of change of Governments and ruling political parties of combinations, the requirement of parliamentary ratification before such a treaty is finalized becomes

self-evident." Here, I would like to stress, Sir, that we are having a Coalition Government and the power of governance in India is, more or less, with the pilot and co-pilot, but, the Leader of the Opposition is also having the equal right like the Leader of the House. We are following a very excellent system from 1963 onwards, wherein we are having the Standing Committees. The Demands for Grants of the Ministry of Finance and everything else is shared with the Opposition Party; even the foreign policy also. The Department-related Parliamentary Committees on Foreign Affairs, Finance, Home Affairs and all other important portfolios are chaired by the Opposition Parties. Therefore, they cannot criticise the Government policies by blaming the Government and say that the Government has committed this error. Accountability on the part of the Opposition is equally there. Therefore, when they are performing as Chairmen, when they are discussing and deliberating as part of the Committee, they have got every right to call for any remark from the Government, but once the Government takes a decision on any matter, there should not be any withdrawal from that. We should have a consensus as the hon. Member, Shrimati Brinda Karat, said while speaking on her Resolution:

"(i) Despite political differences, a broad consensus across party lines in the area of foreign policy, particularly in the sphere of international agreements, is in the national interest."

On this particular thing, all the parties should come forward and accept the decision of the Government, which it takes on any matter, as it is. Sir, when the American President takes a decision on some matter, all the parties accept that; they do not differ from that. They would not challenge his decision. But before that, they will have a threadbare discussion at every forum. Once a decision is taken, all the parties should not feel that we are having our own biased view, therefore, I am saying all that on this particular foreign policy or I am not in agreement with this particular convention or a decision or an international agreement. Therefore, I feel, Sir, it is high time when all political parties should have the liberty to express their ideas, but, at the same time, when the Government takes any decision, that has to be accepted by everybody. That is to be accepted as the decision taken by the people of India. If that view is taken, I feel, we are having a very good governance. We feel pride in saying that we are the only country in the world, which is having the biggest democracy, a real democracy, where an 18-year old could decide who should be a Member of Parliament, who should be a Member of the State Legislature or who should be a Panchayat President. This right is not given

to any person in any part of the world except in India. Therefore, we feel pride in saying that when we take a decision, when our Government takes a decision, all parties should bind by that. But before that, we have to hear the other side and, then, come to the conclusion.

With these words, Sir, I feel that this Resolution is very useful at this juncture in formulating further policies on these issues. Thank you, Sir.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Thank you, Dr. Natchiappan.

Now, Dr. Gyan Prakash Pilania.

DR. GYAN PRAKASH PILANIA (Rajasthan): Thanks, Your Honour. Sir, Dr. Natchiappan has very beautifully put his legal viewpoint regarding this Resolution. He has very rightly said, Sir, "Hear the people". My plea is that, at least, hear the Parliament. It is for hearing the people that the Panchayati Raj has been inaugurated, initiated and nurtured. The hon. Panchayati Raj Minister is sitting here. That is our good luck. That is grass-root democracy. If consultation arises from Panchayati Raj for treaty negotiations, it will be a heavenly world for India. That time still has not come. The Panchayati Raj is still struggling with initial teething troubles and slowly and steadily it is coming up in its own glory.

This Resolution mainly concerns, Sir, with one point. How to enhance the role of parliamentary sovereignty in the sphere of international treaties, both multilateral and bilateral? Primarily, it is the sovereignty of the Parliament which should be supreme and this Resolution is concerned with that. How can we do it? It is above party politics. Any party here or in the Lok Sabha will be interested in ensuring the supremacy and sovereignty of the Parliament in all vital affairs pertaining to the State, pertaining to the nation. As far as the nation is concerned, you know better than me. The people of India are sovereign in this country and they are the fountainhead of power, and that is why the Constitution was framed by them and it was the beauty of the Constitution that in the Preamble it was mentioned, "We, the people of India, do hereby adopt, enact and give to ourselves". This is not given by anyone else. It is a voluntary declaration of intentions, purposes and dreams, voluntary declaration of Fundamental Rights and Directive Principles, and that is why it is one of the best constitutions in the world. So, sovereignty resides in people, sovereignty resides in the Constitution and thus representative of the people is Parliament. We have a unitary federation. We have

separation of powers also. The Montesquieu's formula has got its own significance. There are three branches of administration, the Legislature, the Executive and the Judiciary. The Legislature legislates; the Executive executes; and the Judiciary adjudicates. They don't interfere in each other's affairs. But the main thing is how to ensure accountability of the Executive to the people. That is the Parliament. It is a matter of quintessential of democracy. Democracy means, according to the Greek word, *demos + kratia*, power of the people. How to ensure the power of the people?

Treaties can be of many kinds. They can be political; they can be trade treaties; they can be economic treaties; they can be cultural treaties; they can be scientific treaties; they can be military treaties; they can be international treaties. The Nuclear Treaty, the WTO, the FTA, etc., are all forms of treaties. There are many forms of treaties. But there is a golden thread running through them binding them together and that golden thread should be the consensus of the whole nation. The broad view of the whole nation must be represented. Treaties bind scores of generations; treaties not only bind the Governments but also bind the future of the nation. In treaties there can be three things. One of the things is prior consultation with the political parties. It will be helpful always if prior consultation with the political parties is held. It will be a wider base of agreement for commitments by the Government at treaty level.

Evolve general consensus of the people. That is where the Panchayati Raj grass-root administration comes in. Take Parliament into confidence. This is the third way out. Fourth, ratification before or after treaties are signed. In many countries, it is being done. As good democracy as ours, in the United States, as you very well know, Sir, a treaty must be ratified by the Senate to be effective. They do not feel shame about it that someone, on behalf of the Executive, has committed a treaty, but the ultimate power resides with the Union of States, the Senate, the House of Elders there because States are represented. They are the ways of ensuring that treaty gets its sanctity, treaty gets its power. The Union List has got Entry No. 14, which relates to treaty making power. Exclusive treaty making power of the Union Government is in the Union List. Article 235 of the Constitution mentions legislation for giving effect to international agreements and treaties, which is operative throughout the country, in all States. Those provisions have very specifically been put in there. But here the point is very different. Absolute power cannot be given to the Executive. That is the point in issue because power corrupts and absolute power corrupts absolutely. There must be a curb. That is the only limitation; otherwise, there is no intention to put strings on

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the discretion of the Executive. Let the Executive deliberate, let the Executive consult, let the Executive hear people, let the Executive hear Parliament, political parties and after that go in for treaty and after treaty also there must be ratification, if it is of international and national importance. If it is just a cultural kind of treaty or some kind of treaty in which educationists or scientists are exchanged from one country to the other, that is different. We can form out a format that these kinds of treaties are of essential nature. The Governments may change, but nation always remains. You may come and you may go, but the nation remains forever. Hence treaties become binding. That is, I think, Shrimati Brinda's special emphasis that such kind of treaties must have stamp of approval by Parliament. It can be deliberated in detail across party lines. Virtually, at present, I am not representing a party, but I am representing a notion of sovereignty of Parliament. I think the hon. Minister of External Affairs – I call her Minister because she is such a laudable lady – must have taken down the points. Two days back, we had passed the Bill giving 33 per cent representation to women and we bathed ourselves in glory. Brindaji represents that; Preneet Kaur represents that. I think, today, it is very rightly put up that that glory must always remain with Parliament which gave 33 per cent representation to women. I think, Sir, I have taken enough of time and by your kind indulgence you have not interrupted me. Thank you.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): You think that I am interrupter!

DR. GYAN PRAKASH PILANIA: Sir, you are not interrupter, you are controller.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, Mr. Matilal Sarkar. Mr. Sarkar, according to the list shown here, your party has no time left. Therefore, take a few minutes only.

SHRI MATILAL SARKAR (Tripura): I will try to be brief, but I cannot restrain myself. I do have something to say on this.

Sir, at the outset, I would like to say that I am in full support of the Resolution moved by the hon. Member, Shrimati Brinda Karat. She has been very careful while bringing the Resolution saying that those matters which are of executive nature, that is, administrative nature, should not be included in the purview of the Resolution. But there are occasions, there are cases, when the people of the whole country are involved. We are pursuing a policy of Non-aligned Movement; we do not claim to take the side of the big Powers. We are getting into a neutral role so far as the Foreign Policy

is concerned. But we have seen how the Forces, which are powerful in the international arena, are trying to influence us, and there have been occasions when the Government could not follow or maintain its own perspective. I am giving reference to the issues of liberalization, GATT proposal, nuclear deal, or, for that matter, the ASEAN Treaty, which has, very recently, been signed in Thailand. There have been many, many such occasions in the past. What have we seen? These are the occasions, these are the Agreements, through which the Forces, which are trying to reign countries all over the world, are trying to keep India under some sort of pressure. Now Parliament, which is the supreme body of our country, has to safeguard the sovereignty of the country and protect the sovereign rights of the people of the country. The NAM is not the policy of the Government. It is the policy of the whole country, of the people of the whole country. That is why before signing any Treaty, be it bilateral or multilateral, which concerns the interests of the nation and the sovereignty of the nation, this will have to be ratified by Parliament.

Sir, I represent the State of Tripura. Jairam Rameshji knows very well; my State produces rubber, pine apple and oranges. Now, with the signing of the ASEAN Treaty, all the cash crops will come into our country from the South-East Asian countries. If all these products start coming from other countries, then, the market for our products will get minimised. That is the natural trend. Now, Kerala produces rubber; we also produce rubber and tea and, Assam produces tea. By signing the Treaty with the ASEAN countries, what has happened? We have limited our market facilities, and our producers will be in trouble. All these products will come from our neighbouring countries. Now, did I get an opportunity to say anything on this Treaty? Before signing it, had it been brought before the Rajya Sabha, before Parliament, I could have shared my views.

I could have offered the views, not mine, but of the State that I represent. So, it is pertinent that she has merely identified the issues, other than those of executive, administrative and technical nature. In those cases, it is essential that this should be brought before the Parliament for ratification.

Sir, we have enacted many laudable laws in this House during my span of only eight years, such as, the RTI Act, NREGA, the Forest Conservation Act, to name a few. The Panchayati Raj law was enacted before I came into this House. Then, we passed the Women's Reservation Bill, though it is now hanging in the other House. ...*(Interruptions)*...

Sir, if we see the perspective of this ...(Time-bell rings)... Sir, I would take two minutes more. Sir, if we see all these laws in their perspective, it brings into light people's opinion in Parliament and, through these laws, we have given more and more power to the people. The Parliament is here but I think that the Government do have the liberty to work normally. There is no problem with that. I mean, normal cases are not necessarily within the purview of the Parliament. But here, those cases have to be redefined where, as an hon. Member Mr. Pilania pointed out earlier, the sovereignty of the country is concerned. Government would be doing something and Parliament would not know! Sir, Government is accountable to Parliament. Otherwise, they would be free to bypass the non-alignment policy...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Mr. Sarkar, please conclude. Your Party has no time left.

SHRI MATILAL SARKAR: All right, Sir. Sir, the question is: how far is the Government at liberty to function? The answer is: so far as it does not cross the limit of accountability, because the Government is accountable to Parliament. That is why, I fully agree and I fully endorse the views of Shrimati Brinda Karat who has brought forward this Resolution. I fully support her. I heard Dr. Natchiappan speaking about lofty ideals of the country. We do not disagree. Our country is great. But the role of Parliament does not have to be minimized. That is what you should learn. Thank you, Sir.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Shrimati Jaya Bachchan; not there. Shri Brij Bhushan Tiwari; not there. Now, Shri N. K. Singh.

SHRI TIRUCHI SIVA (Tamil Nadu): Sir, I have to take my flight.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, yes. He has to go to the airport. So, I will call you after he has spoken, if you agree.

SHRI N. K. SINGH (Bihar): All right.

SHRI TIRUCHI SIVA: Sir, I would like to put forth some of my views within the short time which has been allotted to me on the Resolution moved by Shrimati Brinda Karat. It is a very important Resolution. The intention of which and the views on which our Members have expressed here is very essential to be taken note of by the Government. Sir, the draft of the Resolution has been very meticulously drawn. The Resolution says, "All bilateral and multilateral international treaties and agreements, which are not of a technical, administrative or executive nature, underline these words,

be ratified by the Parliament after being negotiated by the Government of India before they are signed. So, it has some classifications.

Sir, the basic intention of this Resolution is to enhance the role of the Parliamentary sovereignty in the sphere of international treaties. Sir, the Parliament has to be taken into confidence. Sir, this Resolution is being discussed at a point of time when our hon. Prime Minister, Dr. Manmohan Singh is honoured with the title of 'World Statesman' by the U.S. He is going to be honoured. That news came to me today only. I just came to know about it.

Sir, India is a largest democracy, and the reason for that is, the way we discuss, debate, arrive at a consensus and then execute whatever we discuss here. In this scenario, Sir, international treaties when they are not ratified by the Parliament means the views of the people are not taken into consideration. Whether it is a Parliament or a Legislature, it is not represented by individuals. Say, for example, a Member in the Lok Sabha is not a Member, but he is the representative of twelve lakh voters, approximately 20 lakh people in his constituency. And, some people who say about the Members in the Rajya Sabha that you are not the people who are elected directly by the people, I always say to them, "See, for example, me, elected from Tamil Nadu, has been elected by 34 MLAs, and one MLA is elected by voters of two lakhs. So, if at all I have been elected by 34 MLAs, I am the representative of 68 lakh people. So, either me or any other Member here or a Lok Sabha Member, our views are not our individual views. We speak on behalf of our party, but we represent the people. So, when it is an international treaty, it is a multilateral or bilateral treaty, it has to be ratified by the Parliament. It is to be taken note of, Sir. It is inevitable. The U.S.A. which has been regarded as another democracy in the world, it has a method of following or being ratifying its treaties in the Senate. And so also, in the Resolution itself, it has been said that Argentina and Mexico are following the same footsteps.

Sir, I don't want to cite many examples here. When the Government of India entered into the WTO Agreement, when it signed it without getting a ratification of the Parliament, Sir, the consequences can be recollected. All over the nation, there were wide protests from many parties. The consequences may be, the outcome may be acceptable or not, but at that time, I think, every one of us could recollect what was the reaction of the people and the political parties. The views of the political parties were not to be reflected or to be implemented in the treaties. So, many other treaties followed the same suit, Sir. So, it is a high point of time that when we are becoming leaders among the world countries, in all areas, especially in democracy and in Parliamentary functioning,

how we debate here, how we discuss here, this is one of the proudest things. See, for example, the discussions that went on in our Constituent Assembly, when we had drafted our Constitution, even a single word, just a word, has changed the entire thing. The word, that has been deleted or added in that, has given a different meaning and that has given it very much importance. Sir, it has helped many a people. So also, while entering into a bilateral treaty, the views of the Parliament when taken into consideration which consists of representatives of the people and political parties, if their views could be included in that, the multi-lateral agreements will be wholly acceptable; otherwise, it would be a draft of the bureaucrats with the guidance of the Executive in a country where the Parliamentary democracy is supreme, as the Resolution is saying, any bilateral or multi-lateral agreement has to be ratified by Parliament and if need be, if a Constitutional amendment is necessary, that should also be considered by the Government. This is only in the interest of the nation and the people. Whoever may be in the Government or whichever party may rule the country, whoever it may be, they should depend on the Parliament. The Parliament's views must be taken into consideration and that will help us in entering into bilateral or multi-lateral treaties, to help the people at large in the best interest. Thank you.

SHRI N.K. SINGH: Sir, on behalf of the Janata Dal (United), I rise to fully support and endorse the content and the spirit of this very comprehensive Resolution of Smt. Brinda Karat. I do so for four considerations.

The first and foremost is the consideration that this Resolution seeks to restore the weakening of Parliamentary oversight. The systemic process by which Parliament has, and Parliament's authority has been increasingly eroded in important ambits of Governance is sought to be at least partially restored by an obligation being cast on the Executive that for purposes of important international treaty and agreement, Parliament's ratification is necessary. So, my first consideration is the restoration of what the Constitution in its spirit, may not have been in letter, sought to assign to Parliament an important role on the oversight of the functioning of the Executive.

Sir, my second consideration arises from the fact that when the Constitution was being drafted, the world was a somewhat fragmented world. If one reads the writings of that time, in fact, it is quite interesting. Last night I was trying to refresh my understanding since Keynesian economics

now seems to be somewhat fashionable. I was trying to read his general treatise, once again, on what he was teaching. Just before the inter-war period, he was speaking of a fragmented world which was broken up on account of various factors. He said, just before that really had happened, before the world have become so fragment, prior to that time, the extent of flow of trade, goods and services was far more open. But, the period of the war saw the world become increasingly more and more autocratic.

Unfortunately, when our Constitution was being framed, it was being framed in the background of India seeking to strive for self-sufficiency in foodgrains, India seeking to be able to achieve an ability to service its debt. In such a background, quite clearly, international treaty and international obligations did not have such an important role to play at a time when the world matrix had changed. Third, why has the world matrix changed? It has changed not because Thomas Friedman describes this to be a flat world, but the reality is that the transfer of goods, services, intellectual ideas and finance is now taking place in a seamless way. This, if it proceeds, would equally apply to movement of natural persons because the logic of demography will also break the barriers to providing much greater flexibility in the movement of natural persons. So, in such an integrated world, when the actions of one begin to dramatically affect the actions of the other, and a world where the hiatus between what is domestic and what is foreign is broken down by the logic of the way in which technology and economics has really changed the shape in which decisions of one country dramatically affect the decisions of the other. In such a world, Sir, I think, that leaving latitude to the Executive undertaking international obligations, which have a far-reaching impact on the life of the people, which are really, maybe, in the rural areas of India, is something on which this Parliament needs to give a second view. Sir, I think, to give you a couple of examples, I am sure that the House has reposed great confidence in the ability of Mr. Jairam Ramesh to craft an agreement on environment that is the subject which is coming up in the next Resolution. Notwithstanding a faith in his ability to negotiate what is best for us, the fact remains that whatever is negotiated will have an impact on the life of the ordinary average people in India. It affects the way they live, it affects the manner of agricultural practices, it will affect the movement of the people, and it will affect the lives of ordinary Indians in a very, very dramatic way. His other colleague, Mr. Anand Sharma, who is not here but we are quite aware that whatever he negotiates as part of an agreement on the WTO is going to dramatically affect in the next stage, the manner in which the economic activity in this country is undertaken, the manner in which agricultural practices, what will be the consequences for

our farmers, what will be the consequences for the manufacturing sector, what will be the consequences for the service sector, all that is going to dramatically alter. I have given you only two examples. But as we go on there are other negotiations and there are treaties in the offing which is going to affect our life in a very conceivable way. My point really is that since the life of an ordinary person is dramatically affected, I think, that it is only natural that the Executive should itself find it responsible and find itself necessary that they must have the mandate and the authority of Parliament to be able to enter into wide-ranging international agreements. This business of entering into an agreement and Parliament, therefore, being informed by a statement of the Minister and the Prime Minister is a practice and device which has lost its relevance in the kind of a world which has altered. I think, they require a basic rethink on the whole approach towards international agreements and treaties. This is not to circumscribe the Executive, this is not to suggest, for instance, to the Minister that say in the next Air Treaty Agreement you have with Mauritius, should require our ratification, but certainly it is time to wake up that the next time you give a commitment in Copenhagen on environment, in Mexico on WTO, on labour, on very important aspects of our life, please take Parliament ratification to do so. Thank you, Sir.

DR. (SHRIMATI) NAJMA A. HEPTULLA (Rajasthan): Thank you very much, Sir. Sir, I am very happy that Shrimati Brinda Karat brought this important Resolution and the Resolution is under discussion. I have a similar legislation, a Private Member's Bill, which has been pending since 2005 on the International Treaties And Agreement Compulsory Approval by the Parliament Bill, 2005 which says that all the treaties, bilateral, multilateral...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Luck did not favour you.

DR. (SHRIMATI) NAJMA A. HEPTULLA: I want that if the Government agrees today to accept this Resolution, perhaps, I will not have a chance to move this Bill and I will withdraw it. But the question is what the view of the Government is which we have to hear from when the hon. Minister speaks. सर, मैं इस House में बहुत कुछ देख चुकी हूँ! Sir, my commitment is because of the experience which I have noticed in this House many times, more often due to the changing situations to which Mr. N.K. Singh made a mention. The WTO, the Intellectual Property Right, the Patent laws, etc. they were all brought to the House.

There were a lot of discussions on it. And I remember when Mr. Pranab Mukherjee came as a Commerce Minister, there was a lot of discussion on the Marrakesh Agreement, whether that statement which he brought to the House be discussed under Short Duration Discussion or should be discussed under the Motion. There was an argument for more than an hour on both the sides and I remember only one person, who is now a Minister, Mr. Jaipal Reddy who was sitting over here - that was my chair and that was his seat - was very vociferous in saying that the Government should discuss this matter under a Motion. The House should have the right to reject or to approve, I remember Mr. Pranab Mukherjee was sitting over there and I went through the Constitution and I went through all the clauses and then, when the House asked for my ruling, I said at that point of time - and even today I say - the Constitution does not provide for the Parliament to ratify any agreement or treaty and hence, if the Constitution does not require that, and then, if I cannot hire, I can fire. If I cannot approve it through a ratification of the Parliament, then, the Parliament has no right also to reject any treaty and that was the end of it. But, at that point of time, Sir, I realized how important it is because when the Patents Law came, I remember it was the Minister from your State, the former Chief Minister of Kerala - he is not a Member of the House, so I am not taking his name - brought the Patents Law and the Intellectual Property Right Law and there was a lot of discussion. I had a lot of meetings in my chamber about it and we sent it to the Committee of the Rajya Sabha to discuss how it should be accepted.

Sir, I have been involved internationally with these issues. As a President of the Inter-Parliamentary Union, we had problems internationally. If you remember, Sir, when this WTO Agreement was signed, a discussion was going on. Consultations were going on. It was the western countries, Members of Parliament from UK and Europe who objected to it in Europe and in Vancouver - if I remember correctly - their Members of Parliament had objected to it. I was quite surprised and I was amazed how Members of Parliament from developing countries like India and other developing countries were not participating or objecting to their involvement in the negotiations when we were having the Uruguay Round of discussions and they did not discuss it prior to going and signing a treaty, which Mr. Siva very rightly said, that, "we are the representatives of the people". While speaking, keeping all these views when the United Nations was celebrating the Millennium Conference I suggested in the IPU to have a Summit Meeting of the head of the

Parliamentarians also so that any Treaty, any Agreement at the United Nations or bilaterally or internationally with any other country which the Government does, it is becoming binding on us to approve it or make supporting legislations to implement those requirements.

After seeing what happened to WTO in my House and what I saw in other parts of the country where the Members of Parliament were making an objection about it, I thought it is very necessary that with the Millennium Conference of the United Nations there should be a Conference of the Head of the Parliament to discuss these issues where the Members of Parliament should be involved. And I remember while addressing that summit meeting 150 Presidents and the presiding officers of the Parliament of the world were participating. When the United Nations Preamble said, "We, the People", I said, "I want to object to it". They should say, "We, the Governments." And only the Parliamentary Union, which is the representative body of the Parliament and the people, represent both the majority and the minority of the country.

Here, I don't use the word 'minority' as a community. But, majority is in Government (51 per cent) and minority (49 per cent) is in Opposition and both are represented in Parliament. Their views should be taken very seriously. They should be involved in it, because one party may be in power today and it may become the opposition later. When one party in power enters into a treaty and the treaty is opposed by the other party which is in Opposition, but it become obligatory on the part of that political party in opposition when it sit on the other side to accept it ...*(Interruptions)*...Sir, don't worry. There is a problem. A lot of problems have to be solved behind the scene.

The problem is, there is another Resolution on Environment about which the Environment Minister is bothered. And, after that, there is one more Resolution which Mr. Rudy will move and he wants that Resolution to be brought.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): But, we are discussing the present Resolution.

DR. (SHRIMATI) NAJMA A. HEPTULLA: So, I want to bring to their notice that let us concentrate on the subject which is before the House now. I assure you Mr. Rudy and the hon. Minister of Environment and Forests that we are not going to take too much time. But, as I said, it is a very serious matter.

SHRIMATI BRINDA KARAT (West Bengal): Sir, he should be more serious, because he is entering into agreements without Parliament's approval.

DR. (SHRIMATI) NAJMA A. HEPTULLA: Exactly. He should listen to it.

SHRI JAIRAM RAMESH (Andhra Pradesh): Sir, I am listening to it very seriously.

DR. (SHRIMATI) NAJMA A. HEPTULLA: Okay. It is good. You should not be disturbed by others.

The main thing is, Parliament represent the will of the people. Sir, in democracy, 49:51 means the will of the people. It does not mean that somebody is sitting with 51 per cent votes in the Government have a right to do something without taking the opinion of the Opposition which has got 49 per cent votes. Sir, it is because, in a democracy a time will come when the 49 per cent may become 51 per cent. And, it will be obligatory on their part to follow the treaties and agreements which they opposed when they were in the Opposition. I wish to share a point here. When Mr. Jaipal Reddy was in the Opposition, he might have a different opinion. Today, he is sitting in the Treasury Benches. He would be feeling, if he still feels that way. When I was sitting in the Chair, I could hear both the arguments. That is the reason why I feel that the Parliament should have the supremacy to accept or reject a treaty. Or, if the Government wants to avoid such disagreement after signing a treaty, it should come to Parliament before signing any agreement which is going to have its ramification on the entire country, like the Patent Law, IP Rights, somebody patenting Haldi or Tulsi. There is a lot of germ plasm in our country. When these kinds of matters come, it affects the nation. It may not affect you, me or the middle; it affects the people of the country. We are the representatives of the people and we should be taken into consideration. That is the reason why we have international conferences. As the head of the Parliaments, the UN was to focus on the world. The opinion of the people of the world is important, not of the Government. Mr. N.K. Singh said very rightly. The time has changed a lot since the UN came into being and since we got Independence. A lot of countries have come out and became democratic. So, the views of those small new democracies have to be taken into consideration. Unfortunately, the UN is still dominated by a few superpowers and it is not in their interest to neglect these small countries. The reflection and will of those small countries, the newly liberated countries, can only be seen when we go to the General

Assembly. We don't see them in the main core body of the UN which controls the movement of all over. I remember, Sir, when I was the President of the Inter-Parliamentary Union, what we did was, I spoke to Mr. Mike Moore, who was the Secretary-General of the WTO in Geneva.

I had a meeting with him. I said, "If you want to have passage of your legislation in the International Parliament, you must involve the Members of Parliament." And, he organized a conference of the Members of Parliament, the Governments and the WTO. It was a tripartite conference in Geneva. Some very important Members of Parliament participated in it. I remember, Mr. Sharad Pawar, who is the Minister of Agriculture, who knows about those issues, spoke very well. He talked about the indigenous knowledge that the people have. That is how we came to a conclusion, in that conference also, that we should have involvement of the peoples' representative, the Members of Parliament. If the Government does not want to bring in this law, it should, at least, come over here today and say that before signing any treaty, either it is a treaty through the WTO, or, it is a Civil Nuclear Agreement with the United States, which is going to have wide ramifications on the country, it would discuss it here in Parliament before signing it. For example, nobody applied mind regarding the disposal of the nuclear wastes. I believe there is a Bill that the Government is going to introduce in the Lok Sabha. It is about the liability of the people, if there is any problem or any mishap. So, these are very, very important issues. It does not matter whether the BJP says this or the Communists say this. It is we, the representatives of the people of the country, who are saying that the Government should come over here and make a commitment that it will bring all the treaties before the Parliament for ratification.

As Shri N.K. Singh said, and I also say that all of us are responsible people; nobody is going to object to any agreement that is in the interest of the people and in the interest of the country just for the sake of opposing it. As you saw the other day in the case of the Women's Bill. You did not have the majority, but the Left and the BJP supported the Congress because we thought that it was a good Bill; it would protect the rights of women; it would provide them what the women have been asking for many, many years, which we could not give to them. We don't need any constitutional amendment for it because there is no constitutional bar on it. It is only in the Fifth Schedule. Of course, my learned colleague is going to speak on the legal aspect of it. And, I heard today the Minister of State for External Affairs. I know the word 'international' is there. But it is more 'legal' than 'international'. The Law Minister should have been here to explain why the Government is going to agree to it, if the Government is not going to agree to it. And, I am still not convinced that the

Government is not going to agree to it. So, the main point is either the Government should agree that they are going to give this right to Parliament to ratify the international treaties and international agreements; or, it should bring forward a legislation, if you do not want to accept a Private Members' Legislation or Resolution. We will be happy if you bring forward a legislation because this lacuna has been there in our law, which I have seen with my own eyes, the problem of the Members of Parliament that I had seen when I used to preside over the House.

So, either you do that or the Government should come before the House and commit that before signing any treaty, which is going to have wide ramifications on the country, and for which you would need supportive laws, it would discuss it with the Parliament before signing the treaty, and not afterwards because it is like putting the cart before the Horse. With these words, I support the hon. Member Brinda Karat in her effort, and I also support my own legislation, which, may come up for discussion on 18th.

[MR. DEPUTY CHAIRMAN in the Chair]

SHRI P. KANNAN (Puducherry): Mr. Vice-Chairman, Sir, I rise here to say a few words on the Resolution moved by Shrimati Brinda Karat. I do not have much difference of opinion with Madam Karat. I am new to this House but I am little aware of what is going on throughout the world. I would like to make some points for consideration. I fully agree that for any matter which is going to affect the people of this country, as was rightly mentioned by Madam Brinda Karat whether it is international treaty, multilateral or bilateral, entered into by the Government of India which have major implications for the people of the country, – there are a lot of treaties and agreements like WTO, FTA Indo-US civilian nuclear agreement, etc. – Parliament has to be taken into confidence. This is my point number one.

My point number two is that we should not come to know after Press getting the whole information about it or giving information about something. But I am very happy that media is doing its job very well. As an individual, I am nothing, but as a representative of the people, I am something. So, it is the right perspective to take the Members of the House into confidence. But, at the same time, I would like to say and I am very confident and I am very proud that we have got a Government – I hope and wish Madam Brinda Karat would agree with me – the UPA Government and our leader Ms. Soniaji and our learned Prime Minister Dr. Manmohan Singhji have done a lot of

reforms. A lot of innovative and other unimaginable reforms have been made by them in the history of this country or in the history of Parliamentary democracy. One is, as mentioned by Dr. Najma Heptulla, the Women's Reservation Bill, which ensures 1/3rd representation to Parliament and State Assemblies. It has been done by the UPA Government. I think, if I am correct, it was not demanded by anyone in the past. It was the dream of Rajivji to give more empowerment to women, by bringing them into the national area and by involving them in the nation building.

Then, the UPA Government, Dr. Manmohan Singhji, Ms. Soniaji, have passed the Right to Information Act. It was not there before this Government, before this Prime Minister and before our Leader, Ms. Soniaji. It was not even thought of before. So, I do not think that our Government would stand in the way. Having done so much, I must say our Prime Minister, Dr. Manmohan Singh and our Leader, Shrimati Soniaji are courageous enough. Of course, I must thank the Opposition, honestly, I thank the Opposition which supported the Women's Reservation Bill.

It is not only because of us though it has been initiated by the UPA. We have preferred to risk anything as Madam Soniaji in a Press Meet, in one of the exclusive Press Meets of the electronic media, said, 'Yes, we will talk to them; we know something may happen; we are prepared for that.' So she worked with a great spirit for the empowerment of woman, for the right of the women. Somebody said, 'Why are they bringing it at this time before passing the Budget? What is the urgency? What is the strategy? What is the ideology behind it? Is there any idea behind it? They are bringing it hastily?' So, all kinds of things were said but we knew all these things pretty well and we were prepared to take the challenge. We faced the challenge. So, we will do what we have to do for the welfare of the people of the country.

Sir, I have only one thing to say. As I said, I agree that Parliament has to be taken into confidence before the ratification of any international treaty. But I do not know whether it is practically possible. It is my apprehension. I am not at all an expert in all these subjects. My only fear is, as Brinda Karatji said, all bilateral and multilateral international treaties and agreements which are not of a technical, administrative or executive nature, be ratified by the Parliament. There I have got my own apprehension. I do not know whether it is practically possible or not. This is my apprehension. I am not opposing or I am not arguing with you on that point. I support this Resolution. It has to be considered. But the point is, whether it is possible for a Government to get the ratification of Parliament before signing an Agreement. My apprehension is, whether it is practically possible for

any Government. Our country is not lagging behind in any such thing. Ours is the largest democracy. The core of democracy is only in this country and no other country in the world has such a big democracy. ...**(Time-bell rings)**... As one hon. Member rightly said, we are now living in a fragmented world today. We have got the United Nations; but what is the role of the United Nations Organisation, I don't understand because the world is fragmented, disintegrated in various ways. So, I would like to request the Mover of this Resolution that after Government takes a decision – it may be any Government; now the UPA is governing the country – we must be united, we must abide by that and we must speak in one voice despite having political differences; we should not dissent afterwards. Before that, we can talk, we can put forward our thoughts or opinions, supporting or opposing a particular thing. We have to talk. But after that, for the sake of the prestige of the country, we must stand united. That is my submission. As far as this Resolution is concerned, I cannot say much because I am not well versed in this subject and I am also not an expert in this. So, I do not know whether it is practically possible or not and whether it could be done or not.

Sir, in a parliamentary democracy, unfortunately, the difficulty is, we have difference of opinion not only on political issues but even on social issues also. I appreciate those Opposition Parties which have supported the Women's Reservation Bill.

But some Parties say that the credit goes to the Congress Party, to the UPA, to Shrimati Sonia Gandhi, to Dr. Manmohan Singh and so, they do not want it. They have this on their minds. The reasoning and arguments put forth may be different. Some of them are very*. It should not be so. I appreciate the Opposition, the BJP, the Left Parties and other Parties who have supported this legislation. Madam Sonia Gandhi has also conveyed her thanks to them. So, Madam ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Now, you are addressing Shrimati Brinda Karat and not the Chair.

SHRI P. KANNAN: Sir, we are good friends and so I made it sound like we were having a talk on personal terms!

Sir, after all, we are talking in the interests of the nation; we do not have any personal interest

†Expunged as ordered by Chair.

here. I would like to be above politics on various matters and, if possible, on all matters. I am for that. You may kindly consider this and see whether it is practically possible. If it is not practically possible, we shall discuss it and work out modalities.

SHRI SHARAD ANANTRAO JOSHI (Maharashtra): Mr. Deputy Chairman Sir, I asked to be allowed to speak on this subject because it is rarely that I get an opportunity to endorse the spirit or the ideas of hon. Brinda Karatji and her Party and I thought I should not miss this opportunity.

This is a great idea and I am endorsing it in spite of the fact that on each of the agreements that are mentioned in alinea (ii), I had a position which was opposed to the position taken by her and her Party. That includes the World trade Organization, that includes the FTA and that also includes the Indo-US Civilian Nuclear Treaty.

Sir, I think the idea is that there should be some kind of a restraint on the powers of the Government and the powers of the Executive about finalizing international agreements. And I am quite sure that the purpose of the Resolution really meant to have a full, popular endorsement and not merely of the Parliament. In that sense, I would submit for her consideration some suggestions for which I am not moving any formal amendment, because I don't think that is done in the case of a Private Member's resolution. But I would be grateful if she does consider the possibility of broad-basing her proposal.

MR. DEPUTY CHAIRMAN: Mr. Kannan, '*' is an unparliamentary term. I shall remove it. ...*(Interruptions)*... It is over. I need not have told you but it is just for information. ...*(Interruptions)*... You may use it in a different context, but when you are saying a * Party or a * it is not allowed.

SHRI SHARAD ANANTRAO JOSHI: It is allowed to be *, but it is not allowed to say '*'!

Madam, I would make some minor suggestions in the beginning of the draft. The multi-party consensus in India is not limited only to the international affairs. So far, we have had a multi-party consensus on a number of other matters including the international trade which is not specifically mentioned here.

But I would like it to be mentioned not only in the area of foreign policy but also in international trade. Further in alinea (ii) while I do not propose any changes on the enumeration of WTO

†Expunged as ordered by Chair.

Agreements and FTA Agreements, etc., I would suggest that it should be made very clear that we are talking of the international conventions as also agreements, conventions are the category apart in the international field. For example, there are a number of conventions of the United Nations on the human rights, etc., etc., and that also should be brought within the ambit of this particular resolution. So, it should really apply to international conventions as also inter-governmental treaties. This addition is required because there are certain international United Nations Conventions and their provisions ought to be screened carefully by the people and by the Parliament in this country. Going beyond that and coming to the operative part of this resolution, I have two suggestions to make which she may kindly take into consideration. First, if what we want is the real people's mandate and people are the fountainhead of final sovereign power in this country, it is not enough that just the Parliament says 'okay'. There is a possibility for the Government to obtain popular mandate in other ways also, and I would suggest that she should make some kind of a proviso for cases where the Government have obtained popular mandate for a particular agreement and for a particular treaty in a popular general election. For example, I was clearly thinking of the WTO in this respect. If the party obtains the consent of the people, at large, in a popular mandate, then, of course, you will have to limit the powers of the Parliament to override that popular demand.

I would also say that in such a case of importance, since this involves almost a constitutional amendment, the Party should be precluded from issuing any whips when the matter is before the Parliament for consideration. Sir, recently we saw an important constitutional amendment Bill put through, at least, in one House because of the whips issued by the two parties and it has come openly in the papers that the vast majority of Members of both the parties, both the ruling and the opposition parties, in the heart of their hearts, in their conscience opposed the Bill even though they voted for it. This kind of a thing will do in a domestic matter, but when it comes to international sovereignty we have to be more careful. In these matters of deciding what is in the national interest, the parties should not be allowed to issue whip unless, of course, as I said, they have obtained a mandate for that in a popular election.

Then, Sir, I would like to suggest that such ratification should be obtained not only from the Parliament but such ratification should be obtained as if it was an amendment to the Constitution. It means they have to obtain not only the

4.00 P.M.

consent of both the Houses of Parliament and the President but also have the necessary ratification from the minimum number of States that is required. Since the proposal is for having a popular ratification of the agreement, she should not stop only with the Parliament, but she should also say that such ratification should be obtained from various States, Sir, for example, in the case of WTO, I have been the Chairman of the Task Force on Agriculture on the subject of WTO, I know that when we visited different States the consensus opinion of the WTO was quite different often from the positions taken by different States taking into account their State interest in respect of agriculture. For example, Kerala always had a separate position because of the predominance of the plantation economy there. Karnataka had also a similar position in respect of the intellectual property rights. Sir, if the ratification has to be a popular ratification.

I would submit to her that she makes a slight modification in the spirit of the resolution in which it has been moved that it should be ratified by the same procedure by which a constitutional amendment is got approved, that includes the ratification by both the Houses of the Parliament, the President and the required number of States.

SHRI M. RAMA JOIS (Karnataka): Mr. Deputy Chairman, Sir, at the outset, I thank you for giving me the opportunity to speak on this all important issue. Shrimati Brinda Karat has raised a very seminal point regarding the interpretation of the Constitution. The question is whether the decision taken by the Executive in entering into international agreements is final, or, whether it requires the approval of the Parliament, or, ratification. My answer to this is – I will first give answer and then clarify – that there are two types of approvals necessary. One is prior approval, and the other is subsequent approval, that is, ratification.

My submission is that as far as matters affecting our sovereignty or constitutional provisions are concerned, they require prior approval and the Executive cannot sign the agreement and create a *fait accompli*. In respect of ordinary routine matters, they can enter into an agreement and thereafter place it before the Parliament. Just as rules are framed and laid for 30 days before the Parliament for approval. This can be done. Therefore, this raises a very important Constitutional question. Under the scheme of the Constitution, as laid down by the largest Bench of the Supreme Court in the Keshavanand Bharati case, we have adopted supremacy of the Constitution. Sometimes, there is a talk as to whether Executive is Supreme, or Legislature is Supreme. But, the real position is that we

have supremacy of the Constitution. Therefore, the question is: what does the Constitution say? In our Constitution, we have incorporated doctrines of separation of powers. Dr. Ambedkar, the architect of the Constitution, has clearly said, "It brings about a limited Government." The powers of the Executive are limited. The powers of the Legislature are limited. And, the powers of the Judiciary are limited. Under the doctrine of separation of powers, what power is given to the Executive, what power is given to the Legislature and what is the power of the Judiciary? They are all traceable from the Constitutional provisions itself. Secondly, ours is a federal state. We have got so many States and also the Union. Therefore, the other arrangement is legislative power. Union legislative power is in List No.1. State legislative power is in List No.2; and then there is the Concurrent List, on which both, the Parliament and the State Legislature, can make laws.

Now, as far as the international agreement is concerned, you see, Entry 13,14,15,16 - participation in international conferences, associations and other bodies and implementing of decisions made thereat; entering into - treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries; war and peace; and, foreign jurisdiction. All these four items are placed within the Union List and then this has to be read with article 253 of the Constitution. Article 253 of the Constitution reads, "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Therefore, even though certain subjects may fall in the State List or Concurrent List, as far as international treaty is concerned, it completely falls within the Union List. The phrase 'notwithstanding anything contained' means that notwithstanding any item contained in the State List or Concurrent List, the Parliament alone has got power to make a law. In that law, they can specify which are the types of agreements for which prior approval is necessary, and which are the agreements which require ratification. But, unfortunately, though sixty years have elapsed, the Parliament has not made a law in exercise of its power under article 253, and that is why, this problem has arisen.

Otherwise, the Executive power is always subject to the Legislature, and, as I said, the four Entries in the Union List are all legislative powers. Only under article 173 of the Constitution, the

Executive can exercise same powers in the absence of law. Now, because the Parliament has not made a law, the Executive is claiming that they have got the power but that is not the intention of the Constitution. The Executive power is to be exercised only until a law is made. You cannot have it for an indefinite period without making the law, and, allow the Executive to function as it is. Therefore, the most important point is: can the Executive in exercise of its executive power enter into a contract and create problems for the nation. This aspect has already arisen. I will read from the Report of Justice Venkatachaliah Commission. In that Report, it is recorded, "The Agreements signed on Intellectual Property Rights, trade, agriculture and services are so far-reaching that there is a body of opinion, which honestly thinks that some of the provisions of these Agreements are adverse to our national interest – so much so that the Human Development Report, 1999 published by the U.N.D.P. has called for a review, a roll back of the Agreement on Trade-related Intellectual Property Rights (TRIPs) to protect the health of the people and economies of the developing countries. At page 10, the Report says "Intellectual property rights under TRIPs Agreement need comprehensive review to redress their perverse effects undermining food security, indigenous knowledge, bio-safety and access to health care."

Further it says, "Many other agreements containing clauses having deleterious effects upon our economy have also been signed during the Uruguay Round of Trade Negotiations". Therefore, the question arises whether the Executive can enter into an agreement, and, make it a *fait accompli*. My answer is, no; the matter has to go before the legislature, and, as I said, even there, there must be a classification between the agreements in respect of which prior approval is required, and, agreements which require ratification. As I said, under article 253, the law is to be made by the Parliament circumscribing the power of the Executive in entering into such agreements. When any agreement has got far-reaching effects on our economy or the Fundamental Rights of our citizens or the integrity or sovereignty of the nation, then, such a matter requires same type of approval as is required for a Constitutional amendment. In fact, during the regime of the UPA-I Government, at the time of Indo-US agreement, the question was made as to whether the then Prime Minister had the majority or not in the Parliament, and, even one vote was sufficient for proving the majority. I was not a Member of Parliament at that time, and, I wrote that an agreement like Indo-US Nuclear Agreement, which has got far-reaching consequences, and, on which there is a serious difference of opinion, requires substantial majority for approval, and, only one vote required for the survival of the

Government was not sufficient. Unfortunately, that was the position. That is why, the Left Parties withdrew support to the Government, but, ultimately, the Government, however, survived by a narrow majority. That is a separate issue. The survival of the Government itself was considered as an approval of the Agreement. That should not be the position. An agreement of the type, which has far-reaching consequences, must get substantial approval, which means, same number of votes which are required for a Constitutional amendment, should be there. That has to be prescribed by law made under article 253 of the Constitution.

That is why, the National Commission to Review of the Working of the Constitution specifically recommended that the Parliament should make a law under article 253 of the Constitution. Unfortunately, it has not yet been done so far, and, that is why there has been the recommendation. The recommendation is, "The first thing that should be done by Parliament is to make a law on the subject of 'entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries' as contemplated by Entry 14 of List 1 of the Seventh Schedule to the constitution."

"The law should regulate the treaty-making power (which expression shall, for the purpose of this discussion, include the power to enter into agreements and implement treaties, agreements and conventions). There is an urgent and real need to democratise the process of treaty-making. Under our constitutional system, it is not the prerogative of the Executive. It is a matter within the competence of Parliament."

It has been laid down very clearly here. Therefore, I congratulate Brindaji for bringing such an important resolution for the consideration of the House.

As far as important agreements with other countries are concerned, I would like to quote Rajdharm of our ancient times. Just see what they have said. "Acquisition of friends is superior to the acquisition of gold or land. Therefore, the state (king) should endeavour to enter into compact (with friendly countries)."

"हिरण्यभूमिलाभेभ्यो मित्रलब्धिवरा यतः।

अतो यतेत तत्प्राप्त्यै रक्षेत्सत्यं समाहितः॥"

[Yajnavalkya Samriti 1-352]

This is from the foreign policy chapter of my book. Legal and Constitutional History of India. Entering into agreement with other countries is absolutely necessary, because they say friends are

more important than gold. But, at the same time, while entering into agreement, we should keep it in mind that it should not have deleterious effect on our sovereignty or territorial integrity.

There was a case where there was an agreement between Pakistan and India for referring certain border disputes to the arbitration. The question was: what is border line; and which portion belongs to India; and which portion belong to Pakistan? That was decided by the arbitration. The question arose whether that agreement was valid or not. Then the Supreme Court said that in a case of ceding a portion of our territory, conceding that some portion of our land belongs to others, Parliament has no power at all. And it require a constitutional amendment. But that was not a case of ceding territory. It was a case where a disputed question was decided and both the parties agreed to that. And, therefore, they said that the award given by the tribunal was valid.

Ultimately, my submission is that the resolution, which has been brought by Brindaji, is perfectly all right. Maybe some change in wording is necessary. But as I said, as far as an agreement is concerned, it the duty of the Parliament to classify what are the agreements for which a prior approval is necessary and which are the agreements which can be ratified subsequently. Thank you.

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRIMATI PRENEET KAUR): Sir, the system of parliamentary Government in India combines the Executive and the Legislature unlike in the USA where the legislature is separated from the Executive. The Members of the Cabinet who are at the head of the Executive are also Members of Parliament and as some hon. Members have said that they represent the people it is absolutely correct these Members of Cabinet who are the heads of the Executive are also accountable to Parliament.

Under the Constitution of India, the Government is empowered to sign and ratify international treaties and Parliament enacts legislation, wherever required, to implement a treaty or an agreement.

Under the Constitution of India, the Executive power of the Union extends to all matters in respect of which Parliament has power to make laws. This Executive power of the Union includes the power to enter into treaties and agreement with other countries.

The intention is not to say that Parliament should be kept in the dark or that the authority of Parliament in this behalf should be denied. In fact, certain agreements cannot be ratified without amending domestic legislation or enacting new legislation. In such cases, implementation of an

agreement/treaty depends upon Parliament enacting legislation as provided in the Constitution in accordance with Article 253.

Sir, after studying the working of the practice of other countries, the Constituent Assembly decided that Parliament should have unfettered power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any foreign country or countries. Sir, this was the broad consensus of the Constituent Assembly. It said that it was the Executive which has the competence to negotiate and sign the treaties with foreign countries. Sir, this has been a time tested practice and it has stood the test of time.

Sir, India has been following the practice under which all treaties, agreements, etc. with foreign countries are concluded by the Union Government with the approval of the Cabinet. These are brought into force under authority of the President of India by obtaining, wherever necessary, full powers for signature of the agreements and instruments of ratification for bringing them into force. As a matter of fact, the views of all the concerned Ministries are taken into consideration and different interests are identified and reconciled before the Cabinet is requested to approve a treaty before signing or ratifying the same. Sir, these Ministries consult their stakeholders. For example, the Commerce Ministry has interaction with their concerned stakeholders such as the CII, FICCI or whatever it is. In respect of some treaties, Parliament has passed resolutions approving such treaties.

The Tashkent Declaration of 1966, Treaty of Peace, Friendship and Cooperation between India and USSR of 1971 and the Shimla Agreement of 1972 are some examples. Statements on behalf of the Government of India including statements by the Prime Minister have been made on important treaties and agreements concluded by India with foreign countries. For example, *suo motu* statement on February 27, 2006 by Prime Minister, Dr. Manmohan Singh, in Parliament on the Civil Nuclear Energy Cooperation with the United States. The Parliament had also discussed and debated this agreement pursuant to the statement by the Prime Minister on 17th August 2006 in Parliament, in this very august House, the Rajya Sabha. The hon. Prime Minister on 13.8.2007 made a statement in the Lok Sabha on Civil Nuclear Energy Cooperation with the United States. There was a discussion and debate on this in both the Houses. The Minister for External Affairs on 20.10.2008 made a *suo motu* statement on India's Civil Nuclear Energy Initiative in Parliament and referred to Agreements for

Cooperation in Civil Nuclear Energy signed with France and the United States and also referred to the proposed agreement with the Russian Federation, which has since then been signed. The Minister for External Affairs provided answers to several questions in both Houses of Parliament on various aspects of the Indo-US Agreement on Civil Nuclear Cooperation.

It is, therefore, submitted that both Houses of Parliament have necessary oversight over the treaty-making power of the Union Government, through its power to discuss, to question and through its legislative powers.

Accordingly, the Government considers that the present Resolution for Parliamentary approval of all treaties before their signing and ratification is not required. However, the views expressed by all the hon. Members have been duly noted and will be taken into consideration. So, I would request the hon. Member to withdraw the Resolution. Thank you.

SHRIMATI BRINDA KARAT : Sir, I thank the hon. Minister for her detailed reply and I would like to express my gratitude to all the Members who have participated in the debate. Sir, what has emerged through this debate is a consensus that even though the present practice has been on since India became independent and since the first Parliament was constituted, times have changed.

Times have changed, and the Members across political lines expressed the opinion that the Government really should consider this practice and take Parliament into consideration. Sir, there are just three or four important points made by the hon. Members which I would like to respond to. The first is, the question was raised, "Is this practical at all?" I would just like to remind the Members who were present in the House that when I introduced my Resolution, I had stated that in the course of the last 50 years, there are huge number of agreements all over the world, something like 50,000 or 60,000 agreements which have been reached. Now, certainly, it can be nobody's case that all these agreements, whether at the international level or those in which India is involved, have to come to Parliament for ratification, and that is why, in my Resolution, I have been very, very specific and the specificity of the Resolution is precisely this that when such agreements or international treaties impinge directly on two aspects of our public life, firstly, it impacts on the people and their livelihood, and secondly, it impacts by encroaching on the rights of the State Governments and the spheres of the State Governments jurisdiction given to them by the Constitution of India in the State List which has been referred to by the hon. Member, Justice Jois, and therefore, it is on this issue that it is certainly practical. The Committee which the hon. Member has referred to, has made practical

suggestions. There was another Committee which was formed by certain experts and intellectuals on this issue in which they suggested that the Government could form a Committee across parties which has to decide which are the agreements which are coming up and which need ratification by Parliament. So, it is certainly not my case, and I am sure, it is not the case of the other Members of Parliament that every single agreement or treaty has to be brought to Parliament.

Therefore, it is specific, because, we cannot in the given world situation, in the changed world situation, where all these treaties which impinge on the lives of the people, how can it be that according to our laws, the Parliament is the supreme, and where international treaties which may have even larger impact on the people of India, there, the Parliament has no say? So, this dichotomy in the present set up certainly has to be addressed by the Government of India, and therefore, I would once again appeal to the Government, through this Resolution, to rethink this point.

Then the other point that I would like to make is that, after all, who are the stakeholders? The hon. Minister while referring to the agreements signed by the Commerce Ministry, has referred to the CII and the FICCI, as being the stakeholders in treaties which are signed by the Ministry of Commerce. That is precisely my point. Are they the real stakeholders who you have to consult? What about the fishermen association, fisherwomen association who are going to be affected, perhaps, even more than FICCI because they will be impacted in a negative way? What about the plantation workers who have been referred to by some hon. Members? Therefore, precisely because the stakeholders in India may have diverse interests, after all, we are talking about a differentiated impact of a treaty on different sections of Indian people. Certainly, the poor will be impacted in a particular way who may not like the treaty. The rich may be impacted in a particular way and get certain benefits from the treaty, and therefore, may like the treaty. And therefore, precisely because the definition of stakeholder is so wide with diverse interest, it is absolutely essential for the Government to refer back to Parliament because in that context, the words of my hon. Member who has said, 'the supremacy of Parliament, the sovereignty of Parliament,' is what I wanted to stress in this Resolution precisely because the stakeholders are the people of India, not this or that lobby or important group.

The third point I would like to make in this and that is when we look at the other aspect of international treaties in the global context and we look at the way the countries are jostling with each other, making temporary alliances for this or that particular interest which may not be there for another treaty. Therefore, the importance of 'national interest' be supreme. I am not raising, here, the question of this or that Government; not at all. My friend, Mr. Kannan, has said, "You must have faith in the UPA Government, and also the faith that the UPA Government is looking after the national interest." That is not the issue at all. Whether it is the UPA Government, whether it is the NDA Government or whether it is any other United Front Government, is not the issue. I want to stress that this Resolution is not connected or concerned with this or that Government or political party in power. That is not my concern. My point is: why does the UPA Government or the Government in power which has rejected this Resolution, through the hon. Minister, not trust the Parliament? After all, if we feel that the Government is responsible enough to look after the national interest - we have no doubt about that - why can't the Government have an equal respect or an equal belief in the sagacity of Members of Parliament and their commitment to 'national interest'? Why should there be an assumption that there is always going to be a divergence of views because of narrow political interests or narrow sectarian interests? This is not going to happen. But I want to stress that the life or the tenure of the Government is limited to five years. The tenure of treaties is not. And, therefore, if you want a bipartisan support and a support across party lines, whether we are in power or not, - a friend has talked about the prestige of the country in national interest - it is precisely because of that a stamp of parliamentary approval is essential. And I take Mr. Sharad Joshi's point here in a right spirit because it is absolutely correct that on many issues where State Assemblies are directly concerned, undoubtedly, there must be a mechanism through which we can consult the States which are going to be directly impacted, before going through any treaty. That is a very important suggestion made by Joshiji, which, I think, the Government should also take into consideration.

Lastly, Sir, we live in a globalised world, but, of course, the interpretations of 'globalization' differ. I have stated, in my introduction for Resolution, that we are not opposed to globalization *per se*. But, certainly, it is a fact that today, the international arena is dominated by imperialist countries. Agendas are driven by those countries. In our tradition and in our practice of foreign policy, where we, no longer, have the support of a strong socialist camp which is, traditionally, being India's friend,

today, the importance of our relations with the G-77, the importance of our relations with the NAM must be paramount, and it will help us in our bargaining with the more powerful countries which, today, utilize every international forum to push their agenda as, we saw, they did in Copenhagen. And even after Copenhagen, Sir, there were attempts to force India to become a signatory to that Agreement which would have been the death knell of the Kyoto protocol. In that context, the ratification of Parliament will also strengthen the Government's hand in its bargaining with these important, strong powers. And it is with this spirit, to strengthen the Government of India of-the-day, to give the Government of-the-day that power behind it to defend the national interest, which is the prime motive, I am sure, of that Government and Parliament, together, I say that that can only be done through a change in the current practice. I have said that if a constitutional amendment is required, – I know that there is a very strong opinion, which Justice Jois has also expressed, and which I agree with, that a law is required – and if, through a legislation, this is to be done, I am sure that the Government can, without going in for a constitutional amendment, bring that legislation to Parliament to help us.

After all, we talk about good international practices. We talk about good international practices. Well, this is a good international practice. There are now many countries which wish to express themselves through the approval of their respective parliaments. That is the democratic way. It is not that anybody is questioning the competence of the Executive. But look at the experience of other countries and look at our own experience. It points to only one conclusion, please consider this Resolution. This is a Resolution which is not pointing fingers at any political party. This is a Resolution which will bind the country together behind an international treaty or an agreement which the Government may wish to sign through parliamentary approval. Therefore, while thanking, once again, the hon. Members for their participation in this debate, I would appeal to the Minister to consider the spirit because, cutting across party lines, this is the reflection of the concerns of the country today in the treaties which we are signing, which would have a much bigger democratic substance and weight if you come to the Parliament for ratification. Thank you very much, Sir.

With these words, I appeal to the Government to consider this and withdraw the Resolution.

MR. DEPUTY CHAIRMAN: Do you want to say something, Shrimati Preneet Kaur?

SHRIMATI PRENEET KAUR: Sir, I just want to thank the hon. Member for her words and I just want to clarify one point that when I gave the example of the FICCI and the CII, it was just an example. It didn't mean that they were the only stakeholders that we take note of. I would also like to say, like Shrimati Brinda Karat, that we share the concerns of the people of India and the Government is made up of Members of Parliament, which represents the people, and is sensitive to the issues of the country. Thank you very much.

SHRI M. RAMA JOIS: Sir, with your permission, I want to say something. In all this there is an essential difference from our culture. We say there is one world family. Now, the West is also saying that the world is one family. The difference is is this. Our view is that the world is *Vasudaiva Kutumbakam*, whereas their view is that the world is one market.

MR. DEPUTY CHAIRMAN: Has she the leave of the House to withdraw the Resolution?

SOME HON. MEMBERS: Yes.

The Resolution was, by leave, withdrawn.

Constitution and Environment Adaption and Mitigation Fund

SHRI N. K. SINGH (Bihar): Sir, I am privileged to move this Resolution that seeks the consent of this august House for constituting an Environment Adaptation and Mitigation Fund and I move:

That this House resolves to constitute an Environment Adaptation and Mitigation Fund by innovative fiscal policies to finance the cost of technology, promote research and development of renewable energy and lower the burden to meet the inevitable costs of adaptation arising from Global Warming and Climate Change.

Sir, in submitting this Resolution for the consideration of this House, I have been primarily prompted by several considerations. The most dominant being that there is an inadequacy of understanding of what mitigation and adaptation, in terms of the burden that they cast on our society, is going to really entail, and that the existing structural mechanism which we have is clearly grossly inadequate to meet this huge burden.

Therefore, I think, there is the need for innovative approach which is based on the benchmarking with best international practice and India must brace itself to deal with these debilitating consequences of global warming and climate change.