

[श्री शीलभद्र याजी]

को आबादी है और 16 लाख की आबादी त्रिपूरा की है और दोनों बंगाली स्पीकिंग एरिया को मिलाकर एक स्टेट बना दिया जाना चाहिये क्योंकि आपने इस बारे में एक प्रिंसिपल एक्सेट कर लिया है।

इन शब्दों के साथ मैं तमाम पार्टियों को और सरकार को धन्यवाद देना चाहता हूँ।

THE LEADER OF THE OPPOSITION (SHRI S. N. MISHRA) : Certain points have been raised on this question, but with regard to the views expressed by some hon. Members of our party, let me make it clear that in matters of the Constitution and matters of the rules of procedure relating to this House, we have given a certain amount of amplitude to our hon. Members. We want to stick to that principle.

On a balance of considerations, our party has decided to support the demand. Let there be no doubt about it. But what we find today is that such demands are being conceded under the pressure of voting and I would request those persons who are behind such demands for some other states that they should pray for voting on such crucial issues.

SHRI CHITTA BASU (West Bengal) : As has been pointed out many a time, Manipur has got some special socio-economic problems. The only point I want to emphasise is that before framing the legislation granting statehood to Manipur the all-party action committee which fought matter of framing the legislation which will have to be placed before Parliament for their consideration. Unless that is done and unless they are associated with this and their cooperation enlisted, it will not be possible for the people of Manipur to extend their cooperation.

SHRI K. C. PANT : All I can say is that I have made a note of all the points made by the hon. Members.

THE PATENTS BILL, 1970

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND INTERNAL TRADE (SHRI DINESH SINGH) : Sir, I move :

"That the Bill to amend and consolidate the law relating to patents, a"

passed by the Lok Sabha, be taken into consideration."

In doing so, Mr. Deputy Chairman, I am conscious of the historic importance of this Bill. For centuries we have been exploited economically and politically by foreigners. Twenty-three years ago, we achieved our political freedom. But we, in fact all the developing countries, have far to go before we are freed from the foreign economic domination. This will require rapid economic growth, greater utilisation of our resources, wider industrial base and greater share of world market. The most important factor for all these activities is the modern technology. We cannot go step by step through the conventional stages from which industry has passed in the last four or five centuries in the countries which are now developing. It is imperative that the latest technology is made available to our country so that we can skip through many stages so that we can accelerate our development, so that our goods are competitive in the world market. One of the main hindrances to the transfer of technology to developing countries has been the virtual monopoly enjoyed by the large international enterprises in this regard and their unwillingness to share their knowledge with the manufacturers except on terms highly advantageous to them.

This system also leads to continuous exploitation of the developing countries where the goods are sold at high prices. The Kefauver Committee of the US Senate has brought alarming, rather shocking, examples of such exploitation of the developing countries including ours by the US manufacturers of pharmaceutical goods. I need not go into details as this has been published in the newspapers. We have, therefore, to see first that research, inventions and development take place in our country and that all available indigenous means are fully utilised. Secondly, we must ensure that where technological gaps exist and where it is necessary to fill them, either for our own essential consumption or for exports, imports take place on reasonable terms. The Patents Bill, which I am privileged to bring before the House today, just does this.

Hon. Members are aware that the Patents Bill of 1967, reported upon by the Joint Committee of both the Houses, was passed by an overwhelmingly enthusiastic Lok Sabha at a special sitting on the 29th August 1970. The passage

of this Bill has been widely acclaimed by the public and the Press alike. This will be a landmark not only in the industrial development of our country, but may well become the basis for transfer of technology to other developing countries.

The concept of Patents, in its historic sense, is based on two main factors: The first is that the patents are private property, that is, the inventor has an exclusive right in the utilisation of his invention. And, the other is that legal protection is granted to the inventor by the State for a limited period of time to encourage research and invention. This protection would, it is expected, induce research workers to disclose their inventions for industrial exploitation and thereby provide new and additional avenues for economic growth and development. However, we have to view this concept in the socio-economic conditions of our country today. We have to see how we can make patents serve the needs of our economy, how we can use them as instruments for rapid growth. Easy access to knowledge and experience in the field of applied science and technology is essential for accelerated economic development as well as greater productivity.

As a developing country, where the bulk of patents are foreign-owned, we have to ensure that the patent system should enable the transfer of technology from the developed countries and at the same time, prevent exploitation of the people.

Any Patent Bill has to be so designed as to preserve the continuing interest of the inventor in his creation, the social interest in encouraging research, the consumer interest in enjoying the fruits of invention at reasonable cost and has to assist the creation of conditions for the acceleration and promotion of economic development of the country.

These thoughts have been kept in mind while drafting this Bill and it is our feeling and conviction that this legislation will meet these requirements and might well furnish guidelines in this wide field for every country, similarly placed as ours.

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

The present law relating to patents in this country is contained in the Indian Patents and Designs Act, 1911. During

the last 59 years of the existence of the 1911 Act far-reaching developments have taken place in every field particularly in the realm of science and technology all over the world including our own country.

Though the 1911 Act has been amended from time to time, it was obvious that the law relating to patents in India needed several basic changes to suit modern conditions. In any case, the law required substantial revision to meet the special requirements of the country rapidly whose economy, since the advent of independence was being provided with a dynamic industrial base. In fact, there was new thinking on the basic purpose served by the patent system itself so far as this country was concerned.

It was considered necessary in the context of our planned economic growth, that there should be a thorough expert review of the very concept of patents so as to ensure that the patent system is rendered into an effective instrument for national interest. Accordingly, there were two enquiries made into the subject of patents. The first enquiry was by the Patents Enquiry Committee under the chairmanship of Dr. Bakshi Tek Chand, retired Judge of the Punjab High Court, which reported in 1950. The second was by Shri N. Rajagopal Ayyangar, who was then a Judge of the Madras High Court and later retired as Judge of the Supreme Court. Shri Ayyangar submitted his report in the year 1959.

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

Both the Committees recognised that although India had the patent system, in some form or other, for over a century, she had not drawn much benefit from it. On the other hand, taking into account the experience of the industrially advanced countries of the world and the position of India as a member of the community of nations, both the Committees were clearly of the view that it was to India's advantage to retain the patent system. Shri Ayyangar's report, which took full note of the

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recommendations contained in the earlier report of the Tek Chand Committee, made a number of proposals for modifying and revising the Indian Patents and Designs Act, 1911, to suit the requirements of the country for development in the industrial and technological fields in the present conditions.

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

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

The Patents Bill 1967 seeks to provide a comprehensive law on the subject of patents, which has an important bearing on the national economy. The Bill recognises the importance of stimulating inventions and encouraging the development and exploitation of new inventions for industrial progress in the country. At the same time, it seeks to ensure that patent rights are not abused. The Bill makes provision for bringing the different clauses into force in a phased manner. The Bill is of a complex and technical nature, and for its smooth working the new Patents Act needs to be brought into force in different stages.

One of the important amendments, incorporated by the Joint Committee, is with regard to Clause 2(1)(1) by which insecticides, germicides, fungicides and weedicides, which are used for the protection and preservation of plants, have been brought within the scope of the expression 'medicine or drug'. The purposes of the amendment is to apply certain provisions relating to patents in the fields of food, drugs and medicines, to which I shall refer later. The insecticides, fungicides, weedicides, etc. are generally known as 'agricultural chemicals'.

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

Another important feature of the Bill is the special provision which it incorporates in regard to the patentability of inventions relating to food, drugs and medicines or chemicals. A patent shall be granted only in respect of a process of manufacture and not for the substance manufactured. For a developing country like India, it is certainly not desirable that there should be patents for products as such in so far as the field of food, drugs and medicines or chemicals is concerned.

The Bill further provides for searches for novelty of inventions on a world-wide basis which will enhance the intrinsic value of our patents. No invention, which has already been anticipated by publication either in this country or elsewhere, should qualify for a grant of patent in India.

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

One of the most important provisions made in the Bill is that the grant of patents under the new Act would be subject to certain conditions specified in Clause 47. Under this Clause, the Government is empowered to use any patented inventions for the purpose merely of its own use. It can

also import the patented articles including drugs and medicines for distribution in any dispensary, hospital or other medical institutions. This Clause will ensure that conditions of scarcity of the patented articles, particularly drugs and medicines, leading to their high prices, are not created. The Government will not be required to pay any royalty to patentees in respect of such use of patented inventions. Government use of patents, already granted under the Act of 1911, will, however, be subject to the payment of reasonable compensation to the patentees.

The Bill further provides that the term of patents relating to food, drugs and medicines would be five years from the date of sealing or seven years from date of filing of the complete specifications, whichever period is shorter, instead of the present term of sixteen years. In other fields, this will be fourteen years as against sixteen years hitherto. Science and technology are progressing at a very rapid rate; we are indeed in an era of technological explosion. This means that inventions become obsolete much faster than in the past. This clearly points to the need for a shortening of the term patents.

The Bill also provides that patents in the field of food, drugs and medicines or chemicals shall be deemed to be endorsed with the words "Licences of right", three years after their grant. This would enable persons interested in the exploitation of patents to get licence under such patents, as of right. The royalty and other remuneration payable to the patentees in respect of such licences shall not exceed four per cent. of the ex-factory sale price in bulk of the patented article. These provisions are necessary in view of the imperative need for ensuring that such essential articles are readily available to the public in sufficient quantity and at reasonable prices and that domestic production and development in these fields are not hampered by monopolistic interests. On the other hand, a reasonable return is also ensured to the patentee for invention.

The next important new provision in the Bill relates to revocation of a patent on the ground of non-working. This provision is intended to induce patentees to take prompt steps for working their patents in India, either by themselves or by licensing others for the purposes. The very large majority of Indian patents are owned by non-Indians and the fact that many of

these patents are not worked in India is really one of the serious drawbacks in our patent system today. The Bill provides that after a compulsory licence under a patent has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the grant of compulsory licence, apply to the Controller for the revocation of the patent on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented article is not available to the public at a reasonable price. This provision also stipulates that applications for revocation of patents on the ground of non-working should be disposed of by the Controller of Patents and Designs ordinarily within a year.

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

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

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

The Bill includes provisions for the conclusion of bilateral or multi-lateral arrangements with foreign countries for the mutual protection of inventions on the analogy of the provisions contained in the Trade and Merchandise Marks Act, 1958 in respect of trade marks. These provisions are designed to revise and widen the present section 78-A of the Indian Patents and

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Designs Act, 1911, which is limited to reciprocal arrangements with the United Kingdom and Commonwealth countries only.

In order to ensure that the patent granted under the Act are commercially worked in the country, provisions have been made empowering the Controller to obtain information regarding working of patented inventions and publishing the information periodically for the benefit of the public. Mr. Deputy Chairman, the main object of this Bill is to promote research and invention, to accelerate industrial growth and, through a well-regulated patent system, to prevent the exploitation of a monopoly position.

That it will promote research, there is no doubt. We have taken care to give due protection to the inventor and provided reasonable remuneration to him for his creation. This Bill also ensures that the patentees—both Indian and foreign—get ample opportunity to exploit their invention or to get them exploited commercially by others. Unhindered availability of modern technology is thus assured. However, we have taken care to see that there is no unfair advantage taken of our economic under-development. Would we be justified in permitting our developing economy to be stifled by international cartels on the excuse of transfer of technology? The Bill, therefore, rightly seeks to give Government powers to import and manufacture food, drugs and chemicals, when it feels that the patentee is taking undue advantage of the privilege of patent given to him. Similarly, Government would have powers to ensure that a patent is not used to retard our economic development.

The Bill has gone through a close scrutiny by the Joint Committee of both the Houses of Parliament and the Lok Sabha. It represents, in our own opinion, the best possible consensus between the various sections of opinion and will, I hope, be warmly welcomed by hon. Members.

Sir, I beg to move that the Patents Bill, 1967, as passed by the Lok Sabha, be taken into consideration.

The question was proposed.

MR. DEPUTY CHAIRMAN : One day has been allotted for getting this Bill passed through all stages. There is a considerable number of Members who would like to participate in this debate, and therefore they will have to restrict

their observations to the minimum time possible. There are only two or three minutes to One. I do not think it desirable to call any Member now. Or, Mr. Chinai, would you like to begin?

SHRI BABUBHAI M. CHINAI (Maharashtra) : After lunch.

SHRI AKBAR ALI KHAN (Andhra Pradesh) : We are happy now that the long-awaited legislation has come. I congratulate the Minister.

SHRI SUNDER SINGH BHANDERI (Rajasthan) : You can say it in the Third Reading.

MR. DEPUTY CHAIRMAN : The House stands adjourned till 2 P.M.

The House then adjourned for Lunch at fiftyeight minutes past twelve of the Clock.

The House reassembled after lunch at two of the Clock, THE DEPUTY CHAIRMAN in the Chair.

SHRI BABUBHAI M. CHINAI : Mr. Deputy Chairman, Sir, before I give my views on some major provisions of the Patents Bill, I would like to make some introductory remarks so that the position that I am taking will be clear to the Members of this august House. I know, Sir, that the hon. Minister, Shri Dinesh Singh, while making his observations when he was introducing the Bill did give a background of the Patents Bill. But in spite of that, I would like to have a little repetition, as I have to add a word or two which he has left out.

I have no doubt in my mind that the existing Act which was enacted in 1911 require modification if for no other reason than the fact that it is nearly 60 years old. Many things have happened during this period, and it is only right and proper that our Patent Law should take note of the developments in the world and subserve national interests and aspirations. The story of the present Patents Bill begins with a Report of the Tek Chand Committee which was appointed in 1950. On the basis of this, in 1953 a Bill was introduced and it lapsed. This is the point which I want to make, which the hon. Minister had not made. Again another Bill was introduced in 1965 which was based on the Report of the Rajagopal Iyengar Committee. I had the privilege to serve on that Committee which went into this Bill. This Bill too lapsed with

the dissolution of the then Lok Sabha. The present Bill was drafted in 1967 and it was also referred to a Joint Committee. I did not wish to serve on that Joint Committee even though I was requested to do so, because I was of the view that no useful purpose would be served as the previous 1965 Joint Committee had already made a thorough job of it. May I repeat again that I would like the present Patents Act to be revised? At the same time, I am against the manner in which this Bill is being pushed through.

SHRI ARJUN ARORA (Uttar Pradesh) : You are only opposed to the manner and not the Bill?

SHRI BABUBHAI M. CHINAI : I will come to certain portions of the Bill. Otherwise, as I said at the beginning, this Bill is 60 years old, and it requires renovation, adjustment, etc., etc. Suddenly, a Bill was introduced in the Lok Sabha following the debacle of the Drug Price Control Order. It is being argued by the Government spokesmen that the authorities do not have adequate powers unless the present Patents Act is replaced by a new one. This is the usual but purious reasoning. I do not think any Government in any part of the world including perhaps the Communist countries has so much power vested in them as in our Government.

There are hundreds of pieces of legislation which empower Government to control and regulate almost every aspect of economic life in our country. If Government is unable to do this or that, it is either because there is no political will to seriously go ahead, or Government is incapable of doing it. If the Drug Prices (Control) Order has failed, it is because Government has bungled and worse.

In this respect, Sir, I want to bring to your kind information that when the reduction of price to the tune of nearly 75 per cent. was announced by the Government, it was felt in the city of Bombay that the Government had at last taken a correct step. But within a few days that the prices went up, a Cabinet Minister had to rush to Bombay with the result that he gave an undertaking that the reduction of 75 per cent. would soon be reduced to 50. Even though officially it had not come out that the reduction had taken place, within 16 days of this order, a new order was promulgated by the Government seeking power to increase the prices under Rule 14(a). What does all this mean if it does not mean that a

great bungling has taken place at that highest level in the Government? I, for one, Sir, would request the Government that in their own interest, let them have an open enquiry on this as to who is responsible for creating this chaotic situation and giving a bad name to the Government so that in future they would be more alert to see that at least none of their party men acts in such a manner.

Some of the major clauses of the Bill are such that the very basis of the patent law is made a mockery. The whole theory and purpose of patents is to encourage new techniques and to assimilate these techniques in our industrial life. Nowadays, no single scientist by himself can bring about a major advance in his discipline. Large and huge funds have to be spent and there must be an organisational backing. When huge funds are expended, then there must be a reasonable return, otherwise such expenditure will not take place or the fruits of such expenditure will not be made available. What is a reasonable return represents the cost to the user of the patent and this cost is negligible in terms of better production and greater production.

I have heard it said that before the Second World War Japan was able to move fast in the industrial field because she did not very much care to abide by patent laws. If the industrial development in Japan was impressive in the pre-war period, in the post-war era, it has been nothing short of being miraculous. And this miracle has been brought about by Japan learning to abide by the principle of protection to patent rights and sedulously introducing techniques from other advanced countries to fill the gap. Japan's overseas payments of royalties, which stood at U. S. \$ 39 million in 1957 swelled to U. S. \$ 232 million in a decade's time. It is much more today. If the Japanese economy has been successfully able to maintain a growth rate of 10 per cent. per annum, and if its gross national product amounts to that of Germany and France, it is because Japan wisely opted for advanced techniques, which had already been successfully tested on a commercial basis.

The cost to the Japanese economy by way of royalty payments is very small, for if Japan had imported those commodities which had been made in patented techniques, she would have had to pay many times more than the amount of royalty so far paid. Secondly, by exporting

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the goods made with the foreign techniques introduced, Japan has been able to offset royalty payments. In fact, this is the pattern of growth in other countries, barring the Communist regimes.

One essential point to remember regarding patents is that in all countries the number of foreign patents that are registered is infinitely more than domestic patents. This will be much more so in the use of developing countries. Therefore, the Patent Law must protect foreign as well as national patents. And the reaction of foreign patentees can be ignored only at the peril of industrial development.

Let me now come to clause by clause analysis. Take clauses 47 and 48. These allow the Central Government to import and use either for itself or on its behalf any patented machine, apparatus or article and to import either for itself or on its behalf for use and distribution in any dispensary, hospital or other medical institution any patented drug or medicine in regard to patents to be granted after the commencement of the Act. No compensation is provided for such use and no appeal is open to the patent holder.

The provision grants unlimited powers to the Government in regard to patents to be granted after the commencement of the Act. It will enable the import of goods in circumstances of grossly unfair competition with the home industry. In the field of drugs, particularly, the loss of patent protection over a wide field by placing the Government in a privileged position will completely dislocate the indigenous industry. It will cut into the rights of the patentee and also obliterate one of the purposes of the patent and the licensing provisions, namely, to encourage the domestic industry. The least that should be done is to compensate the patentee for any loss he may incur by the Government importing patented goods. The compensation should be justiciable and there should be provision for appeal to the court, on the lines of section 19 of the Canadian Patent Act, 1952, which is as under.

"The Government of Canada may at any time use any patented invention, paying to the patentee such sum as the Commission reports to be a responsible compensation for the use thereof, and any decision of the Commission under this section is subject to control of the exchequer Court."

The 1911 Act provided for a term of 16 years for all patents and also that the term can be extended by a further period of five years and in exceptional cases, even to 10 years, if the Government is satisfied that the patentee has not been sufficiently remunerated.

Clause 53, as amended by the Joint-Committee, provides that for inventions claiming a process for the manufacture of food, medicines and drugs, the term of a patent will be seven years from the date of the patent, i.e. the date of filling the complete specification, and in respect of other classes of inventions, the term shall be 14 years from the date of the patent. Under the 1965 Bill and 1967 Bill, as originally introduced, the term was 10 years for food, medicines and drugs and 14 years for other patents. This clause has been amended by the Lok Sabha reducing the term in respect of food, medicines and drugs from seven to five years from the date of sealing of the patent, or seven years from the date of patent, whichever is shorter.

The proposal to reduce the term of a patent to seven years which has been further reduced to five years in the case of patents relating to drugs and medicines is not realistic because the holder of patent cannot derive benefit from the invention during a substantial portion of the term.

Mr. Justice Ayyangar had recommended that the term of every patent should be sixteen years from the date of the patent. Wherever a patentee is able to make out a case that his patent has not been sufficiently remunerative, there must be a provision for extending the term of the patent by two periods of three years each.

Clause 87 deals with the effect of a patent being endorsed with the words "Licences of right" under sub-clause (5) in respect of patents in the field of food, medicines or drugs. It is also provided that the royalty and other remuneration payable under a licence shall not exceed 5 per cent of the net ex-factory sale price in bulk of the patented articles exclusive of taxes and commissions determined in the prescribed manner. The ceiling of 4 per cent was provided in the 1965 Bill as also in the 1967 Bill, as originally introduced. The Joint Committee after hearing expert evidence had raised it to 5 per cent. The rate of royalty has, however, been reduced to 4 per cent by an amendment in Lok Sabha.

Under the present Act, royalty is to be determined by the Controller who is directed to secure that food and medicines shall be available to the public at the lowest price consistent with the patentees' deriving reasonable advantage from the patent rights. Mr. Justice Ayyangar has stated in his report that it is not feasible to arrive at a uniform rate of each and every invention and that it is not desirable to fix statutorily the maximum rate of allowable royalty. The proposed royalty of 5 per cent now reduced to 4 percent for the use of valuable patent rights on which vast sums would have been expended on research will not enable the patentee to recover even a part of his outlay, particularly in the pharmaceutical industry which is research-oriented, highly competitive and requires very heavy investment in equipment, men and material. Royalty has to be fixed having regard to the various factors including the nature of the invention and the expenditure incurred by the patentee in making the invention and developing it. Royalty should, therefore, be left to be determined in each case according to merit.

I cannot help pointing out that the overall impression which the new Patents Bill gives is that our Government is completely out of date with the economics of modern technology. It almost appears as if our Government would not want the wide gap between the knowledge of new products, processes and techniques, and the successful application of that knowledge to industry to be filled. I feel sad that this Bill is yet another instance of the lack of clear and conscious strategy for economic development. But at the same time I congratulate the honourable Minister that at least after three lapses of the Bill, he has been able to bring before us a Bill which can be considered by this House. Thank you.

SHRI ARJUN ARORA : Sir, I rise to support the Bill. As the Minister has pointed out and even Mr. Babubhai M. Chinai has agreed, the endeavours which began in 1950 are how likely to bear fruit. As you know, The Ayyangar Commission was appointed to go into the patent law of this country and the needed reform as early as in 1950. The whole episode of one Patent Bill after the other lapsing is a very sad story. At one stage, . . .

SHRI BABUBHAI M. CHINAI : On a point of information. In 1950 it was the Tek Chand Committee that was appointed.

SHRI ARJUN ARORA : All right. The Tek Chand Committee was appointed. It was in 1950. Then came Shri Ayyangar and in 1955 the first Bill came. In 1965 the second Bill was introduced. And the third Bill, which we are likely to pass today, came in 1967. It is a very sad reflection on this government that the process which they began in 1950 is to be completed in 1970. The government, it appears, had no sense of urgency with regard to this important matter of patent legislation in this country. I do not know the full story of the 1955 Bill. But in the case of 1965 Bill and in the case of the 1967 Bill, as a member of this august House, I have some personal knowledge which I am going to share with you.

The joint committee report on the 1965 Bill was presented on 1-11-1966. Why should this important measure have not been passed during that particular session is a question to which the Government has no reply. In the case of the 1967 Bill, as Shri Babubhai Chinai has correctly pointed out, there was no need to appoint another select committee. Within six months of the submission of the report of the previous Joint select committee, a new select committee was appointed and it went on leisurely. I was also its member and I could not help prevent the committee moving leisurely. Even then, the report of the 1967 select committee has been with the two Houses for about six months now. It was submitted in March. There was at one stage doubt if this Bill would be brought before the House during the current year. So, I congratulate the Minister for Industrial Development for this development, though it is a belated development. What has been happening in the absence of a correct legislation and a correct approach on this part of our government, has repeatedly been brought before this House, elsewhere and in the United States Senate. The United States of America commands a great deal of respect in this country, though it does not deserve it in view of its performance in Indo-China. But there are good men in the United States as there are bad men . . .

AN HON. MEMBER : In Russia.

SHRI ARJUN ARORA : . . . in India. The Kefauver Committee pointed out the high prices that Indian consumers, the Indian patients, the sick Indians and the poor Indians have to pay and compared those prices with our per capita income. Recently, another American Senator, Mr. Gaylord Nelson, has pointed out that the United States firm,

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have been over-charging countries like India and Pakistan. He said that over-charging by American drug manufacturers and availing themselves of the U. S. A.I.D., assistance for making supplies to India were so phenomenal that the US AID had claimed a refund of 175,000 dollars.

The Indians have been overcharged. The over-charging is found scandalous by the USA and they get the money back. Similarly, Senator Nelson has pointed out that the US drug manufacturers have been making astronomical gains and he has said that some big US concerns set up subsidiaries in India which in turn supply drugs to the consumers in India at fantastically high rates, even thousands of times higher than the prices ruling in the USA.

Sir, this is the testimony of a responsible Senator of the USA. While all the time this was happening, some of us were more worried about research by the foreigners. We were more worried about many other things and this Bill was kept in the cold storage.

Sir, it is very interesting that a spokesman of the US AID Organisation, while admitting in New Delhi when talking to a UNI representative, the deliberate over-charging, said that the US manufacturers are fair, they have been over-charging all the developing countries and India is not particularly chosen for this loot. It is good for them. But, it takes us to a very difficult position. Sir, it was with a view to checking this sort of thing that a law like this was necessary and that is why I support the Bill.

Sir, it is repeatedly said that this Bill will hinder economic development. Sir, the correct view is that this bill will help economic development in this country.

It will help scientific development in the country and it will help research, particularly research in drugs, pharmaceuticals and life-saving medicines.

Sir, as you know, none of the foreign drug manufacturers in India except CIBA has any research organisation functioning in India. While they have been selling drugs and pharmaceutical products in India at very high prices, they have not been spending—except CIBA—anything on research on the Indian soil and then, about research none of the pharmaceutical manufacturers in India, none of the

foreign concerns or their subsidiaries has indulged in any basic research in India. There is no research and there is no co-operation among them as far as research is concerned.

Sir, in the case of textile industry, at Bombay, Coimbatore and Ahmedabad, our industry, which is an indigenous industry, has combined and set up beautiful and efficient research laboratories.

But in the case of drug manufacturers, though they have been charging us at rates thousands of times higher than the international or the American prices, they have not established any such thing or research. I asked in the Select Committee the spokesman of the OPPI who are the biggest opponents of this Bill :

"I put it to you, Mr. Reece, that your view is that research cost is not allocated to a particular drug. So, there is no question of recovery of the cost on research from a particular drug. You may spend a large amount of money with no results and may spend large amounts and discover a drug which will not lead to large profits. Yet you may discover something which does not cost you much which gives much yield. Is that the position?" Mr. Reece said : "That is exactly the position." Then I asked him:

Would you tell me which of the members of your organisation is engaged in real basic research irrespective of the cost?"

Mr Reece had no reply. But in the delegation was one Dr. S. L. Muthherjee. He said : "I can speak only for my organisation, Sarabhai Chemicals." He claimed that they were engaged in some basic research and had a basic research division. Subsequently, Dr. Siddhu, who was a Member of this House and also a Member of the Committee, pointed out that far from engaging in basic research, Sarabhai Chemicals were not manufacturing anything without foreign collaboration. They were not manufacturing even detergents like Tinopal without foreign collaboration. Even those concerns which claim to have basic research divisions are so devoid of research facilities that they cannot manufacture even soaps and detergents without foreign collaboration. The research is conducted abroad. Its results come here and royalties continue to be paid and intermediaries and raw materials and what not and the know-how and plants are imported without any good being done to the industry in this country.

There is a basic question about the fair rate of royalty. The Bill as amended, by the Lok Sabha which we are considering to-day fixes the maximum of 4% of royalty. I personally feel that 4% is not a fair rate of royalty. It is too high a rate.

SHRI BALKRISHNA GUPTA (Bihar) : It must be 1%.

SHRI ARJUN ARORA : It must be 1% because the current rates of royalties even unregulated royalties, are not 4% or 3%. They are between 1 and 2%.

SHRI R. F. PARTHASARATHY (Tamil Nadu) : Is it the international standard to have only 1% and nothing more than that?

SHRI ARJUN ARORA : I pointed out the international standard. Every country wants to loot the other just as the American drug industry has been looting this country. The US AID Mission says : "We have been looting all the developing countries at the same rate and there is no discrimination." That is considered a fair international standard. We should think of ourselves and not try to become a carbon copy of other countries.

In this country, even though the rate of royalty is not regulated by any law, any regulation, any order, the rates vary between 1% and 2%, and the prevalent rate is of the order of 1.5%. Sir, there are many funny things in the drugs industry. We visited the Glaxo laboratories as Members of the Select Committee. Mr. G.C. Desai, a member of that Joint Select Committee, who is a very keen administrator and a very successful businessman, asked Mr. Mackinnon of the Glaxo laboratories: do you pay anything for research? "No, nothing." Do you pay anything for expertise? "No, nothing." Everything that Mr. Desai, a successful businessman, an ex-member of the ICS, ex-Commerce Secretary of the Government of India, ex-High Commissioner, ex-everything,...

SHRI A. C. KULKARNI (Maharashtra) : Now an M. P.

SHRI ARJUN ARORA : Like Mr. Kulkarni.

SHRI AKBAR ALI KHAN : Now ex-Swatantra.

SHRI ARJUN ARORA : Everything that Mr. Desai could imagine, put to Mr. Mackinnon, was replied by him

saying, "No, nothing." Then some layman in the Committee—I think Mr. Dahyabhai Patel was with us that afternoon—asked, "Are Glaxo laboratories of Britain a charitable organisation that they charge you nothing?" The reply was, "We are paying a small sum of Rs. 50 lakhs per annum to get everything that we want." These are the international standards, Mr. Parthasarathy.

MR. DEPUTY CHAIRMAN : You may now conclude, Mr. Arjun Arora.

SHRI ARJUN ARORA : Yes, Sir. I expected the Government to adopt an attitude which will lead to a progressive reduction in the rate of royalty, but the Government have somehow chosen to provide for the maximum rate, the unpractical, exorbitantly high maximum rate of 4%. I do not want to bring in an amendment because, if this reasonable House adopts it, the Bill may have to go to the other House, and in the meantime the misery of our people may be prolonged by a few months, if not by a few years. I am not bringing forward an amendment. But I must say, Sir, the Government should itself apply its mind and during the next session bring forward an amending Bill on royalty which should prescribe the maximum rate of 1% for royalty.

I have a lot to say on Clauses 87, 88, 89, etc. which I will say when the Clause by Clause consideration is taken up, and I hope you will please permit me then.

श्री सुन्दर सिंह भंडारी (राजस्थान) : उप-सभापति जी, इन्डियन पेटेंट्स एंड डिजाइनस ऐक्ट 1911 वास्तव में बहुत पुराना हो गया और जिस समय में वह बना, यह सहज रूप से अनुमान लगाया जा सकता था कि कोई उन उद्देश्यों को लेकर नहीं बनाया गया जो किसी भी पेटेंट कानून के द्वारा हम अपेक्षा करते हैं। मंत्री महोदय ने जैसे अपने विचार व्यक्त किये, वह किसी देश में रिसर्च करने और इनवेन्शन बनाने के लिये मदद देते हैं, पेटेंट कानून ट्रांसफर आफ टेक्नोलॉजी के प्राबलम को हल करने में मदद देते हैं या इन्डस्ट्रियल प्रोग्रेस की गति को बढ़ाने में मदद देते हैं। मैं समझता हूँ, जब अंग्रेजी शासन काल में वह कानून बना तो स्वाभाविक रूप से यह कोई उद्देश्य नहीं था। ईमानदारी से उद्देश्य यह था कि अगर हिन्दुस्तान में किसी प्रकार से उस दिशा में बढ़ने की इच्छा भी हो तो

[श्री सुन्दर सिंह भंडारी]

विदेशों को पेटेंट देकर यहां की औद्योगिक प्रगति और विकास और अन्वेषण को कैसे रोका जा सके। असल में हमारे विपरीत इसका उपयोग हुआ और यही बात है जिस वजह से कि जिन जिन लोगों को, इस पेटेंट कानून ने किस तरह से देश में काम किया है, इसको जांचने का मौका मिला, तो एक मत से उन्होंने राय जाहिर की, जैसा कि जस्टिस राजगोपाला आयंगर ने भी कहा है। मैं सेलेक्ट कमेटी के नोट आफ डिसेन्ट में से उद्धृत करके कह रहा हूं। उन्होंने कहा कि "भारतीय पेटेंट पद्धति अपने उद्देश्य को प्राप्त करने में असफल रही।" यह बात बिलकुल स्पष्ट है कि वह कानून आज की परिस्थिति और समय के अनुसार ठीक नहीं है और उसको आमूल बदलने की जरूरत थी।

लेकिन यह देख कर मुझे थोड़ा आश्चर्य हुआ कि यह जो कानून हमने बनाया, हमने इसमें केवल पैच वर्किंग किया है—इसको थोड़ा घटा दो, उसको बढ़ा दो, उस पर लागू होता है पूरा तो हमारे लिये कम कर दो, रायल्टी के बारे में विचार कर लो, या ज्यादा से ज्यादा कुछ क्षेत्रों में हम सरकार को अधिकार दे दें। खास कर मंत्री महोदय ने स्वयं सारे बिल में भी, इस सारे कम्पोजिशन में, एक लाइन ड्रा की है : औषधि, भेषज, खाद्य एक, और, दूसरी ओर इन्डस्ट्री। एक तरह से यह एक डिवाइडिंग लाइन है सारे बिल की, सारी स्कीमिंग में, और यह बात ठीक है कि उन क्षेत्रों के लिये जो उद्योग के अतिरिक्त हैं, उनके बारे में कुछ अधिकार रखे गये हैं; पेटेंट देने के बाद भी कुछ सीमाएं उसकी अलग हैं और सरकार ने यह अधिकार रखा है कि अगर उनमें कीमतें ज्यादा हुई, और यह जरूरी हुआ और इसके लिये विशेष परिस्थितियां हुई, तो चाहे पेटेंट दे रखा है या नहीं दे रखा है हम उन चीजों को उपलब्ध करेंगे, और आयात भी करेंगे, राएलिटी भी देंगे। मैं विरोध नहीं करता माडर्न टेक्नोलाजी का, मैं चाहता हूं आधुनिकतम टेक्निक हमारे देश में विकसित हो और उद्योगों में अधिक से अधिक विकास ला सकें, लेकिन क्या हम इस माडर्न टेक्नोलाजी का विचार करते

समय उद्योग, खाद्य, केमिकल्स और दवाइयां इन क्षेत्रों के लिये अलग अलग विचार नहीं कर सकते। मैं एक मौलिक विचार सरकार के सामने रखना चाहता हूं। पेटेंट बिल की आवश्यकता हमने केवल औद्योगिक क्षेत्र के लिये सीमित क्यों नहीं की? यह बचे हुये क्षेत्र के लिये हमको पेटेंट के लिये आवश्यकता क्यों अनुभव हुई? यह एक ऐसा सवाल है जिसका हमको विचार करना चाहिये।

यह कहा जा सकता है कि यह पेटेंट का कानून केवल देश की सीमाओं में सीमित नहीं रहता और उसका प्रभाव अंतर्राष्ट्रीय व्यापार और अंतर्राष्ट्रीय संबंधों के क्षेत्र में भी पड़ेगा। अब यह भी, कहा जा सकता है कि हम अन्न के क्षेत्र में भी, फूड प्रोडक्ट्स के एक्सपोर्ट या रॉ फूड या रॉ मटेरियल उसके लिये भी बाहर माल भेजते हैं। यह कोई हमारे लिये शोभा की बात नहीं है। आज हम अपने देश के बच्चों के मूंह से अच्छी क्वालिटी का अन्न और अच्छी क्वालिटी का फल और अच्छी क्वालिटी का सामान छीन कर बाहर इसलिये भेजने पर मजबूर होते हैं कि हमको अपना बैलेन्स आफ ट्रेड बराबर रखना है। चूकि फारेन करेन्सी को हमें उपाजित करना है इसलिये हम अपनी आवश्यकताओं को काट कर अपने देश के लोगों को सब-स्टैन्डर्ड फूड दे रहे हैं जिससे सारा देश माल न्यूट्रिशन का शिकार बन रहा है। तो भइज इस वजह से कि हमको ये खाद्य पदार्थ बाहर भेजने पड़ रहे हैं, हम अपने देश को भूखा मार कर भेज रहे हैं। यह कोई मार्केट को तलाश करके बड़ा लाभ उठा लेंगे उस उद्देश्य के लिये नहीं है। हम आज अपने देश को एक प्रकार से भुखमरी के, केवल सन्सिस्टेन्स लेवल पर रख रहे हैं। अगर अन्तर्राष्ट्रीय जगत में इस कारण से हमने औषधि का भेषज का और खाद्य का क्षेत्र कानून के हिसाब से बड़ा रखा होता तो कुछ बिगड़ता नहीं था। इससे कुछ हानि नहीं होती बल्कि अपने देश में इस संबंध में किये जा सकने वाले सब प्रकार के अन्वेषणों के लिये मार्ग खुला रहता। इसके लिये हमको बाहर के लोगों के पेटेंट्स को ले लेने के कारण, हमारे उपर कोई विशेष दबाव न रहता। कम से कम अभी भी मैं चाहूंगा कि मंत्री

महोदय इस बात का विचार करें कि इस क्षेत्र में कम से कम औषधि-भोजन व खाद्य के क्षेत्र में किसी विदेशी को हम कोई पेटेंट नहीं देंगे। कम से कम इस क्षेत्र में इस बात को सुरक्षित रखना यह नितान्त आवश्यक है।

अब यह बात हो सकती है कि आज जो औद्योगीकरण की नीति हमने अपनाई है, अपने देश में चल रही है, उसमें साझेदारी है और साझेदारी के कारण आज विदेशी कम्पनियाँ केवल निजी क्षेत्र में ही नहीं बल्कि सार्वजनिक क्षेत्र में भी साझेदारी का काम कर रही हैं। श्री अर्जुन अरोड़ा जी ने केमिकल्स का नाम लिया। यह बात साफ है कि साराभाई केमिकल्स कालोबोरेशन से काम कर रहा है। वह यह जानता है कि हमारे देश में सरकार में भी और जनता में भी यह धारणा बनी हुई है कि अगर किसी चीज पर विदेशी ठप्पा लगा होगा और यह मालूम हो जाय कि यह विदेशी पेटेंट की चीज है तो उसकी 300 गुना कीमत प्राप्त होती है। इस कारण वह क्यों जहमत उठाये अपने इन्डिजिनस मैटिरियल के आधार पर यहां पर चीज तैयार करने की, रिसर्च और डेवलपमेंट के उपर पैसा लगाने की जबकि वह जानता है कि कितनी भी मेहनत हमारे वैज्ञानिक यहां पर इन्डिजिनस सबस्ट्रिक्ट्स के आधार पर करने की कोशिश करें वह चीज मार्केटबल नहीं होगी और उसकी कीमत उतनी नहीं मिलेगी। तो यह सवाल पेटेंट के अन्तर्गत नहीं आता चाहिये क्योंकि यह एक ब्रॉड क्वेश्चन इन्टरनेशनल पालिसी का है। हम कालोबोरेशन के आधार पर कौनसी नीति उसके अनुसार रखना चाहते हैं और किन क्षेत्रों को सुरक्षित रखना चाहते हैं अपने देश के वैज्ञानिकों के रिसर्च और डेवलपमेंट के स्कोप के लिए। तो यह एक अलग विषय है। इसलिए मैं चाहूंगा कि इस मौलिक प्रश्न पर हम विचार करें।

वैसे भी अगर इन क्षेत्रों में पेटेंट कानून लागू नहीं हुआ है तो इसका यह मतलब नहीं है कि इन क्षेत्रों के ऊपर हमारा कोई कंट्रोल नहीं रहेगा मैं समझता हूँ कि मंत्री महोदय ने दूसरे सदन

में यह कहा था कि यहां पर ड्रग्स एंड केमिकल्स ऐक्ट है इनसेक्टोसाइड ऐक्ट है, प्रिवेन्शन आफ फूड एडल्टरेशन ऐक्ट है और भी ऐसे कानून बनाये जा सकते हैं जो उनकी क्वालिटी के संबंध में आवश्यक हैं। नहीं तो एक ही दवा एक ही सबस्टेन्स अलग अलग पेटेंट के नाम पर अलग अलग प्रकार से देश में बिकती है और इससे बड़ा कंप्यूजन क्रिएट हो रहा है। कहीं न कहीं इस चीज का सिम्पलीफिकेशन करने के संबंध में विचार करना चाहिये।

इसलिए मेरा निवेदन है कि प्रारम्भिक अवस्था में ही मंत्री महोदय इस बात पर विचार करें और इस प्रश्न को देखें। हमें पेटेंट चाहिये, औद्योगीकरण के लिए क्योंकि हमको बहुत माडर्न और अपटुडेड टेक्नोलॉजी को आज किसी न किसी प्रकार से अपने देश में लाना है, ट्रांसफर करना है और उस टेक्नोलॉजी को, उस एडवान्स टेक्नोलॉजी के आधार पर हमको एडवान्स करना है ताकि बजाय इसके कि हम वह चीज सीधी फिनिशड गुड्स के रूप में बाहर से न मंगाये बल्कि हम उसका निर्माण अपने यहां करे और इस तरह से अपने देश को उत्पादन में भी भागीदार बना सकें। इसकी आवश्यकता है।

इस कानून में पांच साल के लिए पेटेंट देने की व्यवस्था है। उस स्कीम को तो मैं थोड़ा समझ सकता हूँ और इस पेटेंट बिल को उस क्षेत्र तक लागू किया जा सकता है। लेकिन मैं आग्रह करूंगा और मैं चाहूंगा कि मंत्री महोदय इस स्टेज पर भी केवल यह तर्क देकर नहीं कि इस पर इतना समय हो गया है, हम पहले ही इस बिल को लोकसभा में पास कर चुके हैं और वह कल खत्म हो रही है, अगर हम यहां पर कोई चेन्ज लायेंगे तो हमारे सामने कई टेक्नीकल चीजें आ जायेंगी। मैं चाहता हूँ कि अगर मंत्री जी आनेस्ट हैं इस बात को रियलाइज करने में तो वे जल्द से जल्द अमेन्डिंग बिल लाकर इसके परव्यू को बदल सकते हैं। इस आधार पर मैं इस बिल पर विचार करने के लिए उन्हें आग्रह करूंगा। यह बात हमें निश्चित रूप से मान लेनी चाहिये कि पेटेंट कानून हमारे वैज्ञानिकों के हित में अभी तक काम नहीं कर पाए

[श्री सुन्दर सिंह भंडारी]

हैं। इन पेटेंट कानूनों की आड़ में हमेशा विदेशियों ने हमारे वैज्ञानिकों की प्रतिभा को रोकने की कोशिश की है, उनको स्कोप आफ डवलपमेंट एंड रिसर्च का अवसर प्राप्त नहीं हुआ है। हमारी साइंटिफिक लेबोरेटरीज यहां पर काम कर रही हैं और सारा सी० एम० आई० आर० इस बात के लिए चिन्तित है कि उनके वैज्ञानिकों द्वारा प्राप्त किए गए सबस्टीट्यूट्स और शोधों जो उनकी लेबोरेटरीज में आइडिल पड़ी हुई हैं उनका उपयोग हो लेकिन कॉलेबोरेशन की शर्तों के कारण और पेटेंट के कानून से बंधे होने के कारण हम उनका लाभ नहीं उठा सके, उनका विचार नहीं कर सके। मैं मानता हूं कि फूड के क्षेत्र में, केमिकल्स के क्षेत्र में हम नौसिखिए हैं, प्रारम्भ कर रहे हैं, हम इसमें इंडीजिनस टैक्नीकल नो हाउ की स्टेज तक अपने देश में पहुंच जाये तो फिर इस क्षेत्र के बारे में भी पेटेंट का कानून एप्लाइ कर अपने देश के वैज्ञानिकों को प्रोटेक्शन देने के काम में, इंडीजिनस नो हाउ को आगे बढ़ाने में मदद दे सकते हैं। नहीं तो यह बिल उल्टा हमारी ही गर्दन पकड़ रहा है, हमको दबोच रहा है, हमारी वैज्ञानिक प्रगति के मार्ग में बाधा उपस्थित कर रहा है। इसलिए मैं चाहता हूं इस आधार पर इस सारे बिल की स्कीम पर विचार किया जाय।

मैं एक और बात आपके सामने रखना चाहता हूं। अभी भी सरकार ने कुछ अधिकार अपने हाथ में लेने का प्रयत्न किया है लेकिन रायल्टी का परमटेज फिर से बढ़ा दिया, 5 परसेंट सेलेक्ट कमेटी में हुई, ओरिजिनल बिल में 4 परसेंट थी, पहले भी 4 परसेंट थी।

श्री आर० पी० खेतान : आपकी पार्टी के एक मेम्बर का अमेंडमेंट 5 परसेंट का है, आपका अमेंडमेंट 3 परसेंट का है, आपकी पार्टी का क्या व्यू है ?

श्री सुन्दर सिंह भंडारी : जब अमेंडमेंट रिकार्ड पर फार्मली आ जाय तब सवाल करिएगा। मैं मानता हूं कि अपटु 4 परसेंट आपने रखा है लेकिन अपटु 4 परसेंट भी मिस्चीफ करने में

मदद देता है। हम इसको और घटाएं। मैं इसके लिए सरकार को धन्यवाद दूंगा कि 5 परसेंट से 4 परसेंट मानने की उमने अपनी सहमति प्रगट की है। मैं तो चाहूंगा कि वह इस प्रश्न पर फिर से विचार करके 4 परसेंट के बजाय 3 परसेंट अधिकतम सीमा निर्धारित कर दे। अच्छा तो यह हो कि हम आधे परसेंट से शुरू करें, एक परसेंट पर अधिकतर रहे और एक्सेपशनल केसेज में एक से ऊपर जायं लेकिन 5 परसेंट, 4 परसेंट की मियाद पर हम जायं तो उसका दुरुपयोग हो सकता है। मैं चाहता हूं कि यहां पर भी हम कानून में अपने सब निगणियों के हाथ बांध कर 3 परसेंट पर लाएं और 3 परसेंट के नीचे सभी प्रकार की रायल्टी देने की हम व्यवस्था करें।

मैं चाहता हूं कि बुनियादी सवालों पर हम इतना विचार कर लें। बाकी के जो संशोधन हैं उन पर जो हमें कहना है वह जब क्लोज बाइ क्लोज कन्मीडरेशन आएगा तब हम उपस्थित करेंगे। मैं चाहूंगा कि मंत्री महोदय प्रथम वाचन के समय इन दोनों बुनियादी सवालों पर अपनी राय दें।

SHRI DAHYABHAI V. PATEL (Gujarat): Sir, I think we must congratulate the new Minister for Industrial Development for salvaging this Bill on which this House has spent such a lot of time and expenditure. Not only did we have sittings here, but we had one sitting even in Bangalore.

SHRI ARJUN ARORA: No, no. That was the Monopolies Bill. You have too many committees.

SHRI DAHYABHAI V. PATEL: Yes, It is almost similar, but I thank you for the correction. It is necessary that a Bill of this type should come, but whether this is the right type is the question.

The objective of the Bill should be development of research, which should be encouraged. I doubt whether the restrictions that have been put in this would make it worth-while for anyone to spend a lot of money in research. I would read a few lines from a recent address. I do not know whether Members will be able to guess whose address it was.

"Our country deserves the best, and the fact that we could not hold Dr. Khorana and Dr. Ghandrasekhar

and cherish them is a matter for regret. Yet I wonder whether they could have done their remarkable work had they remained in India. Much dependency is due to our pattern of administration in which the scientist is subordinate to the bureaucrat."

These words are quoted from the person who presides over the bureaucratic administration of this country. Prime Minister Shrimati Indira Gandhi, very recently, I think, just a few months ago, at the Nehru Memorial Lecture, 1968. It is surprising that the person who is in charge, who is the head of the administration has to pass these remarks about the administration. What are we doing about it? Is that not a question that can be legitimately asked and is a Bill of this type is going to remedy the situation? I do not think so. I feel that there is a lot of confusion prevailing in the minds of people on the opposite side, perhaps some on this side also, as to what is the result of this Bill going to be.

Then, we have tried to separate two sides of the Patents Bill, normal inventions for which we receive patents and applications for patents regarding food, medicine, drugs and insecticides. My feeling is that under the plea of giving medicines at a cheaper rate or restricting the prices of drugs, too much power is being sought to be concentrated in the hands of the Government or the bureaucrats. The result will be the same. If there is too much power in the hands of these bureaucrats, growth will be restricted. And failure to use the law as it stood has been made a pretext by some of the bureaucrats to get more power. There is sufficient power under the ordinary law. They have a variety of laws one after another which they could use. They have got the Drug Control Orders, they have the Company Law Orders, they have got all sorts of orders and laws with which they could meet the objective that they want. Here is a case of too many laws, and I do not know whether it is going to give them what they expect or what they hope to achieve by this.

I do not know whether the objective of curbing the use of foreign exchange also will be met. After all, it is the same Ministry, the Trade Ministry, the Licensing Ministry, one after another, that gives the licence.

If the Minister or the Ministry gives licences for certain items, why
3 P.M. blame the trade? The Ministry is

inefficient. Why should an efficient machinery in the Ministry be not set up so as to scrutinise the applications and see whether so much foreign exchange is really required? Is it because we have set apart so many Ministries under so many Ministers with their different Empires, and these Ministers do not talk to each other that this happens?

SHRI ARJUN ARORA : Do they not talk to each other?

SHRI DAHYABHAI V. PATEL : Not in the literal sense. But they are independent in their own way. I do not mean talking as you talk to your neighbour. I mean a helpful dialogue with regard to the business of the Ministry.

SHRI SASANKASEKHAR SANYAL (West Bengal) : Sometimes husbands do not talk to their wives.

SHRI DAHYABHAI V. PATEL : So the objective of curbing foreign exchange could very well have been attained if the law, as it exists, was properly administered. Having failed to do this, they want more power.

Sir, I do not know whether I should begin going into the clauses of the Bill. In brief, I have stated my objection, while I agree generally with the remarks of my two predecessors. Therefore, I would save the time of the House by not repeating them.

SHRI DINESH SINGH: You agree with Mr. Bhandari.

SHRI DAHYABHAI V. PATEL: No. In this matter I do not agree with Mr. Bhandari. I agree with Mr. Babubhai Chinai.

SHRI ARJUN ARORA: He does not support it.

SHRI DAHYABHAI V. PATEL: We are not denying the need for the patent law, but we want a good patent law, a strong patent law that will encourage industry and not favour it. I do not see that in this Bill. The life of the patent, for instance, is sought to be made too short. Would it be worth anybody's while to come forward and spend a lot of money in research? To quote the Prime Minister: Why did Mr. Khorana have to go abroad? Because research facilities were not available here. Why is it not available? Because we have not got the money. Why have we not got the money? Because of Government policies.

SHRI SASANKASEKHAR SAN-YAL : Because it is in the coffers of the big business.

SHRI DAHYABHAI V. PATEL : I do not know how much big business is going to be left after the Bills that have been passed, after the plethora of legislation and the taxation that has come. You have got the Monopolies Act and different taxes one after the other. What is going to be left? And after all, what is going to be the investment in business? How can one invest unless one has got some money to invest? This is the basic conception which people do not seem to realise in this country. Unless a man is able to save a little money out of his current earnings, he is not going to put any in business. Unless one has some money he would not put it in shares and investments. Very little business can be done in this country particularly at this high rate of taxation. And, probably, we have become a high cost economy. Always we have been told that this is a developing country and we are backward. I am not very sure whether we are backward in that sense. We have become backward because of the twenty years policy of the Congress Government. This country used to export cloth to England. The traders of this country had a reputation all over the Far East, Middle East, the Arab countries and the African countries because of their honesty.

DR. (MRS.) MANGLADEVI TALWAR (Rajasthan) : That was in ancient days.

SHRI DAHYABHAI V. PATEL : Madam, that was in ancient days. But that justifies my statement that we are not a backward country and we are not an undeveloped country either. We have become undeveloped because of the gap. And this gap has grown in the twenty years of Congress rule.

All industry has been stagnated because of this idea of control, control, control. Too much of control has hampered the growth of industry. May I say that this is something more in that line and, therefore, I would like the Minister to reconsider it.

SHRI ARJUN ARORA : It is a fact that patent controls others. So, if controls are bad, patents are worse. Therefore, you should advocate the abolition of patents altogether.

SHRI DAHYABHAI V. PATEL : If I were to follow your line, I would not want any inventions in this country.

I want inventions. I want scientists. I want people who work on research to be encouraged; I want them to feel that there is some reward for them. If there is no reward, what will they do? We talk of brain-drain. Why do our scientists and engineers leave this country? Because there is no opportunity for them to do research. Research has become so expensive to-day. A single scientist is not able to do research to-day. It is several men working together as a team who are able to do something in the matter of research. And how could this be done with such type of regulations? Therefore, I would like the Ministers to re-consider the matter. I would like the House to think before it leaps into this. The term of patent, the royalty to be given, all these are matters which are worth considering and re-considering if we want a proper patent law.

DR. (MRS.) MANGLADEVI TALWAR (Rajasthan) : Mr. Deputy Chairman, Sir, before I go to the Bill, I would like to say that the leader of the Swatantra Party has mentioned many things which perhaps this Bill is not meant to cure. He says that all the ills should be cured by one measure, which is certainly not possible.

SHRI A. G. KULKARNI : Do not waste your time on that. You come to your points.

DR. (MRS.) MANGLADEVI TALWAR : Any way, I would wish to congratulate the Government and the Minister for Industrial Development for bringing this measure before this House. As has been said by the previous speakers, this Bill has been long overdue. It has taken nearly 17 years, or perhaps 20 years, for this measure to be brought before Parliament. But I do not agree with the remark made by one of the Members that it was due altogether to the slackness on the part of the Government. Sir, this is an important subject. It required consideration, deliberation and also taking the other people's points of view into consideration as has been done by the Joint Select Committee.

The present legislation replaces the Act of 1911 and reduces the period of patents from the present 16 to 14 years in the case of ordinary articles and seven years in the case of food, drugs and medicines. Sir, that in itself is a great step forward. I am also glad that the amendment moved by Mr. Anandan Nambiar was accepted by the Government which has made this provision more stringent by reducing it to

five years from the date of sealing of the patent or seven years from the submission of patent specifications, whichever is shorter. Another amendment was accepted by the Government, which is also welcome. This has reduced the ceiling of royalty from five to four per cent. I agree with the previous speaker that even the 4 per cent royalty fixed is quite a high royalty and by experience we would learn that it should be reduced in future. The honourable Shri Arjun Arora has said that it should be not more than one per cent. Well, I would not go to that extent. But I do feel that this should be much less than 4 per cent. As it has been pointed by the previous speakers, regarding the Patents Bill committees were appointed right from 1948; committee after committee was appointed. And I am glad that they were appointed because they have done a very valuable work. The last committee was headed by Mr. Justice Rajagopala Ayyangar and that committee submitted its report in 1958. Earlier to that a committee was appointed which was headed by Dr. Tek Chand in 1950. Both these committees recognised that although India had the patent system in some form or the other for over a century, she had not drawn much benefit from it. Both the committees were clearly of the view that it was to India's advantage to retain the patent system. The honourable Shri Babubhai M. Chinai said that even an industrially advanced country like Japan has no patent system. But in our stage of development we cannot compare ourselves with Japan and we have to take measures which are suited to our country under our circumstances. Since 1911 and during the period of these twenty years much has happened in the world. The world has progressed much in the field of technology. The man has reached the moon and is preparing to reach the other planets. And therefore, modifications in the patent regulations are absolutely necessary. Our economy since we attained independence, is being rapidly transformed into a dynamic industrial economy. Indeed there has been a new thinking in the country on the basic purpose served by the patent system. The Patent Bill of 1967 sought to provide a comprehensive law on this subject. It has an important leaning on the national economy. I do not agree with the statement made by two honourable Members of the Opposition, Mr. Babubhai Chinai and Mr. Dahyabhai Patel, that this Bill would obstruct our economy, that this will encourage foreign collaboration and that it will not encourage our own people. This Bill is

designed to encourage our own people, to stimulate inventions and encourage the development and exploitation of new inventions for industrial progress in the country. One of the most important provisions made in the Bill is that the grant of patents under the new Act will be subject to certain conditions specified in Clause 47. I would bring to your notice and the notice of the honourable House only sub-clause (2) of Clause 47—of course, there are four sub-clauses, but I am more concerned with drugs and medicines Clause 47(2) says—

“Any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;”

This is a very important provision in the Bill. Suppose a foreign firm or even an Indian company wants to exploit our market and is not willing to give us the formula or we are not able to make it at the moment, then, we can import, we can get that patent itself, and therefore, the Government can do it for its own use.

Clause 47(4) says :

“in the case of a patent in respect of any medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette”.

This is also very important. In the present context, we all know how the fluctuation in the drug prices has affected us for weeks and months. There is no doubt that the drug prices in our country are much higher than in other countries. This clause will ensure that conditions of scarcity of patented articles, particularly drugs and medicines, leading to high prices are not created. The firm will not be required to pay any royalty to the patentees in regard to such patented articles. That is another advantage to my mind.

I would just mention another point. A very large majority of Indian patents are owned by non-Indians and the fact that many of these patents are not

[Dr. (Mrs.) Mangladevi Talwar.]

worked in India is one of the serious draw-backs in our patent system in India. Some years ago, as Shri Arjun Arora said, the American Senate appointed a committee to go into detail regarding the structure of the cartels that had been set up by the drug industries and other aspects pertaining to this problem. It came to the conclusion on the basis of facts and figures that only 6 per cent was being spent on research and 25 per cent was being spent on sales promotion. This is very important to our country because the sales promotion of these big drug companies is playing a very important role for them, but it is putting us in a very disadvantageous position. It shows that money spent on research is just a fraction of what they spend on advertisements and sales promotion. There is no doubt that Indian drug market is being exploited by the foreign firms in the field of drugs, medicines and chemicals.

Another point is that different trade names are given to the same medicines and they are patented. Many medicines contain the same thing. But because they have different names and they are manufactured by different companies, they are used in the medical world. The prices charged in our country are 100 times, 500 times and even 1,000 times higher. This must be stopped and when the Bill becomes an Act it should be strictly enforced. Enforcement is also very essential. Unless the laws are implemented, all the laws and regulations that we are making into Acts have no meaning.

The Government owes it to our supreme people to see that prices are proportionate to the paying capacity of our people.

Sir, I would give you one example of how different names of different drugs are prevalent in the country. There is a medicine called 'Flagil' and it is manufactured by May & Baker. It is prescribed for dysentery. There are a large number of cheap drugs for this trouble and this is a very expensive drug, but, because it is a new drug, because it is manufactured by a company that has a good name and because these companies see to it that they give large amounts of samples to the doctors, both in the hospitals and outside they prescribe these drugs and, therefore, the public, the patients, have to buy, but some of them cannot and so they go without them.

MR. DEPUTY CHAIRMAN: Please conclude now.

DR. (MRS.) MANGLADEVI TALWAR: Therefore, Sir, I welcome this Bill and I support the Bill.

SHRI SASANKASEKHAR SANYAL : Sir, as a humble lawyer, I find that after a great deal of travail, over nearly two decades and after so much of labour pain, this piece of legislation is going to be a still-born child.

Sir, one question has been occurring to me from the very first day that I have been studying this Bill : Who will give the sanction to the patent? I put this question to everybody. As a matter of fact, informally I approached the Minister some minutes ago, asking him what is the provision for giving sanction and by whom. The relevant Clause is Clause 43. Sir there you will find, in your wisdom, that "Where a complete specification in pursuance of an application for a patent has been accepted and either, etc., etc.,... the patent shall on request made by the applicant in the prescribed form, be granted to the applicant or, in the case of a joint application, to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register."

Sir, there are two conditions in this Clause. One is in the passive voice, that is, something; shall be done and the active voice is "The Controller shall cause the patent sealed". It is only in the marginal note, which is no part of the legislation, that there is a mention of grant and sealing of patent. But, where is the granting? Who will grant? The Controller? And under what provision? Sir, 'seal' has not been defined. Sir, there is, therefore, yet time. I am giving notice to the Minister. Either you bring an amendment defining sealing in the definition clauses to say that sealing includes the power of giving sanction to the patent or, in the alternative, you introduce a rule-making power. Sir, I was staggered to see that unlike so many other Bills such a big Bill is without any rule-making provision in this behalf. If there was a pertinent rule-making provision, you could have said that consistent with the provisions of the Act, the Government will introduce rules for purposes of giving sanction, etc, etc.

Sir, I talked to Shri Arjun Arora whose wisdom I value very much, and I discussed this matter with him. I gave notice to the hon. Minister. There is Clause 43. Except the marginal note, it does not say that any particular authority will grant the patent by sanction. The Controller, will do? What? The Controller shall cause the patent to be sealed with the seal of the patent office. It is peon's job. It is a peon's business. Sir, probably the hon. Minister is surprised at this argument. But, still I appeal to him to reconsider this matter. Either he should bring an amendment by defining sealing to say that it includes the power to give and sanction patent or get a rule-making power by which you can give the Controller such powers of sanctioning. Otherwise, I may tell you, my humble prediction is that this piece of legislation will be a dead letter and will prove the proverbial saying of moving a mountain, but producing a mouse, and that too for nothing. Now, coming to the political aspect of the matter, I have got mixed feelings. Some of the socialist countries are going in for patents. Some of the capitalist countries have abolished or are abolishing patents. Where do we stand? We are in a mixed or unmixed economy. We are just harping stage, crawling and trying to stand. I maintain that the Controller and the Controller's office should not remain merely as a Ministerial or clerical Department. It should be manned with experts. It should have a library, it should have a laboratory and it should be manned by experts and just as there is the P.S.C. so there should be technicians examining everything. The experts, as I have said on many occasions, must be put at the top and not at the tail, otherwise the whole thing will be regimentation of capitalists, regimentation of monopolies, regimentation of research and intellectual pursuits. Anti-biotics that we can purchase for one paisa have to be purchased for one rupee. How to control it? We have so many laws. The Drugs Act when it was introduced here the other day by Dr. Sen, there was so much of table-thumping here to cheer him or congratulate him but after that what has happened? The stranglehold of the capitalists have fallen upon the whole matter and we are now at a disarray. So the whole question will depend upon the implementation of the provisions of this Bill. Therefore I maintain that instead of leaving these matters to the executive bosses, instead of placing the whole thing at the altar of the capitalists why not straight go in for the nationalisation of the whole thing? You induct your experts.

My friend Shri Patel mentioned Dr. Khurana. He is certainly a super-genius. We might not have so many other geniuses here but still we have our talents. If the Government is to recruit the best men and have a nationalistic cadre to pursue this matter and to help, then of course there will be something which will be useful, otherwise the law, as it is, will only give another handle to the monopolists and the stupid, silly capitalists who do not understand the business of protection of the society but who understand only their own business. That apart, I repeat my former submission and I say this very strongly with all the little knowledge that I have as a lawyer that unless you have made provision for making it clear as to who will be the sanctioning authority, this Bill will be a dead letter.

SHRI BALACHANDRA MENON (Kerala): On the legal question that was raised I think there is a case. Somebody must have the right to sanction. It is not explicitly stated and it will be much better if we do it and at least in the rule-making stage, otherwise there is danger. I am also afraid that it might be struck down on that basis and that will be a very unhappy thing if it so happens. From 1969, from the last monsoon session to this, we have been moving a little and that is something to be very happy. First the Hazari report, then the Monopolies Bill and now this and the Bill we are taking up on the 4th, all these show that though hesitantly, we are moving forward.

It is no wonder that we took more than ten years to bring forward such a legislation. In 1965 we thought about it, we discussed it, we brought a Bill, but we had not the courage to press for it. Naturally. Why was it so? Because the Indian bourgeoisie had not yet decided what step it should take. It was still having its compromises with the monopolists, capitalists of foreign countries. It was still believing that, with the large number of Agreements with monopolist countries, with the innumerable Agreements that we had with foreign monopolists, we might be able to industrialise this country. But today we find that it is not possible. We have come to a stage where the Indians bourgeoisie itself is now afraid, and it is fearing that, at the rate at which we are going, there is no possibility of industrialisation of this country independently by us. It is no wonder that Mr. Babubhai Chinai, who represents a Chamber of Commerce, and the most reactionary Indian monopolist should come forward

[Shri Balachandra Menon.]

now here and tell us that this is a Bill which takes us backward. No wonder that he does it because he represents that class which never seriously took up the question of India's progress; they were depending on foreign monopolists. The innumerable Agreements that we had with foreign collaborators—more than 3,000 Agreements with foreign collaborators—clearly show the amount of money that we are spending in the shape of know-how, the amount of money the foreign capitalists are taking out from here as interest, dividends and know-how etc. It clearly shows that this country has been made a happy hunting ground for foreign capital. The worst are the drug monopolists. And what are they doing? (*Interruptions*) I will tell you. They have charged about 300 or even more profits from country like India which though poor is a big market they can exploit very well. They are now charging these high rates—because we have no other go. When that is so, I am glad the Government have come forward and stated that in such and such cases they will have the patent right only for five years. That is a correct stand. I am not one of those people who believe that our country can not have its own know-how. We are capable of having it. Innumerable youngsters of this country have really invented quite a number of products. I have seen how one of our brilliant scientists has been able to get protein from sea-water, which no other country except France has done. It is only France which is attempting it. No other country has done it. And if we move forward quick, we will be certainly the first in this field. There are so many things like that. And why is it that our industrialists don't encourage Indian know-how. Because they come from a class which never believes in work. They were people who were high-placed, high-class people, people who were just traders. And when they found that they had an opportunity to get at industries, they took to them. That is how the Indian industrialists have progressed. In the case of other places like France or England we have seen how an ordinary artisan, or an ordinary middle-class man starting a small industry turned out to be a big industrialist. Here it is the other way round in that it is the big merchants, the big capitalists, who got the industries. This is what is happening. India had capital even during the period of Asoka, but he could not industrialise the country because it was trading capital. And now, after the First World War, the big trading interests

have captured the industries with the help of the foreign capitalists. They are not very serious about industrialisation. That is why they don't encourage research. I am glad that food, drugs and medicines are treated as a category apart and in the case of medicines they have included in that category insecticides, germicides, fungicides and weedicides, which help to protect plant life.

These have been brought on in the interests of our agriculture and it has been rightly done. Now, so many of the recently developed countries like Japan have taken the Patent Law only very late. They had no patent law. When there is an industrial base already, they have come forward for Patent legislation. Till then they never wanted to have any patent law. So, is the case with Russia. China, which is marching forward, does not want any patent law now because it has a new industrial base, thanks to the help which the Soviet Union gave. But we are not in that position. When we are not so naturally we have to depend to an extent on foreign know-how and to that extent we will have to compromise. I can understand it fully well, but it should be done in such a way that it should not harm us much.

* Now, the monopoly interests will not allow our patents to come up in this country. More than 90 per cent of the patents are with the foreigners. A plea has been put forward that this is the case with almost all the countries. It is not the case with America. It is not the case with Germany and it is not the case with Japan. These are the three countries which today count. Most of the other countries have become, more or less, satellites. You have been telling us that independent socialist countries are satellites. I can tell you very well that now Britain, France and all these countries have come to such a stage that they are not in a position to make such advancement as they did previously. These three big countries have their own patents which certainly are much more than the foreign patents. Here in this country it is more than 90 per cent. That is the whole difficulty. So, I suggest that we should give encouragement to our own people, who are prepared to invent. In such cases, the State sector industries must devote a little more attention to this and set apart sufficient money for such inventions.

In the case of small industries also they are capable of inventing and let them be helped. Let our laboratories be helped.

It is no use depending helplessly on the foreign monopolists. I am sure there will be so many in foreign countries who are prepared to help us. Under the present conditions of monopoly capital, even those who have invented certain new processes, cannot sell them immediately. Until the monopolists are sure of their market, they will not come forward. They will do it only at a later stage. When the whole process has been invented and taken up by small fellows, they just eat it up. That is how it is being done. So, even in advanced countries, where the monopolists still dominate, you will see that those people who invent are not immediately being recognised. They will be recognised only at a later stage, when they find that their products can have a better market, the invention is adopted when they find that their machinery has become obsolete and new machinery has to be put up. Then, they will come forward for the new process. This is what has happened. This is what monopoly is doing and that is how monopoly restricts intelligent people from coming forward and making their own inventions and having their own patents. In such cases they may be prepared to help us, provided we give sufficient inducement to them. During this period of the monopoly stage of capitalism, I am sure there is no such possibility of the small man ever doing anything much in any advanced country. In the developing countries they will be able to come forward. In the developing countries, they will be able to help a good deal. In other countries they will be used only at a later stage when the monopolists decide that they should use them. Only when they are sure of maximum profit the monopolists go in for new inventions. As such this is the time for us to get foreign talents even if we pay them highly. Not the patents but the man is what we want. When our men don't have the know-how, let us buy the know-how from outside.

Here is also an opportunity. This Bill definitely gives you some help for that also. One of the interesting clauses that I found—and that is correct also—is regarding the compulsory licences. It is quite good. In cases where a man is not prepared to see that the process is being taken up for a product and he does not do anything for bringing out that product, what the Government has to do is to bring out a compulsory licence and hand it over to such people who are prepared to do it. This is a very fine thing and you have taken it up. This must be followed. I am sure there are so many instances where they are not making use of the process.

MR. DEPUTY CHAIRMAN: You wind up.

SHRI BALACHANDRA MENON: I would only say that even though this is a hesitating step even though you have allowed 4 per cent as a sort of compensation or royalty which has to be paid in case you take up any of these patents—up to 4 per cent—even that is a big thing in a country like India which is so huge. Four per cent in Netherlands on the whole turnover will be small, but 4 per cent in India is going to be a very big thing. What is 10 per cent in other countries will be 1 per cent in India, because it is such a huge country, and that is why I say even this 4 per cent is very high. It can be very well brought down and attempts must be made to see that we bring in an Amending Bill at a later stage after considering the situation as to whether we can reduce it to 2 or 1 per cent. That will be sufficiently big.

Lastly, I would request the Government to take more interest in the case of these young people who are prepared to spend their time and their energy for inventions. Let the State sector make use of them. Let every State sector reserve a certain portion of its funds for research work. That must be done and we should not depend upon others. Even in the case of small spare-parts we have now to depend on others. Why should we do that? We should be in a position to do all that. I would request that more money should be set apart for this by every State sector, for furthering research work. Thank you.

SHRI A. G. KULKARNI: Sir, I stand here to support the Bill. The objects of the Bill and its assessment particularly must include promotion of research and invention and acceleration of industrial growth. Sir, this is very important in any Patents Bill—or whatever you call it—of any country, if it is in existence or it is going to be introduced. Particularly, Sir, this research and development of industrial growth are absolutely necessary particularly for developing nations, for developing countries. But at the same time in a developing country care must be taken that the patent system must be used in preventing the exploitation of the market and consumers by a handful of persons. This particular Bill is going to prevent that exploitation of the market and the consumers by very few people. In this connection I think that certain provisions of the Bill are quite adequate, but at the same time I look at this Bill from another angle, whether it is going to improve our

[Shri A.G. Kulkarni.]

chances of developing technology, indigenous technology in the country as well as attract foreign technology in respect of sophisticated products wherever necessary for production in the country itself. In this connection I really think that this country cannot afford to move in isolation of the developments in other countries. Sir, no countryman should envision that the development or import of foreign know-how is anti-national; he should not take that view. Particularly in a country like ours where an industrial base has been created, we are in such a position that more industrial technology can be developed and if we have to go to a take-off stage, more foreign technology will be required. I understand that. In this connection, the Patents Bill can be made use of for this purpose, so that we can bring in sophisticated technology wherever necessary, and the Government has got adequate powers under the Bill concerned. But what I am anxious about is the implementation of the provisions of the Bill, and the rigours of bureaucracy should not be there to this extent that foreign investment is inhibited by the implementation of the Act and the rules framed under it. Particularly, foreign investment is necessary in this country in some highly sophisticated fields and that is why I desire that the Industrial Development Ministry should be more careful to see that foreign investment is not frightened by the passing of this Patents Bill or by the implementation of any such Act. Particularly I have to bring to the notice of the House that we have really now to take an overall perspective of the technological development in this country when this Patents Bill is being enunciated and is being passed by this House.

Sir, there was recently a Seminar on Technology of the 70s and I was really very happy to read the Report of that Seminar. I was enthusiastic to go through this Patents Bill to see and find out if it can achieve the objective. A science policy commensurate with the overall picture of the technological developments in this country has to take place. Why do I say this? I know that naturally we are spending on technical development. But the foreign collaborators, particularly in the drug industry or in the other type of industries which are highly sophisticated, industries like the polyester yarn or nylon yarn, they are taking the benefit of the market price and the market differences in the import and other domestic prices. Here this

type of development is more necessary and indigenous development of such type of research and development will be called for. It is on record that some forty thousand to fifty thousand scientists are already working in this country in the scientific and other types of laboratories. Harnessing their energies for the internal development of technology will be necessary. A long-term perspective of this technological development or what you call a science policy, is necessary where the intention should be to increase more our own indigenous technology through the patents already available or through the technology already developed in our National Physical Laboratory or through the CSIR, and the entire set-up of this development and research should be so geared that it should have a practical economic approach. Otherwise, research carried on in isolation now-a-days in this country will be of no use. The intention of a long-term perspective of technological development should take note that intentions and economic relation be closely linked so that it will be a worthwhile pursuit.

Sir, when there is apprehension in the expert opinion available that the foreign investment or foreign technology will be scared in this country, it will be worthwhile for the Industrial Development Ministry to develop a viable base of indigenous technology itself. That point I was mentioning in the earlier stage also. Sir, why do I say this? If you look to the spectacular progress made by Japan it was not done in the hope that industrial technology should be developed, but they went massively for import of technology till they developed their own technology. There was, what you call, the golden mean between these two. Develop this nation like Japan. I think the use of this Patent Bill should be in that direction and the implementation should be in that direction where there will be a viable base of indigenous technology. At the clause by clause reading stage I will offer my comments.

श्री बालकृष्ण गुप्त : उपाध्यक्ष महोदय, मुझे यह देख कर बड़ा आश्चर्य हो रहा है कि 1911 ई० से 1970 ई० तक अंग्रेजी सरकार का जो शोषण का बिल था, जो हिन्दुस्तान का दोहन और शोषण कर रहा था, वह 23 वर्ष तक स्वराज्य के बाद भी चलता रहा और हमारी हिन्दुस्तानी टेकनालाजी ब्रिटिश टेकनालाजी की गुलाम बनी रही और विदेशी बड़ी

बड़ी कम्पनियां हमारे देश को लूटती रहीं और आज तक लूट रही हैं। सैकड़ों करोड़ रुपया, अरबों रुपया हमारा हिन्दुस्तान का ब्रिटिश पेटेंट्स, अमेरिकी पेटेंट्स, जर्मन पेटेंट्स के पीछे देश से बाहर चला गया और हम पूँजी के अभाव में वैसे ही लड़खड़ाते रहे और वैसे ही अभिषुत पड़े रहे। जापान ने, रूस ने और इटली ने अपने यहां पेटेंट के ला. को शुरू में नहीं लागू होने दिया और बड़ी भारी औद्योगिक तरक्की कर ली और हमारी जब बात चली तो हमेशा ये देश जो कि हमारे देश को लूट रहे थे वह यह कहते रहे कि हम पिछड़े हुए देशों की मदद करना चाहते हैं और उनकी बड़ी-बड़ी कम्पनियां, तेल कम्पनियां, केमिकल कम्पनी, जिसका भारत की गवर्नमेंट के हिस्से में एक्स-प्लोसिव में और पेट्रोलियम में हिस्सा मौजूद है, लीवर ब्रदर्स जैसे केयरमैन आज स्टेट ट्रेडिंग कॉर्पोरेशन के मैनेजिंग डायरेक्टर बन कर उन विदेशों को हमारा धन लुट रहे हैं, ये सब चल रही हैं।

मुझे कुछ तो राखी है कि आज एक पेटेंट बिल आया है, लेकिन फिर भी जितनी खुशी होनी चाहिये थी उतनी नहीं है; क्योंकि इसमें भी फारेनर्स को, हमारे देश को लूटने की पूरी गुंजाइश है, वह बार-बार उसी पेटेंट को फिर थोड़ा सा अदल बदल कर के रजिस्टर करवा लेंगे और हमारे देश को लूट खसोट उसी तरह से चलती रहेगी। हिन्दुस्तान के बनिये और व्यापारी एक परसेंट, दो परसेंट पर काम करने को स्वराज्य के पहले तैयार रहा करते थे और यह 4 परसेंट जो आया है, वह बहुत ज्यादा है।

मैं तो समाजवादी हूँ। मेरे दोस्त श्री मधु लिमये और श्री गोड मुराहरी ने इस सेलेक्ट कमेटी की रिपोर्ट में मिनिट आफ डिसेंट भी दिया है और कह है कि पेटेंट, कॉपीराइट और रायल्टी वगैरह हमेशा के लिये खत्म होनी चाहिये। अगर हमें देश को एक बड़ा औद्योगिक देश, इसको 55 करोड़ के लायक देश बनाना है तो यह सब चीजें छोड़नी होंगी और यह विदेशी शोषण वन्द करना होगा।

[THE VICE-CHAIRMAN, (SHRI AKBAR ALI KHAN) in the Chair]

अभी अभी अर्जुन अरोड़ा साहब ग्लैक्सो की बात कर रहे थे तो मुझे एक व्यापारी ने बताया कि यही ग्लैक्सो कम्पनी स्टेट ट्रेडिंग कॉर्पोरेशन का एजेंट हो कर फ्रांस में 2 रुपये किलो में मिल्क पाउडर खरीदती है और वही स्टेट ट्रेडिंग कॉर्पोरेशन को 7 रुपये किलो में सप्लाई करती है और फिर उनसे वापस खरीद कर के कुछ और चिजें मिला कर के 11 रुपये में फी मिल्क पाउडर के डिब्बे को बेचती है और वह भी कभी-कभी इतना कम मिलता है कि उसमें ब्लैक मार्केटिंग हो जाती है और चार-चार या पांच-पांच रुपये एक डिब्बे में ब्लैक मार्केट का चलता है। यह हाल तो इन विदेशी कम्पनियों ने हमारे शिशुओं का, जिनको दूध नहीं मिलता और जो बेबी पाउडर पर अवलम्बित हैं, उनका कर रखा है।

अभी दवाओं का बड़ा भारी जिक्र आया। अर्जुन अरोड़ा साहब ने सेनेटर मैसफील्ड का जिक्र किया जो कि अमेरिकी सेनेट के बड़े सम्मानित सदस्य हैं। हिन्दुस्तानियों के बारे में अक्सर इनवाइसिंग, अंडर इनवाइसिंग की बात तो चलती है, लेकिन ये कम्पनियां वहां से जो माल बेचती हैं, उस पर हजार परसेंट, यानी दस गुना, दाम वहीं ले लेती हैं। वह हमारे फारेन एक्सचेंज को ही नहीं विगाड़ती, हमारे देश में गरीब और बीमारों का भयंकर शोषण कर रही हैं। मैं आपसे क्या कहूँ, पेटेंट बिल तो बड़ा डास्टिक होना चाहिये अंडर डेवलप्ड कंट्रीज में। इसमें पांच, सात और चौदह सालों की जो मीयादे दी गई है, वह भी बहुत अधिक है। यहां पर ज्ञान और विज्ञान की बातें तो बहुत चली इधर से लोगों ने इसके बारे में बोला, लेकिन मुझे एक भी वैज्ञानिक हिन्दुस्तान का नहीं मिला जो किसी पेटेंट के जरिये करोड़पति हो गया हो। अमेरिका में तो एडीसन माहब, कौर्डन साहब और न जाने कौन-कौन माहब हुए, जिनके खानदान अभी तक करोड़पति हैं, लेकिन यहां पर विज्ञान की बातें तो चलती हैं कि इतना बड़ा हो गया है लेकिन जब तक शो

[श्री बालकृष्ण गुप्त]

वैज्ञानिक किसी लेबोरेटरी में ख्याति प्राप्त नहीं कर लेते उनको कोई नहीं मानता। अमरीका वालों ने डा० खुराना को कई करोड़ की लागत से लेबोरेटरी दी है और उन्हीं के नीचे वहाँ के वैज्ञानिक काम करते हैं, तब उनको लाभ हुआ है। हमारे यहाँ तो रिसर्च और साइन्स दोनों का बुरा हाल है और जब तक पुराने पेटेंट्स को लेकर, अंग्रेजी, अमरीकी, जर्मन, स्विस् और फ्रेंच कंपनियाँ हमारे देश को लूट रहीं हैं, तब तक उसमें सुधार की गुंजाइश नहीं है। दवाइयों के अलावा "एस्सो "स्टैन्डर्ड" आइल कंपनियों ने अपनी रिफायनरीज बनाई है और जो ईरान में हमको पार्टनरशिप में कूड़ आइल मिलता है, उसका उपभोग नहीं करने देना चाहती और उन्हीं कंपनियों के मुंहमांगे दामों पर तेल हमको मिलता है। अन्डर डेवलप्ड कंट्रीज को ऊपर उठाने का प्रोग्राम प्रेसीडेन्ट होवर ने पौइन्ट फोर का चलाया था, फारेन ऐड देना के नाम पर, लेकिन जितना फारेन ऐड देते हैं उससे कहीं ज्यादा देश से लूट कर ले जाते हैं, इसलिये यह देश इतना पिछड़ा हुआ और गरीब है। औद्योगिकरण जरूर पश्चिम की देन है, पश्चिमी देशों ने पहले पहल विज्ञान के जग्ये रेल निकाली, जहाज निकाला, हवाई जहाज निकाले, ये सब चीजें निकाली और हमको बीस-बीस, पचास-पचास, सौ-सौ करोड़ रुपये देकर एयर इंडिया के लिये, इंडियन एयरलाइन्स केलि ये, हवाई जहाज खरीदने पड़ते हैं, उन हवाई जहाजों के इंजन पर कितना पेटेंट का रुपया भरा पड़ा है। हमारे यहाँ एयरक्राफ्ट तैयार नहीं होते। कल ही तो मैंने इन्डियन एयरलाइन्स का टाइम टेबल देखा तो पाया कि कई सर्विसेज हिन्दुस्तान में कटेल कर दी हैं कम कर दी हैं क्योंकि हमारे पास अपने हवाई जहाज नहीं हैं। यह सब देख कर मुझे यह लगता है कि पेटेंट, रायल्टी, कापीराइट के कारण हमको दुगुने तिगुने दाम देने पड़ते हैं, इसलिये वह तीनों ही समाप्त कर देने चाहिये, उनके इन्वेन्शन की नक़ल कर के, जैसे कि जापान ने किया है, जिस तरह से चीन और रूस कर

रहे हैं। तो उसी तरह से रास्ते अख्तियार करने चाहिये नहीं तो इस तरह दाम चुकाते चुकाते हमारी रीढ़ की हड्डी टूट चुकी है। हमारे 40 करोड़ गरीबों की तसवीरों को विलायत के टेलीविजन पर दिखाया जा रहा है। वह गरीब हमें कभी माफ नहीं करेंगे चाहे इंदिरा गांधी और दिनेश सिंह कुछ भी कहते रहें। गरीबों के शोषण का अंत कभी नहीं होगा जब तक यह पेटेंट का तरीका बना रहेगा। इम्पीरियल टुबेको कंपनी लंदन ने अपना नाम इंडियन टुबेको कंपनी रख लिया है, उसमें बड़े-बड़े काश्मीरी लोगों को रख लिया है, मोटी-मोटी तनख्वाह में और उनके द्वारा हमारे देश का भयंकर शोषण कर रहा है। "गोल्ड फ्लैक" और "कैप्सटन" का जो ब्रैंड यहाँ चलता है हर ब्रैंड में एक आना डब्लू विलायत चला जाता है। (Time bell rings.) यह एडव इजमेन्ट का तरीका, यह प्रचार का तरीका एक फ्राड है। इसको हम बंद करें तब हमारे देश का कल्याण होगा और तभी हमारी गरीब भूखी जनता ऊपर उठ सकेगी।

अभी जो देश की हालत है उसको देखते हुए इस बिल से भी मैं संतुष्ट नहीं हूँ, इससे भी इरास्टिक बिल आना चाहिये, लेकिन फिर भी इस दिशा में पहले पहल यह कदम उठाया गया है, इसलिये मैं इसका स्वागत और समर्थन करता हूँ।

4 P.M.

SHRI T. CHENGALVAROYAN (Tamil Nadu): Mr. Vice-Chairman, Sir, it seems to be a very strange and singular fortune that whenever I have the privilege and honour of addressing this House, you should happen to preside. And that gives me a particular pleasure and a unique satisfaction that whatever I may have to say by way of observations on this Bill, your good nature will incline you to some degree of indulgence. I have very great and genuine pleasure in lending my feeble voice and vote in respect of this Bill particularly with regard to the purpose with regard to the provisions and with regard to certain policies underlying this Bill. As I was poring over the voluminous report of Mr. Justice Rajagopala Ayyangar on this very important and far-reaching question of the codification of the

law of patents, I was struck by this on cardinal principle that the law of patents as envisaged from the early middle centuries in Great Britain had itself had to undergo a very great change. It was as you know, Lord Halsbury who said that a patent is nothing but an exclusive privilege for utilisation and enjoyments. Even Lord Halsbury in his monumental work on Laws of England was pleased to observe later on that that was the 19th century concept of law and now after a great change, a very cataclysmic change, in the evolution of legal principles and concepts, particularly on the notion of property, it has become fairly settled that that principle or concept underlying the law of patents has considerably altered. If today this Bill has got any great attraction for a socialist emulation, I submit with very great respect that many provision of this Bill are in line with such socialist endeavour. I must say with great respect that the law of patents, as obtaining in our country, particularly the Patents and Designs Act, 1911, was nothing but a pitiable replica of the British model and we never had the British model of industry and industrial development. Therefore, it became all the more necessary for us to give a certain reorientation to the fundamental basis of the law of patents and I am very glad to state that this Bill is a very noble and notable attempt in that direction. I may, very briefly within the course and compass of a short address, make some observations with regard to certain very good provisions, if I may say so, of this Bill.

The first thing that strikes me very much and impressively is with regard to the prohibition of certain patents and certain inventions in certain areas which affect the people at large. For example, the non-patentability of matters relating to drugs, food, medicine, and other matters which are impressed with public interest, is a very salutary provision in my respectful submission. The second non-patentability is with regard to certain inventions which have a bearing and relevancy to the question of atom energy within the meaning of Section 20 of the Atomic Energy Act. These provisions I very respectfully commend for the acceptance of this House.

The other provision which is rather impressive is with reference to the necessity for information and for undertaking of patents in regard to foreign countries. In fact, if you will look back how the patents law and practice has been worked in our country over the last so many years,

it gives us a very clear picture of the exploitation and the emasculation of our national development process in regard to foreign patents.

This provision which requires information and undertaking of the foreign applicants is, in my submission, very necessary.

Thirdly, we have the provision with regard to what is called a compulsory licence and in fact it is a very new concept that this present Bill has introduced in the law of patent. In one sense it may be argued, perhaps very faultily, that the law of patent envisages, what may be called, certain singular protection for the person who has the patent and at the same time this provision for compulsory licence would be rather antagonistic to this very basic concept. A very careful reading of this provision will give an answer to this question that this question of compulsory licence is necessitated because of the utter failure and callous neglect of the person who has worked out the patent. There are two circumstances which the Bill envisages for the purposes of compulsory licence. In the first place if it is not possible for the person to work and utilise that patent within a reasonable time, then that situation will attract the provision for the compulsory licence; or, if the process of such utilisation will not be available at a reasonable price and with the available time, then also it could be a matter for compulsory licence. I wonder, Sir, who in this country can ever have any objection to this provision of compulsory licence.

There is the other provision more or less analogous and flowing from this provision of compulsory licence and that is the provision relating to licence in right. That means, if a person could not exploit that patent or is unwilling to exploit or is willing to exploit it at exorbitant and socially unconscious methods and manner, surely the Government takes power under this Bill to acquire that licence and give it to such other person or persons who will suitably exploit it for the benefit of the public.

Then there is this provision with regard to, what we may call the question of acquisition of patent for the governmental purposes. I have gone through that provision very carefully and if I could just give a parallel continental provision to this, I could think only of the law of patent in West Germany where the Government has taken the power—plenary-power—

[Shri T. Chengalvaroyan.]

for the purpose of acquisition of patent rights. Sir, we have the Land Acquisition Act. We have the acquisition of several undertakings and if we understand the economic philosophy and the social object behind that acquisition it is ultimately for the benefit of the public and for public interests. Therefore, I must very respectfully congratulate the Government on this very bold step they have taken for acquisition of patents for the purposes of the government.

As I was reading that provision, I had a kind of nervousness to find out whether the Government has taken this power of acquisition without a corresponding protection for compensation. I am glad to say and, therefore, I feel grateful to the Government for the next provision that was made in the Bill that in regard to such acquisitions there would be the question of compensation. Not only it is a question of compensation which is left to the sweet will and pleasure of the bureaucratic decision or the autocratic whims but it has been left to the justiciability of the court. I must very respectfully offer my sincere thanks as a votary of the rule of law and as a person who will worship at the shrine or tabernacle of the judiciary of the country for upholding all the rights. I must offer my sincere support to the provision with regard to the justiciability of this question of acquisition by the Government for governmental and public purposes.

There was one question that was incidentally mentioned by my esteemed friend Shri Babhubhai Chinai and he was rather exasperated when he said that there is no provision for compensation. He was here and I would remind him when I see him next that this provision for compensation not only provides for compensation, but it is justiciable in a court of law. I am sure that the conscience of my friend Shri Babhubhai Chinai must be eminently satisfied.

I will answer only one criticism that was made by my legal friend when he said that there is no power taken into the Bill for the purpose of rule-making in order to implement the provisions of this Act. I must draw your kind attention and the attention of this House to the...

SHRI SASANKASEKHAR SANYAL : I did not say that. I said that the rule making power cannot be extended towards including the definition of the concept.

SHRI T. CHENGALVAROYAN :

My learned friend should know as a lawyer that a rule-making power gives without prejudice to the generality of the foregoing powers and especially with reference to the stated subjects in the rule-making power. It is now a modern draftsmanship skill that there is an interpretation clause in the Bill. Then, I would ask my learned friend to put that question if, after working this Act in the initial stages, the Government finds that instead of giving definition and a statutory definition for sealing in the rule-making power itself, whether there could be an interpretation clause where the sealing could be defined.

Therefore, Sir, I shall submit that on the whole this Patents Bill is, if I may say so, with great respect and with considerable felicitation to the Minister for Industrial Development, who is extremely handsome and who has done handsomely in this Bill, absolutely and patently fair which requires to be supported by this House. Thank you.

SHRI DINESH SINGH : Sir, I am most grateful to the hon. Members for their kind words that they have said with regard to this Bill and for the general support that they have extended to it. Now, there have been some general remarks made and I shall attempt to answer them at this stage. Then, when we come to the clause-by-clause consideration, I shall go into the specific points that the hon. Members have raised.

There have been two voices expressed. One is that the Bill is too liberal and the other is that it is a strong Bill. Now, that shows that, as I stated in my opening remarks, we have tried to take into account the views of all sections of the House and that this is the best possible consensus, keeping in mind our national objectives. And, the fact that we have been able to arrive at this consensus is in itself an indication that there is understanding of the need to have this new Bill and also to have this Bill as an instrument for encouraging economic activity and for preventing exploitation.

Now, Sir, a doubt has been expressed that this Bill may prevent transfer of technology because of certain facilities that it has given to the Government to avoid exploitation. Now, that would not be correct at all, Sir, if you will bear in mind that there has been a very strong move from all the developing countries that the transfer of technology from the

developed countries should be made as easy as possible. In fact, this was one of the resolutions of UNCTAD over which I had the honour to preside when it was held in New Delhi. That transfer of technology to the developing countries must be made as easy as possible. And, this is only appropriate because we have had a long period of foreign domination when our economy did not have free play with the result that many countries, at our cost, have acquired considerable technology and it is only right that we should be able to get it and therefore, the provisions that have been incorporated in the Bill are not provisions which will hamper transfer of go technology, but would give fair return for the technology that comes and it would save the developing countries from the exploitation that has been going on.

On the other hand, a voice was raised by the hon. Member, Shri Bhandari that we should do away with patents in drugs and medicines in full. We went into this question very carefully. There were examples of countries which had done away with patents in this regard. It was the example of Italy which was cited and then we saw that even in the country where they had done away with this patent as in Italy, they are now reverting to patent on drugs and medicines, because there was certain misuse of it. India is at a stage of industrial development, scientific development, where our own people are now engaging themselves in innovations and if we did away with patent in this, then we would also be making it difficult for our own people to go into research and development and especially for bringing out new innovations.

Then another question was raised that we should discriminate in this and say that we would have no patent for foreigners, but we would have it for Indians. It is within our sovereign rights to do that but it would make it difficult for us to join any international association dealing with patents where discrimination will not be allowed and as a member of the community of nations it would be to our advantage not to bring about a discrimination of this nature. We had this looked into and so far as our research reveals, there was no country which had gone into discrimination between its own nationals and foreigners in this respect and that is why the Government

took these powers to see that there is no undue exploitation on the one hand, and prevention of technology being passed on to our people on the other hand for our own research and development and if the Member would see the balance, on the one hand we have shortened the time, we have placed a ceiling which is 4% but which we hope will not be exercised to the real limit and it would be at a very much lower level and then at the same time we have to continue this patent and are taking certain powers by the Government that in the totality of all these measures, the purpose that the Member has in mind will be served that it will be possible for our people to go into the manufacture of drugs, in chemicals and in foods within three years of the granting of the patent on payment of royalty to be fixed by the Controller. After 7 years from the date all particulars are provided or 5 years from the date of the dealing all royalty will end and the patent will end and then they will be free to manufacture. The time has been so fixed that it will avoid any exploitation, that it will give full freedom to our manufacturers to come into this field.

The question of royalty was also raised that 4% was too high. We do not see that all royalty will be at 4%. This is the ceiling, it will be the maximum. It has been provided because we may have certain new, very sophisticated drugs coming up for which they may require a higher royalty and in exceptional cases to see that our people are able to get the drugs which are the latest in the world and that we are able to manufacture them as quickly as possible we may have to give royalty at a higher rate but then a gain this is for a very short period. The whole patent comes to an end within 5 years and therefore the Member will appreciate that we may have to pay a little more for giving royalty at 4% but in the balance it will enable us to get the latest medicines almost immediately and then the period being short, it will not lead to exploitation and it will not lead to payment over a length of time for these medicines. Most of the countries for other goods are really giving patents for 16 years and even more and this is the first time that any country has introduced these checks and balances which will enable a developing country like ours to prevent exploitation and as I mentioned in the opening remarks, this may become an

[Shri Dinesh Singh.]

example for other developing countries to follow.

The question was raised whether this Bill will inhibit development of technology in our own country and I said it will not. In fact it will encourage and development of technology is not inhibited by having patents with our own people. When you give the same royalty and protection, it will give them encouragement.

SHRI SUNDAR SINGH BHANDARI: What is the percentage of our people till now?

SHRI DINESH SINGH : If the percentage of our people has been low to-day does it mean that we should not give them any encouragement in the future? The two things are not compatible.

SHRI SUNDAR SINGH BHANDARI: Whom are you helping at present?

SHRI DINESH SINGH: We are not thinking in terms of the India of today, Sir; we are thinking of the India of tomorrow. The hon. Member thinks of the India of today and the past. I am thinking of the India of tomorrow and the future that will come, when our people will have new innovations, will have new inventions, which they will patent and will enjoy these facilities in our country, and which the people abroad will also enjoy. Therefore I would request the hon. Member not to remain in the past and the present but to think of the future, which is essential for the growth of our country.

SHRI SASANKASEKHAR SANYAL: Not even in the present?

SHRI DINESH SINGH Well, I say, if you look at it from that point of view, there is no present because, by the time you start talking of it from that point of view, the present becomes past.

Now there is the other point that was raised, some doubts raised by the hon. Member, Shri Dahyabhai Patel, that Government has taken too much authority upto itself. Now the hon. Member knows that Government's authority is always limited to the authority of this House, that Parliament is the final body that decides what authority Government should have. And even as we ask for this authority, we ask for this authority from this House

as we asked for it from the other House. And therefore, any authority Government has, is subject to the checks that are being exercised constantly by vigilant Members in this House. Therefore, the authority that we take must always be taken to be limited by the sanction that we shall have and by our accountability to Parliament. Therefore, Sir, when we say that we have this authority, it is to exercise it in our national interests, to see that there is no delay, and of course subject to the limitations that this House places.

Now I am most grateful to the hon. Members, Shri Chengalvaroyan for helping me to remove some of the doubts that had been mentioned by some hon. Members, including the hon. Member, Shri Sanyal, and supported by the hon. Member, Shri Menon. If you will see, Sir, Clause 43 does define how the patents will be sealed. Now, sealing of a patent is the granting of a patent, and entering it in the register makes it a patent and this Clause says that this would be caused by the Controller. Therefore it is the Controller who is the granting authority. And then further, Government's rule-making powers have been spelt out in Clause 159. Now, of course there can always be a difference of opinion in this matter but, should any loophole arise, we have ample power, as the hon. Member, Shri Chengalvaroyan explained, under Clause 159 by virtue of which a definition could be expressed. But we have not had any such difficulty in the practice of the present law in this country and, therefore, it is unlikely that any further difficulty will arise. But, should it arise there is ample provision and that we have.

Now, without going into any further details at this stage, Sir, I would request the House...

(Interruptions)

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Order, order.

SHRI DINESH SINGH : Sir, I was saying that I would make an appeal to hon. Members not to press for any of the amendments, because they will only cause further delay of this Bill. Hon. Members have expressed their satisfaction that I was able to finally bring this Bill before the House, and therefore I hope hon. Members will assist me in getting this Bill passed and will not become an instrument for further delay of this Bill.

Thank you very much.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That the Bill to amend and consolidate the law relating to patents, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): We shall now take up the clause by clause consideration of the Bill.

*Clauses 2 to 4 were added to the Bill.
Clause 5 — Inventions where only methods or processes of manufacture patentable.*

SHRI SUNDAR SINGH BHANDARI: Sir, I move:

15. "That a age 5, lines 27-29, the words in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable be deleted."

यहाँ पर क्लॉज पांच पर ऐसे पदार्थों का उल्लेख रसायन प्रक्रिया द्वारा रखा गया है जो दूसरे पदार्थों से संबंधित हैं। मेरा यह आग्रह रहा है कि ऐसे खाद्य पदार्थ जो उद्योग के अतिरिक्त हैं उस पेटेंट प्रथा में इस समय उल्लेख नहीं करना चाहिये। मंत्री महोदय ने इस बात का उल्लेख किया है कि जिन देशों ने पहले इस खाद्य के क्षेत्र में या दवा के क्षेत्र में पेटेंट की व्यवस्था नहीं की थी, अब उनको करना पड़ रहा है। मैं यहाँ पर जब इस संशोधन को प्रस्तुत कर रहा हूँ तो मेरे कहने का यह अर्थ नहीं है कि हमको इस क्षेत्र में कभी भी पेटेंट की जरूरत नहीं होगी। क्या आज आवश्यकता है और क्या अगले 10 वर्षों तक इस क्षेत्र में हम को पेटेंट की आवश्यकता होगी, यह प्रश्न हमको विचार करना चाहिये।

आज हमारे देश में यहाँ पर इस क्षेत्र में स्वयं के पेटेंट होल्डर नहीं हैं। लगभग इस क्षेत्र में सारे के सारे विदेशी या बाहर के हैं और व सब हमारे यहाँ के उस क्षेत्र के उत्पादन

और विकास में या शोधन में बाधा उपस्थित कर रहे हैं। दूसरे देशों में जहाँ पेटेंट है, वहाँ हमारा उनके साथ मौलिक अन्तर है। जहाँ हम कई क्षेत्रों में इम्पोर्टेड सबस्टीट्यूशन की बात करते हैं शायद वे देश इस विषय में सोचते तक नहीं हैं; क्योंकि हमारी इकोनोमी, हमारी आवश्यकताएं, हमारी अर्थ नीति, हमारी जनसंख्या का बल, इन सब बातों का हमें विचार करना है और इस कारण इम्पोर्टेड सबस्टीट्यूशन का हमने विचार किया है। शायद दुनिया का इंटरनेशनल मीनेटरी फंड और consumption के बाकी सदस्य हमारे इस इम्पोर्टेड सबस्टीट्यूशन की जरूरत को भी स्वीकार करने के लिए और सहन करने के लिए तैयार नहीं हैं; क्योंकि उनका मापदंड भिन्न है। केवल यह कह कर के कि इन देशों ने भी आज पेटेंट लागू किया है, मेरा कहना यह है कि मंत्री महोदय अपने इस क्षेत्र के उद्योग को उस स्तर तक पहुंचा दे और उस स्तर तक पहुंचाने के बाद जैसा दूसरे क्लाजेज में उन्होंने कहा है कि अभी इसे कम से कम रहने दिया जाय और फिर जरूरत होगी तो हमेशा इसमें संशोधन और आवश्यकता के अनुसार परिवर्तन किये जा सकते हैं। तो मैं चाहता हूँ कि प्रारम्भ में इस क्षेत्र को मुक्त रखा जाय और फिर जब उस स्टैंडर्ड और इस स्टेज तक पहुंचा जाय जबकि अपने वैज्ञानिकों के हित में है, अपने देश की इन्डस्ट्री के हित में पेटेंट की आवश्यकता जिस दिन प्रतीत हो उस दिन सरकार संशोधन लेकर आये और क्षेत्र को विकसित करे। अभी तब तक के लिए इस क्षेत्र को पेटेंट बिल के दायरे से बाहर रखा जाना चाहिये, यही मेरा संशोधन है।

The question was proposed.

SHRI DINESH SINGH : I think the hon. Member is quite right when he says that we have to look at it from the point of view whether the time has come when we require patent protection for these categories of goods, food, drugs and medicines. I would say to him that we are at that stage when we require to give patent protection in this and I say this because there is a reason. He quoted the example in some countries where these patents were removed and it led to

[Shri Dinesh Singh.]

production of certain spurious drugs and other things. The quality of those drugs in the international markets went down. This can be a very serious thing for a developing country. As it is the goods of developing countries have a psychological barrier. The hon. Member himself mentioned that anything foreign is more appealing. I hope the hon. Member will have a more serious campaign about 'swadeshi', but when we go to foreign countries and there is a feeling that the Indian medicines are not as good as they ought to be, then it will seriously hamper our exports, because we are just getting into a stage where Indian drugs and pharmaceuticals are selling in foreign countries. They are selling in foreign countries because they are satisfying the rigorous standards, and because they are carrying certain research for which we do not have yet the capacity but which we have been able to get. If we take that away at this stage, it is a question of assessment. The hon. Member may feel that it will assist. It has been the feeling, our feeling as well as the feeling of the Select Committee that this would not be the stage when we should remove it. Therefore, I would say that taking away this protection will not assist our industrial development, but keeping this for a short time will on the one hand prevent exploitation and on the other hand will enable us to bring in the latest technology and compete in world markets.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN : The question is:

15. "That at page 5, lines 27-29, the words 'in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable, be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN : The question is :

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 to 11 were added to the Bill

Clauses 12 to 42 were added to the Bill.

Clause 43—Grant and sealing of patent.

SHRI DAHYABHAI V. PATEL: Sir, I move:

1. "That at page 24, after line 26, the following be inserted, namely :

(4) Subject to the provisions of sub-clauses (a) and (b) of sub-section (2) of this section, a patent shall be sealed as soon as may be and not after the expiration of 24 months from the date of application; provided further that a further extension of 4 months after the said 24 months shall be allowed for the sealing of the patent."

The question was proposed.

Sir, the experience has been that sealing of the patents takes a long time. If sealing is to take a long time, so much time of the patentee or applicant is lost. If it is delayed too long, it is likely to be copied or somebody else may apply for such a patent. Therefore, I would like to have a definite time-limit fixed within which a patent application is disposed of, that is, either the Government says it is giving the patent or says 'no' if it is rejecting it. Government will naturally have to give reasons. But within one year of the application surely Government should be in a position to say that they are giving this patent, which is called sealing in their language, because it is a document which is given in a seal, it is called sealing. The object of the amendment is to fix the time within which the sealing of the patent should take place. Government should not take unduly long on this. Times are moving very fast. This is a changing world. Many advances are taking place and time is the essence in this matter. Therefore, I move this amendment.

SHRI DINESH SINGH: I entirely agree with the hon. Member that we should seal these patents as speedily as possible. The time to be spent at various stages has been spelt out. We went into this question whether we could reduce the time. We would have had no objection to reduce any period. The point that Justice Ayyangar made out was that in case we provided a very short time-limit, then the applicant might not be able to provide all the details that are required.

Also, now that we are going for a world search, suitable time should be given to the Controller to make this search. We had this compared with the time that is taken in other countries and we found that the tendency in the other countries was to take a longer

time. In England, France, Germany and other countries the time that is taken is very much more than what we have provided in this. But I naturally wanted to assure the honourable Member that if all the particulars are provided the patent can be sealed within seven months. If patentees take the maximum time, they take as much as 24 months. Now, of course, if nobody co-operates and if the applicant also takes more time than is provided, the Patent Office also takes time, then it can be longer. But the average time that is spent in getting a case sealed is about 23 months and, therefore, there will be no undue delay.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is :

"That at page 24 after line 26, the following be inserted, namely:—

(4) Subject to the provisions of sub-clauses (a) and (b) of sub-section (2) of this section, a patent shall be sealed as soon as may be and not after the expiration of 24 months from the date of application; provided further that a further extension of 4 months after the said 24 months shall be allowed for the sealing of the patent."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is :

"That Clause 43 stand part of the Bill."

The motion was adopted.

Clause 43 was added to the Bill.

Clauses 44 to 46 were added to the Bill.

Clause 47—Grant of patents to be subject to certain conditions

SHRI DAHYABHAI V. PATEL: Sir, I move:

2. "That at page 25, after line 30, the following be inserted, namely:—

(5) the powers of the Government to make use of a patent under sub-clause (1) or sub-clause (2) or sub-clause (4) above shall be exercised only for non-commercial and charitable purposes and in the event of widespread calamity such as floods epidemics famine drought and other like causes;

(6) the importation of a patented machine apparatus or other article or any patented machine or drug in pursuance of this section and making of a patented machine apparatus or other article or the use of a patented process or the making of an article by the use of the patented process in pursuance of this section shall be made upon the terms as may be agreed upon either before or after the use between the Central Government and the patentee or as may in default of agreement be determined by the High Court on a reference under Section 103."

Sir, the purpose of this amendment is very clear. One can understand Government wanting to acquire a patent under certain circumstances, in distress, famine etc. But then, should Government acquire for anything and use it for commercial purposes also? I am not satisfied with this. This is the part which I object to most. Government acquiring a patent, if they are using it for a public purpose, for a charitable purpose under certain circumstances, I may be inclined to agree, but not to their acquiring it for commercial purposes. For instance, their white elephant at Bangalore, the I.D.P. L., is in a bad mess. It has been discussed many times in his House.

SHRI ARJUN ARORA: It is not at Bangalore. It is in Hyderabad.

SHRI DAHYABHAI V. PATEL: I stand corrected. In a haste I make some mistakes, but I thank you for correcting them. I do not want the Government to use these patents for the purpose of wiping out that loss at the expense of the public and, therefore, no commercial use of this patent should be made. I hope the honourable Minister will look into the reasonableness of my amendment and agree to it.

The question was proposed.

SHRI DINESH SINGH: Sir, this is the clause which I was able to put forward when the honourable Member Shri Bhandari was wanting to make his amendment on clause 5, and I said that this is the clause—clause 47—which will prevent us from being exploited by others. Now I am glad that the honourable Member Shri Dahyabhai Patel agrees to the part that Government may be able to take over patents in respect of goods which are

(Shri Dinesh Singh)

non-commercial. But he has objection only to Government's commercial exploitation of a patent.

But there we have provided that when the Government takes over a patent for commercial exploitation, royalty will be paid. After all, I am sure the hon. Shri Dahyabhai Patel does not want that the industrial growth of this country should be held up.

SHRI DAHYABHAI V. PATEL: Government is not helping the industrial growth of this country but it is pushing it back by the huge losses sustained by those white elephants.

SHRI DINESH SINGH : Commercial exploitation will be only for the purpose of industrial growth and therefore royalty will be paid.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

2. "That at page 25, after line 30, the following be inserted, namely:—

'(5) the powers of the Government to make use of a patent under sub-clause (1) or sub-clause (2) or sub-clause (4) above shall be exercised only for non-commercial and charitable purposes and in the event of widespread calamity such as floods, epidemics, famine, drought and other like causes;

(6) the importation of a patented machine, apparatus or other article or any patented machine or drug in pursuance of this section and making of a patented machine, apparatus or other article or the use of a patented process or the making of an article by the use of the patented process in pursuance of this section shall be made upon the terms as may be agreed upon either before or after the use between the Central Government and the patentee, or as may in default of agreement be determined by the High Court on a reference under Section 103.' "

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

"That clause 47 stand part of the Bill."

The motion was adopted.

Clause 47 was added to the Bill.

Clause 48—Right of patentees.

SHRI SUNDAR SINGH BHANDARI: Sir, I move:

16. "That at age 25, line 34, after the word 'India' the words 'but not exceeding more than the period provided under section 53 of this Act' be inserted."

श्रीमान्, इस अधिनियम में जिन क्षेत्रों के लिये पेटेंट देने की व्यवस्था है, उसके अधिकतम वर्ष की सीमा कितनी होगी यह अनुच्छेद 53 के अन्तर्गत दिया हुआ है। लेकिन इस कानून के लागू होने के पहले जिनको पेटेंट दे दिया गया वह बदस्तूर वैसे के वैसे कायम रहेंगे। पिछले कानूनों के अन्तर्गत 16 वर्ष तक पेटेंट देने की अवधि है अर्थात् जब तक यह कानून लागू नहीं होता, तब तक 16 वर्ष के लिये पेटेंट दिये जायेंगे जब कि इस कानून के लागू होने के बाद कुछ क्षेत्र तो ऐसे हैं, जिनमें केवल 5 वर्ष के लिये पेटेंट दिया जायगा और कुछ क्षेत्र ऐसे हैं, जिनमें 14 वर्ष के लिये दिया जायगा। तो मैं सरकार से एक सीधा प्रश्न पूछना चाहता हूँ कि यह कानून उस दिन से लागू होगा जिसे यह सरकार लागू करने के लिय तय करेगी, तब तो इसमें बहुत गुंजाइश है कि जितने भी पेटेंट विदेशों से सम्बन्धित पेटेंट केसेज हैं उनको इसके लागू करने के एक दिन पहले तक मंजूरी दी जा सकती है और वह 16 वर्ष के लिये दिये जायेंगे और इस कानून के लागू होने के दूसरे दिन से जो पेटेंट दिय जायेंगे वह पांच वर्ष के लिये दिये जायेंगे, अर्थात् तीन बार नये पेटेंट बदल देंगे नये कानून के अनुसार लेकिन वह पुराने पेटेंट जो कि कानून लागू होने के एक दिन पहले तक दिये गये वह 16 वर्ष तक चल कर हमारे तीन बार दिये जा सकने वाले पेटेंट के अधिकार को समाप्त कर देगा। इसलिये हमारा कहना है कि इस कानून के अन्तर्गत जो 5 वर्ष और 14 वर्ष की मियाद पेटेंटों का अलग-अलग वर्गीकरण करके हमने यहां रखी है तो फिर जितने अभी तक के दिये गये पेटेंट्स हैं, उनके बारे में भी कोई

न कोई व्यवस्था करनी चाहिये और कम से कम यह यत करना चाहिये कि नये कानून के अन्तर्गत जो अधिकतम सीमा होगी उस पर आकर इस कानून के पहले जारी किये गये पेटेंट भी समाप्त हो जायेंगे। ऐसी कोई न कोई व्यवस्था अगर नहीं की तो यह कानून पास करने के बाद भी जो मंशा है वह पूरी नहीं होगी। मंत्री महोदय, ने मुझे कहा कि एक छोटा सा भी संशोधन मेरे द्वारा यहां रखा गया और स्वीकार कर लिया गया तो पहले ही बड़ी देर हो गई है और तब तो कानून को लागू करने में बड़ी कठिनाई होगी, लेकिन इस कानून के लागू करने के पहले जो 16 साल के सोदे किये जा सकते हैं इसके लिये कौन जिम्मेदार होगा और उसको रोकने का कोई रास्ता इस कानून में कहां है। अगर वह है तो मंत्री महोदय मुझे बतायें और नहीं है तो फिर तो मैं उन पर चार्ज लगाऊंगा कि वह इसलिये उनको सुरक्षा दे रहे हैं कि उनको 16 साल के लिये वह ररमित करें और नये कानून के लागू होने से पहले एक प्रकार से साइड-ट्रैक करवा कर उन सारी फारेन कंपर्न्स को वह एडवांटेजेज देते चले जायें जो कि हमारे लिये बाधक बने।

The question was proposed.

श्री दिनेश सिंह : सभापति महोदय, माननीय सदस्य शायद उस वक्त थे नहीं जब कि मैंने शुरू में इस विधेयक को यहां पर सदन के सामने मूव करते हुए कहा था . . .

श्री सुन्दर सिंह भंडारी : मैं था।

श्री दिनेश सिंह : . . . कि फिलहाल जितने भी ड्रज और मेडिसिन्स के पेटेंट्स हैं, वे कई सालों से रुके हुए हैं, बहुत सालों से उनके लिये कोई पेटेंट नहीं दिये गये हैं। अब नये विधेयक के हिसाब से उस पर विचार होगा . . .

श्री सुन्दर सिंह भंडारी : किस कानून के अन्तर्गत पेटेंट रखा हुआ है . . .

श्री दिनेश सिंह : कानून के अन्तर्गत रखा हुआ है।

श्री सुन्दर सिंह भंडारी : कौन सा कानून।

श्री दिनेश सिंह : पहले डिफेन्स आफ इंडिया ऐक्ट के अन्तर्गत रखा हुआ था। उसके बाद जब इसमें तरमीमें आई 1965 में, तब उसके अंतर्गत हुआ था, पेटेंट्स ऐक्ट में . . .

श्री सुन्दर सिंह भंडारी : कौनसा लाँ है, आपने नहीं बताया।

श्री दिनेश सिंह : मैं आपको उसकी नकल भेज दूंगा। कोई ऐसी बात नहीं है।

उपसभाध्यक्ष (श्री अकबर अली खान) : आप भिजवा दीजिए।

श्री दिनेश सिंह : अब आपका आदेश हो गया है तो जरूर भेज दूंगा। लेकिन जहां तक फूड, ड्रज और मेडिसिन्स का सवाल है . . .

SHRI SUNDAR SINGH BHANDARI:
There is no mandatory provision.

श्री दिनेश सिंह : फिलहाल तो रखा है। कैसे रखा है बाद में पुष्टियेगा।

श्री सुन्दर सिंह भंडारी : राम भरोसे।

श्री दिनेश सिंह : तो जहां तक फूड, ड्रज और मेडिसिन्स का सवाल है, यह रखा हुआ है। नये विधेयक के अनुसार इस पर विचार होगा। बाकी चीजें बचती हैं, जिन पर 16 साल का फिलहाल समय है। अब नये विधेयक से 14 साल हो जाता है। तो यह दो साल का फर्क आता है, जिसके लिये माननीय सदस्य कह सकते हैं कि हमको नये हिसाब से 14 साल होता है। पुराने सालों से जितने आए हैं उनको हम 16 साल की बजाये 14 साल कर दें पर उसके बारे में हमारा यह कहना है उपसभाध्यक्ष महोदय, कि जो अभी कानून है उसके अंतर्गत जिसको पेटेंट मिलता है, उसको बदलना मुनासिब नहीं होगा। आज यह नया कानून आप पास करेंगे तो हम इसको फौरन प्रेसीडेंट साहब के पास भेज देंगे। उनकी स्वीकृति मिल जायेगी तो नये जितने पेटेंट्स हैं, वे इस कानून के अंतर्गत आ जायेंगे। आज के पहले जिसको पेटेंट

[श्री दिनेश सिंह]

मिल गया है उसके लिये दो साल के लिये हम कानून को फिर से बदलें यह आवश्यक नहीं मालूम होता है। जैसा कि माननीय सदस्य से मैंने कहा, हमारे पास जो गजेट है उसे मैं उनके पास भिजवा दूंगा।

श्री अर्जुन अरोड़ा : गजेट की तारीख उनको बता दीजिए।

श्री दिनेश सिंह : नहीं, नहीं, मैं उनको भेज दूंगा। उनको दूँडने को और मंगाने की तकलीफ नहीं करनी पड़ेगी।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:-

16. "That at page 25, line 34, after the word 'India' the words 'but not exceeding more than the period provided under section 53 of this Act' be inserted."

The motion was negatived

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That clause 48 stand part of the Bill.

The motion was adopted.

Clause 48 was added to the Bill.

Clauses 49 to 52 were added to the Bill.

Clause 53—Term of patent

SHRI DAHYABHAI V. PATEL: Sir, I move:

3. "That at page 28, line 11, for the word 'seven' the word 'fourteen' be substituted."

Sir, I would not repeat my arguments. I think the period that is given is too small and the patentee will never be able to recouperate what he has spent on research. Therefore, a longer period should be given. I press my amendment.

The question was proposed.

SHRI DINESH SINGH: Sir, is it necessary for anybody who has done research outside India to recover all his research cost from India? I have mentioned, Sir, what has been published in the newspapers about the exploitation that has been going on in the developing countries. Even in today's newspaper Sir you may be interested to know,

the news say that drug firms overcharged the State Department 4 million dollars. So they are exploiting us directly and through State departments and others from where we get any kind of assistance. And, therefore, to continue this for any longer period will be really continuing exploitation.

It is interesting, Sir, that the Model Law which has been prepared for the developing countries also does not constrain any provision for extension. The hon. Member feels that the period fixed is small and so there should be provision for extension. Now we had the patent laws of other countries checked. The laws of countries like the United States¹ Germany, Switzerland, Holland, Belgium, France and many other countries do not have this provision for extension. In the United Kingdom, the Banks Commission which has given its report in July has also proposed that they should take away this power of extension.

SHRI DAHYABHAI V. PATEL : Take it out, but give a longer initial period.

SHRI DINESH SINGH : About the longer period, Sir, the hon. Member does not need to argue across the House with me. He might try to convince the gentleman sitting next to him.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

3. "That at page 28, line 11, for the word 'seven' the word 'fourteen' be substituted".

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

"That clause 53 stand part of the Bill."

The motion was adopted

Clause 53 was added to the Bill.

New Clause 53A

SHRI DAHYABHAI V. PATEL: Sir, I move:

4. "That at page 28, after line 23, the following New Clause be inserted namely:

53A. *Extension of term of patent—*
(1) A patentee may present a petition to the Central Government praying

that his patent may be extended for a further term; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee and must be advertised by the patentee within the prescribed time and in the prescribed manner.

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

(3) When a petition is presented under sub-section (1), the Central Government may, as it thinks fit, dispose of the petition itself or refer it to the High Court for decision.

(4) If the petition be referred to the High Court, then on the hearing of such petition under this section the patentee, and any person who has given notice under sub-section (2) of objection shall be made parties to the proceeding and the Controller shall be entitled to appear and be heard.

(5) The Central Government or the High Court to which a petition is referred shall, in considering the petition, have regard to the nature and merits of the invention in relation to the public, to the profits made on the patent and to all the circumstances of the case.

(6) If it appears to the Central Government or to the High Court, when the petition is referred to it, that the patent has not been sufficiently remunerative, the Central Government or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding two years."

Sir, I won't take long. I am just saying the same thing that a patentee must be given enough time; this is the plea that is made here. I hope the Government would see the reasonableness of this. The Government is trying to cut this down too fine. Therefore, I ask the Government to give a little more time. This will help inventions in this country. All that the Government is doing is to try to discourage it. Therefore, I appeal to the Government to accept this amendment.

The question was proposed.

SHRI DINESH SINGH: Sir, I had replied to both these points when I spoke last time. I would like the hon. Member to give some thought whether this patent protection that he wants me to give to foreign applicants will really help industrialisation. To my mind, it will inhibit industrialisation, for our people must be able to get technology as soon as it is possible. Of course, where necessary due remuneration will be paid in the form of royalty. Therefore, I would suggest to the hon. Member that in the interest of rapid transfer of technology, and industrial growth in the country, he should not really press this amendment.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

4. "That at page 28, after line 23, the following New Clause be inserted, namely :

53A. *Extension of term of patent.*—

(1) A patentee may present a petition to the Central Government praying that his patent may be extended for a further term but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee and must be advertised by the patentee within the prescribed time and in the prescribed manner.

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

(3) When a petition is presented under sub-section (1), the Central Government may, as it thinks fit, dispose of the petition itself or refer it to the High Court for decision.

(4) If the petition be referred to the High Court, then on the hearing of such petition under this section the patentee, and any person who has given notice under subsection (2) of objection, shall be made parties to the proceeding and the Controller shall be entitled to appear and be heard.

(5) The Central Government or the High Court to which a petition is referred shall, in considering the petition, have regard to the nature and merits of the invention in relation to the public, to the profits made on the patent and to all the circumstances of the case.

[Shri Akbar Ali Khan.]

(6) If it appears to the Central Government or to the High Court, when the petition is referred to it, that the patent has not been sufficiently remunerative, the Central Government or the High Court, as the case may be, may by order extend the term of the patent for a further term not exceeding two years."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

"That clauses 54 to 84 stand part of the Bill".

The motion was adopted.

Clauses 54 to 84 were added to the Bill.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Now we come to the amendment seeking to introduce new clause, clause 84A. Are you moving it, Mr. Patel?

SHRI DAHYABHAI V. PATEL : Yes.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN) : But the difficulty is that they do not see your reasonableness.

SHRI DAHYABHAI V. PATEL : If you also feel like that, I do not move it.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : No, I want you to move it.

SHRI DAHYABHAI V. PATEL : If that is the mood of the House I will not move any amendment. It does not matter.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Dahyabhai, I request you to move it and say something if you want.

New Clause—84A

SHRI DAHYABHAI V. PATEL: Sir, I move :

5. "That at page 41, after line 37, the following new clause be inserted, namely :

84A. "Inventions relating to food medicine or drug.—(1) Without prejudice to the foregoing provisions of this Act any person interested may, at any time, make an application to the Controller for the grant of a Compul-

sory Licence under a patent in force in respect of an invention relating to food, medicine or drug, to work such invention.

(2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent.

(3) Every application made under sub-section (1) shall contain a statement setting out the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(4) In considering the application under this section, the Controller shall take into account the matters specified in Section 85.

(5) The Controller shall, after giving notice to the parties and hearing them and after making such enquiry as he may deem fit, grant a license to the applicant upon such terms as he may deem fit.

(6) The controller shall dispose of the application for a compulsory licence under this section within a period of 6 months from the date of such notice.

(7) The provisions of Sections 91, 92, 94 and 95 shall be applicable to all applications for a compulsory licence and to all licences granted under this section.

(8) A licence granted under this Section shall entitle the licensee to make use, exercise and vend the invention as a food or medicine or drug or for the purposes of production of food or medicine or drug but for no other purpose.

(9) The Controller may at any time before the grant of the licence under this Section, on application made to him in that behalf, permit the applicant to work the patented invention on such terms and conditions as the Controller may, pending a final decision as to the grant or otherwise of a licence, think fit to impose; provided, however, that before the grant of such permission the Controller shall take into consideration the matters specified in Section 85.

(10) Where the Controller directs the patentee to grant a licence, he may as incidental thereto exercise the powers set out in Section 93.

(11) The decision of the Controller shall be subject to an appeal to the High Court.'

The question was put and the motion was negatived.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is:

"That clauses 85 and 86 stand part of the Bill."

The motion was adopted.

Clauses 85 and 86 were added to the Bill.

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

SHRI DAHYABHAI V. PATEL : Sir, I move:

6. "That at page 42, line 39, for the word 'three' the word 'five' be substituted."

The question was put and the motion was negatived.

SHRI DAHYABHAI V. PATEL: Sir, I move:

8. "That at page 43, line 2, for the word 'three' the word 'five' be substituted".

The question was put and the motion was negatived.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The question is:

"That Clause 87 stand part of the Bill".

The motion was adopted.

Clause 87 was added to the Bill.

Clause 88—Effect of endorsement of patent with the words "Licences of right".

SHRI SUNDAR SINGH BHANDARI Sir, I move:

17. "That at page 43, line 29, for the word 'our' the word 'three' be substituted

श्री सुन्दर सिंह भंडारी : मेरा आग्रह है कि 4 प्रतिशत को इसमें स्वीकार किया है उसको घटा कर 3 प्रतिशत करना चाहिये। मंत्री महोदय : यह कहा कि ऐसी कोई रेयर मेडिसिन्स हो सकती हैं, कुछ नये इन्वेन्शन्स

हो सकते हैं, जिनके लिए हमको ऊंची रायल्टी देनी पड़े। अगर यह केवल वाणिज्यिक तर्क है, तब तो मेरे पास इसका कोई जवाब नहीं है, लेकिन इस बात को सर्व्‌टेंशिएट करने के लिए यह बताइए कि अभी तक के रायल्टी के क्या रेट्स रहें हैं, हमने कहां तक दी, क्या हमने 4 परसेंट भी पहले दी किसी को या हमने मजूर की? अगर वह नहीं किया है और हम हमेशा आधे और एक पर सारा काम करवाते रहे हैं तो अनावश्यक रूप से ऐसा हौवा खड़ा करना कहां तक उचित है कि हमको जरूरत पड़ सकती है। इसको यहां रखने की कोई आवश्यकता नहीं है उस आधार पर। अगर उनके पास ऐसे एक्स्ट्रीम केसेज नहीं हैं तो मेरे 3 परसेंट के संशोधन को स्वीकार करने में सरकार को आपत्ति नहीं होनी चाहिए।

The question was proposed.

श्री दिनेश सिंह : उपसभाध्यक्ष महोदय, हमने बहुत कम 4 फीसदी की रायल्टी को मंजूर किया है। एक दम से तो मैं नहीं कह सकता, लेकिन मेरा खयाल है कि इस बीच दो ही ऐसी रायल्टी के एरेंजमेंट रहे हैं . . .

श्री सुन्दर सिंह भंडारी : कितनों में से और क्या इतना अनिवार्य था कि उसके बिना इतना कहर मच जाता, एपीडेमिक फैल जानी।

श्री दिनेश सिंह : कहर नहीं मचता, हम लोग बीमार हो जायं, बहुत से लोग मर भी जायं, उससे कहर नहीं मचता लेकिन नई दवाइयां आती हैं तो आप भी चाहेंगे कि लोग उनको इस्तेमाल करें।

श्री सुन्दर सिंह भंडारी : वह उतनी आवश्यक थी ?

श्री दिनेश सिंह : आवश्यक है या नहीं है यह तो बहस की बात है। माननीय सदस्य बहुत सी चीजें आवश्यक समझते हैं, जिन्हें मैं अनावश्यक समझता हूं, बहुत सी मेरी चीजों को वे अनावश्यक समझते होंगे, इसका फैसला कौन करेगा। हमने इनको आवश्यक ही समझ कर, दिया है अनावश्यक समझ कर देने में, देश का नुकसान करने में सरकार को कोई फायदा नहीं है ॥

श्री सुन्दर सिंह भंडारी : देव की दुहाई काहे को देते हैं ?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

17. "That at page 43, line 29, for the word 'four' the word 'three' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The question is:

"That Clause 88 stand part of the Bill".

The motion was adopted.

Clause 88 was added to the Bill.

Clauses 89 to 99 were added to the Bill.

Clause 100—Power of Central Government to use inventions for purposes of Government

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Dahyabhai Patel, are you moving your amendments?

SHRI DAHYABHAI V. PATEL: No, Sir. With what heart can I move them? I want to draw your attention to something very serious. Yesterday, there was voting on the matter that was reported in the press, about the Privy Purses Bill. There were serious irregularities, if not fraud, and that has worried all of us. How can we concentrate on anything? Five votes were recorded and one man was absent. How can we concentrate on anything?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Are you speaking on the Patents Bill?

SHRI DAHYABHAI V. PATEL: Is this how Parliament functions? Sir, if you want to understand it, please understand it. If you do not want to understand it, then I will leave it to you.

5 P. M.

SHRI ARJUN ARORA: On a point of order.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): We cannot discuss it here.

SHRI ARJUN ARORA: That is what I was going to say.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The House is in possession of the Patents Bill.

SHRI LAL K. ADVANI (Delhi): I agree that we should not discuss what has happened in the other House.

SHRI AWADHESHWAR PRASAD SINHA (Bihar): It is an extraneous matter.

SHRI LAL K. ADVANI: I agree that we should not discuss it here. But tomorrow when we meet, we should have the division in the lobby and not by the automatic voting system.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): That is a matter for tomorrow. Tomorrow when the Bill will be presented here, you have every right to raise this question.

SHRI LAL K. ADVANI: I am drawing the attention of the Chair to this matter and I will raise this again tomorrow. I am of the view that the recording of the vote should be done in the lobbies. I am making this suggestion.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I am sorry. I rule out this objection.

SHRI SUNDAR SINGH BHANDARI (Rajasthan): It was not meant for your ruling. We were informing the Chair in advance so that proper arrangements can be made for tomorrow.

SHRI ARJUN ARORA: The hon. Member was saying that it was not meant for you. It was meant for the press gallery.

SHRI SUNDAR SINGH BHANDARI: It was not for the Chair to conduct his work tomorrow.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): As the matter does not concern with the Patents Bill, this is not relevant.

We were taking up clause 100.

Clause 100 was added to the Bill.

Clauses 101 to 115 were added to the Bill.

Clauses 116 to 137 were added to the Bill.

Clause 138—Supplementary provisions as to convention applications.

SHRI SUNDAR SINGH BHANDARI :
Sir, I move:

18. "That at page 64, line 11, after the words 'translation into' the words 'Hindi and' be inserted."

धारा 138 की उधारा (2) में यह लिखा है कि : 'यदि कोई ऐसे विनिर्देश या अन्य दस्तावेज विदेशी भाषा में है, तो उस विनिर्देश या दस्तावेज का अंग्रेजी में अनुवाद जो शपथ-पत्र द्वारा या नियंत्रक को अन्यथा समाधानप्रद रूप में सत्यापित है उस विनिर्देश या दस्तावेज के साथ उपावद्ध किया जायगा ।'

आज 1970 है । हमने विदेशी भाषा के बजाये भारतीय भाषा का यहां समावेश होने की बात कही है । संविधान के आर्टिकल 343 में आफिशियल लैंग्वेज हिन्दी है, उसके साथ अंग्रेजी का प्रयोग किया जा सकता है जब तक हम चाहें, लेकिन अंग्रेजी स्वयं, बिना हिन्दी के अगर दस्तावेज की भाषा बनेगी, तो यह एक संविधान में अंग्रेजी को इस प्रकार स्थान देने की जो मंशा है वह उचित नहीं है, क्योंकि अंग्रेजी शेड्यूल्ड के अंदर भी नहीं है, उसका समावेश भारतीय भाषाओं के रूप में नहीं है, हम उसका प्रयोग करने के अधिकारी हैं । हमने उसका प्रयोग किये जाने के लिए अवसर दिया है, लेकिन हम जो विधान बनाना चाहते हैं, जो कानून बनाना चाहते हैं उसमें विदेशी भाषा पर आपत्ति लेने के बाद, संविधान के अंतर्गत जो हमारी सरकारी भाषा नहीं है उसको प्रश्रय दिया जाय और जो सरकारी भाषा है उसका उल्लेख न हो तो यह ठीक नहीं है । यह हम मान सकते हैं कि हिन्दी के साथ-साथ अंग्रेजी का भी प्रयोग किया जा सकता है ।

लेकिन हिन्दी का यहां उल्लेख न हो और केवल अंग्रेजी पर आग्रह किया जाय विदेशी भाषा के अनुवाद के तौर पर जो कि स्वयं शेड्यूल्ड के अन्तर्गत भारत की भाषा नहीं है चाहे वह अब तक प्रयोग होती होगी, तो इस एनालाजी के बारे में सरकार विचार करे । मैं समझता हूं कि केवल इस तर्क पर कि द्वारा इसको लोक सभा में भेजना पड़ेगा, इसलिये मैं अपना

संशोधन वापस ले लू कोई उचित बात नहीं है । या तो सरकार आश्वासन दे कि इस शब्द का यहां पर समावेश करने के लिये वह अगले अधिवेशन में संशोधन विधेयक लायेगी तब तो ठीक है नहीं तो मुझे इसको वोटिंग तक के लिये प्रेस कर ना पड़ेगा ।

The question was proposed.

श्री विनेश सिंह : उपसभाध्यक्ष महोदय, माननीय सदस्य ने खुद बताया कि विधान की धारा के अंतर्गत अंग्रेजी का जो प्रयोग हो रहा है वह एक सहूलियत के लिये है और आज इसी सहूलियत की वजह से हमने इसमें अंग्रेजी का यहां लिखा है और हिन्दी साथ नहीं लिखा है; क्योंकि नये-नये इन्वेंशन जो आते हैं, अभी उसके टर्म नहीं हैं, उनका अभी अनुवाद नहीं हो सकता है और किसी एक टेक्निकल दिक्कत की वजह से वह रुक जाय तो हमें उसमें कठिनाई होगी । हमारा यह बिल्कुल इरादा नहीं है कि इसमें हिन्दी का प्रयोग नहीं करेंगे, बल्कि मैंने उस सदन में भी कहा था और यहां भी कहना चाहता हूं कि हमारी पूरी यह कोशिश होगी कि ज्यादा से ज्यादा हम इन पेटेंट्स को हिन्दी में लायें और इसके लिये हम इंतजाम कर रहे हैं । अभी हमारा पेटेंट का दफ्तर बहुत छोटा है, उसको काफी बढ़ाना पड़ेगा और उसमें हम इसकी भी पूरी कोशिश कर रहे हैं कि इनका हिन्दी अनुवाद भी हो सके लेकिन अगर आज इस विधेयक में लिख देते हैं तो मुमकिन है कि इससे कुछ अठिनाई हो जाय; क्योंकि अनुवाद की ...

श्री सुन्दर सिंह भंडारी : हिन्दी या अंग्रेजी लिखिये न ।

श्री विनेश सिंह : ... अभी पूरी वहां पर सुविधा नहीं है । इसलिये मैं माननीय सदस्य से यह कहना चाहता हूं कि इस वजह हमने हिन्दी का इसमें जिक्र नहीं किया । हमारा यह कोई मतलब नहीं है कि इसकी वजह से हम हिन्दी को पीछे रखें या हम अंग्रेजी को आगे बढ़ाने के लिये यह कर रहे हैं । यह कोई ऐसी बात नहीं है । हिन्दी को साथ-साथ

[श्री दिनेश सिंह]

बढायेंगे, पूरी कोशिश करेंगे कि हिन्दी भी अनुवाद हो, लेकिन आज उसको विधेयक में लिख देने से कठिनाई हो सकती है। इसलिये मैं माननीय सदस्य से चाहता हूँ...

श्री निरंजन वर्मा (मध्य प्रदेश) : मैं माननीय मंत्री जी से यह आश्वासन चाहता हूँ कि वह ऐसा करेंगे। अगर वह हिन्दी या अंग्रेजी लिख दें तो क्या हर्ज है।

श्री सुन्दर सिंह भंडारी : मेरा संशोधन ही यही है।

श्री प्रेम मनोहर (उत्तर प्रदेश) : उसमें तो कोई बात ही नहीं है।

श्री सुन्दर सिंह भंडारी : मैंने हिन्दी या अंग्रेजी लिखा है।

उपसभाध्यक्ष (श्री अकबर अली खान) : भंडारी जी ने यही कहा था।

श्री दिनेश सिंह : उपाध्यक्ष महोदय, माननीय सदस्य का जो यह कहना है कि हमारे पास अगर कोई पेटेंट हिन्दी में आये, उसका अनुवाद हिन्दी में आये अंग्रेजी के बजाय, तो मैं उनसे कहना चाहता हूँ कि हम उसे मान लेंगे। इसका हम फौरन इंतजाम कर देंगे। इसके लिये हम रूल में भी कर सकते हैं। इसके लिये विधेयक में बदलने की आवश्यकता नहीं है।

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष महोदय, मुझे अफसोस है। यह तो मैं मान सकता हूँ कि मंत्री महोदय का यह तर्क है कि इतने वर्षों के बाद यह विधेयक आया है और इसमें कोई छोटा सा भी संशोधन होगा तो फिर इसको दूसरे सदन में जाना होगा और इसी बात के लिये मैंने यह कहा कि आश्वासन दें कि अगले सेशन में संशोधन विधेयक लायेंगे। मंत्री महोदय ने जो कहा है कि वह हिन्दी को रोकना नहीं चाहते, लेकिन जो हिन्दी में अनुवाद अभी तक नहीं हुआ, उसका कारण भी यही है कि यहां पर केवल अंग्रेजी ही है और अब भी

उसका अनुवाद होने नहीं देंगे जब तक कि हम यहां पर हिन्दी या अंग्रेजी की व्यवस्था नहीं करेंगे। यह पेटेंट्स बिल के लिये जो डिपार्टमेंट है वह हिन्दी नहीं करेगा। आफिशियल लैंग्वेज का, जो ट्रांसलेशन डिपार्टमेंट है वह अनुवाद करेंगे। अगर अनुवाद हो भी गया तो इस कानून के अन्तर्गत जहां पर विदेशी भाषा का अनुवाद केवल अंग्रेजी में माना गया है वह नहीं माना जायगा। मंत्री महोदय के शाब्दिक आश्वासन की इस कानून के रूप में किसी के ऊपर पाबन्दी नहीं रहेगी, हिन्दी में अनुवाद देने के बाद भी वह अंग्रेजी में अनुवाद मांगें और कहीं ऐसी दुर्भाग्यपूर्ण अवस्था न आ जाय कि हिन्दी में दिया गया कागज़ भी विदेशी भाषा की संज्ञा में आ जाय और कहें कि हमको तो अंग्रेजी में अनुवाद जब तक नहीं होता till then everything is Greek and Latin to us. तो इसी लिये मैंने जो संशोधन दिया है, अगर उसको आप मानने की स्थिति में हैं, अगर इस समय नहीं बाद में भी हैं, तो आप यहां पर आश्वासन दीजिए कि आप एक अमेंडिंग ऐक्ट के द्वारा इसमें अंग्रेजी के पहले "हिन्दी या..." इतने शब्द डममें डालेंगे। अगर ऐसा करने को मंत्री महोदय तैयार हैं तो मैं अपने संशोधन को वापस ले लूंगा अन्यथा नहीं।

श्री दिनेश सिंह : अगर इसके लिये बाद में अमेंडिंग ऐक्ट की आवश्यकता होगी तो उसको लाने में मुझे कोई आपत्ति नहीं है। उपसभाध्यक्ष महोदय, मैंने कहा कि जो अनुवाद हमारे पास बिलायती भाषाओं का हिन्दी में आयेगा, उसके लिये हम अंग्रेजी का तर्जुमा नहीं मांगेंगे। अगर हम कानून में यह कर सकते हैं तो हम देखेंगे जो हमारे नियम बनाने के अधिकार हैं, उसमें और अगर नहीं है तो उसके लिये हमको अमेंडिंग ऐक्ट लाना पड़ेगा, तो मैं खुशी से लाऊंगा। मतलब यह है कि जो विदेशी भाषाओं में पेटेंट्स आते हैं, उनका अनुवाद हिन्दी या अंग्रेजी में हो, यही बात माननीय सदस्य कह रहे हैं, तो इसको काम में लाने में हमको अठिनाई नहीं है। लेकिन इस वक्त इस कानून में बदलने में कठिनाई है।

SHRI SUNDAR SINGH BHANDARI:
I do not press my amendment.

18 The amendment* was, by leave,
withdrawn.

THE VICE-CHAIRMAN (SHRI AK-
BAR ALI KHAN): The question is:

"That clause 138 stand part of the
Bill".

The motion was adopted.

Clause 138 was added to the Bill.

Clauses 139 to 63 were added to the Bill.

New Chapter XXIV

SHRI KRISHAN KANT (Haryana):
Sir, I move.

25. "That at page 71, after line 8, the
following new Chapter be inserted,
namely :

Chapter XXIV—Inventors, Certificates

164. *Grant of patents or Inventors
Certificates.*—For any invention as is
defined in clause (ii) of sub-section (1)
of section 2, the inventor or his suc-
cessor in title may obtain, at his option,
either a patent or an inventor's cer-
tificate.

165. *Grant of Inventor's Certificates.*—

(1) Except section 142 and clause
(iii) of sub-section (2) of section 159,
the rest of the sections shall be appli-
cable by analogy to the grant of in-
ventor's certificates.

(2) The grant of an inventor's
certificate shall be exempt from
fees.

166. *Obligations and Rights of the
Government.*—(1) The Central Gov-
ernment may examine the possibilities
of exploitation of the invention, the
subject of an inventor's certifica-
te, in Government undertakings and
organisations and to exploit it to the
extent possible.

(2) The Central Government may
authorise any undertaking or person
to exploit the invention in the coun-
try.

167. *Obligations and Rights of the
Holder of the Certificate.*—(1) The hol-
der of an inventor's certificate shall
have the right and the obligation to
participate actively in the examina-

tion, the carrying out, and the subse-
quent development, of the invention
in the country.

(2) He shall be required in parti-
cular to put at the disposal of the
Government or any persons or under-
takings designated by the Government
all documentation in his possession
regarding the invention and give all
advice and information relating to
it.

168. *Compensation to the Holder of
the Certificate.*—The holder of an in-
ventor's certificate for an invention
which is exploited in Government
undertakings or organisations, or, by
virtue of an authority from the Govern-
ment by other persons or undertakings,
shall have the right to receive from the
Government adequate remuneration,
commensurate with the extent of the
exploitation of the invention, as well
as other benefits to be specified by the
Rules".

Mr. Vice-Chairman, what I have
given to-day is in pursuance of the assur-
ance given by the previous Minister
of Industrial Development in the Select
Committee when I had desired that
an Inventor's Certificate should be
given as an option which may be given
to any patentee because it will have a
salutary effect in the sense that once
the patentee comes with the intervention,
it can be bought over by the Govern-
ment and the Government can utilise
wherever it may like and can promote
its utilisation. The patentee will not
in any way be responsible nor will he
have to put in any effort and he can
go on pushing forward with his inter-
vention. If you will see the last clause—
168—you will see that it does not give
any scope for exploitation and the patentee
has not to go through the various details
or difficulties and it will be taken up.
In some of the countries of Europe,
this certificate is being very well
utilised and it helps the small patentees
in their inventions and their talents are utilised.
The Minister of Industrial Devel-
opment then—Shri Fakhruddin Ali
Ahmed—welcomed this new addition of
Invention Certificate but said that
there were some technical difficulties.
He said that he had to take the permis-
sion from the President for including
it. So I had withdrawn that in the Select
Committee on the assurance that the
Government itself would come forward
with an amendment so that it would
become part of the Bill. So I would re-
quest the Minister to kindly accept this

*For text of amendment, vide col. 113 *supra*.

amendment which will help the whole process of patent and research. I would request him to accept it.

The question was proposed.

SHRI DINESH SINGH: I am in agreement with the spirit of this Chapter that the Member has in mind but I am afraid this is not possible to be incorporated within the ambit of this Bill and that is what my predecessor, Shri Fakhruddin Ali Ahmed, had also said.

Now may I say, Sir, that we have really the Inventions Promotion Board as also the National Research Development Corporation, which assist us in the development of inventions and also in the industrial exploitation? and we have to see that these two agencies are made more effective to take care of what the hon. Member has in mind.

SHRI KRISHAN KANT: But they are not sufficient.

SHRI DINESH SINGH: We shall see that, and if these are not sufficient as the hon. Member says, then we shall have to bring forward a separate measure to consider this matter, and if it is felt necessary, we shall be certainly glad to bring it, or the hon. Member will be free to bring a Private Member's Bill also in this regard. We are in agreement with the spirit, as I said, but unfortunately I am not in a position to accept it as it is not within the ambit of this Bill.

SHRI KRISHAN KANT: In view of the assurance given by the hon. Minister, I hope he will get it examined so that it can be incorporated in any future measure. I beg leave to withdraw my amendment.

** Amendment No. 25 was, by leave, withdrawn.*

The Schedule was added to the Bill.

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

SHRI DINESH SINGH: Sir, I move:
"That the Bill be passed."

The question was proposed.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Sundar Singh Bhandari.

** For text of amendment vide 117 col. Supra.*

श्री सुन्दर सिंह भंडारी : पेटेंट विधेयक अब अपने अंतिम वाचन में है। जो बाने संशोधन के समय में उठाई गई, मैं समझता हूँ कि मंत्री महोदय उन बानों पर सम्प्रीरतापूर्वक विचार करेंगे। हम सबका उद्देश्य है कि देश का वैज्ञानिक प्रगति, अपने देश की उत्पादन शक्ति तथा आत्म-निर्भरता बढ़े और इसके लिए चाहे हमें इन्टरनेशनल लाइसेंस पालिकी के बारे में विचार करना पड़े, चाहे पेटेंट के बारे में विचार करें या फिर हम अपने यहां के वैज्ञानिकों को और उद्योग के क्षेत्र में लगने वाले लोगों को प्रोत्साहन देने के सबध में विचार करना पड़े, लेकिन कुल मिला कर इसका सामूहिक परिणाम देश की आर्थिक व्यवस्था पर पड़ता है। परन्तु इतना जरूरी है कि इस पेटेंट के मामले में अभी तक जो तरीका रहा है, उसमें काफी निगरानी रखने की आवश्यकता है। अभी तक यह बात कि जांच किये बिना कि इसमें कार्मणियल फिजी-बिलिटी है या नहीं, इस प्रोसेस में इस बात की जांच किये बिना पेटेंट दिया जाता रहा। अब कम से कम इस बात का आश्वासन होना चाहिये कि जब तक किसी प्रोसेस की कार्मणियल फिजी-बिलिटी जांच नहीं कर ली जाती है, तब तक उसे पेटेंट नहीं दिया जायेगा।

दूसरा यह जो साइस्टिम्ट है, जो अनुसंधान करते हैं, पेटेंट प्राप्त करने के पहले उन्हें कई तरह के हर्डल्स पार करना पड़ता है, विशेषकर वे वैज्ञानिक जो सरकार की लैबोरेटरीज में काम करते हैं, डायरेक्टरों के नीचे और दूसरी माइन्टिफिक सब कमेटियों के नीचे जिन्हें काम करना पड़ता है। इसलिए मेरा निवेदन है कि ऐसे छोटे उत्साही युवकों को, वैज्ञानिकों को अपने द्वारा की गई शोध के लिए पेटेंट आसानी के साथ प्राप्त हो सकें, उसके लिये हमें कोई तरीका निकालना चाहिये; क्योंकि आजकल उनके सामने अनेक प्रकार की रुकावटें आती हैं। इसलिए इस बात का विचार करना चाहिये कि ये रुकावटें कैसे दूर की जा सकती हैं। क्या केवल लैबोरेटरीज के डायरेक्टरों के ऊपर यह बान छोड़ दें या फिर कोई और भी एजन्सी इस बान के लिये प्रस्थापित की जाय, जिसके द्वारा इस तरह

के वैज्ञानिकों का उत्सह हम कम न होने दें और उसको पेटेंट प्राप्त करने का सीमागत प्राप्त हो सके बिना किसी रुक बट के, क्या हम इस तरह की कोई व्यवस्था करेंगे ?

एक तीमरी चीज जिसके कारण आज लिए हुए पेटेंट भी कामशियल एक्सप्लाइडेशन के लिए जा नहीं रहे वह यह है कि जो भी चेम्बर आफ कामर्स है, इन्स्ट्रियल और मैन्युफैक्चरिंग आर्गनाइजेशन है उनके पास वह रेकारमेशन नहीं पहुचनी कि किन-किन चीजों बारे में पेटेंट जगने किए जा चुके हैं। तो इस बात का बहुत अधिक आग्रहपूर्वक विकास करना होगा और हमें सभी औद्योगिक मस्थानों को और ऐसे सभी चेम्बर आफ कामर्स को सरकार के विभिन्न विभागों को इस बात की अपटुडेट जानकारी रहे कि इस-इस प्रकार के पेटेंट दिए जा चुके हैं। इसकी व्यवस्था हमें जल्दी से जल्दी करनी चाहिए, अन्यथा यह जो आज कई शिकायतें हैं कि पेटेंट दिए जाने के बाद उनका उपयोग नहीं हो रहा उनके पीछे एक कारण यह भी है कि जो उसका कामशियल एक्सप्लाइडेशन कर सकते हैं या उसे पाइलट प्रोजेक्ट में आगे ले जाने की बात कर सकते हैं, उनको जानकारी नहीं रहती कि उस प्रकार का पेटेंट दिया जा चुका है। मैं समझता हूँ कि इन चीजों के विकास और अपने यहां के वैज्ञानिकों के मार्ग में जो बाधाएँ हैं उनको दूर करते हुए जिस मंशा से हम यह कानून पास करने जा रहे हैं, उस काम को करने में सरकार रुचि लेगी।

SHRI CHITTA BASU (West Bengal):

Mr. Vice-Chairman, there has already been a long drawn procrastination in bringing forward such a very important Bill in order to free our industry from the domination of the foreign industrialists. I think many of the weaknesses of this Patent Bill itself have been discussed and highlighted by many hon. Members of this House, but I am constrained to say that, although it is a step in the right direction, it suffers from certain basic weaknesses. That as already been pointed out and highlighted by many hon. Members. I would, at this last stage of

the discussion, urge upon the Government that they should pay proper attention to all the points raised in this House and try to remove them even by bringing forward another comprehensive Bill, particularly bearing in mind the object of doing away with or depending less on foreign patents. That should be the attitude of the Government while they implement the Act itself. Even today our industry is relying very much on the foreign industrialists. I have got certain figures to show that even today the foreign manufacturers take away about Rs.200 crores a year by way of cost of medicines which can be manufactured in our country at a cost of only about Rs. 50 crores. This should be gradually done away with so that our national economy can be self-reliant and we may not be required to depend on foreigners any more. In this connection, research is very important and to my great surprise I find that even today the Government is still bent on or determined to rely, for the promotion of research, on the private industrialists through their co-operation. I would urge upon the Government to bear in mind that technological development and promotion of research should be done in the national interest as a whole and that cannot be done by relying on individual capitalist or individual industrial houses. An attempt on the part of the Government should be made to see how much research we can develop and how much technology we can develop through the Government itself by promoting proper measures. In this connection I want to refer to the deplorable condition of certain National Laboratories in this country. The Government should pay proper attention and give aid to the development of the National Laboratories. In this context, we should also bear in mind certain difficulties of the research workers. It is reported that the research workers some times are not being provided with the necessary incentives for promoting their research.

I am told that only those persons belonging to the higher echelon derive the benefit of the research which is conducted by the relatively junior research workers. They are not even recognised by the society; they are not even recognised by the industrialists; they are not recognised by the Government. If this kind of non-recognition of the genius or perseverance or endeavour of the young research scholars goes on, then naturally the country will be deprived of the talent of these young junior research workers

The Government should pay proper attention for creating conditions so that they may contribute more for the development of our national economy free from the dominance of the foreign imperialists in our country.

Lastly, I want to say only one point. It has been mentioned in the Joint Select Committee report that it has been argued by the Attorney General that the right to patent is also equal to the right to property. That stands in the way of the Government bringing forward a much more radical and progressive measure. *(Interruption)* Anyway I do not like to dilate on that subject. We should not forget this particular, important question raised during the course of the Joint Select Committee's deliberations. Will the Government apply their mind in the matter of amending the Constitution so that the right to property should not be recognised as a fundamental right? Unless that great stumbling block is removed, progressive and radical measures cannot be undertaken and Parliament which represents the sovereign will of the people cannot fulfil the social objectives. With these words...

SHRI A.D. MANI : (Madhya Pradesh): I want to put an important question on this.

SHRI CHITTA BASU : Let me complete my sentence. Therefore, even at this last stage of our discussion I want the Government to apply their mind to this very specific question I have raised.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The Minister.

SHRI DINESH SINGH : Sir, I am very glad that hon. Members have focussed attention on the need for economic development in this country and the need to make use of all the instruments we have, whether it is the licensing regulations or whether it is the Patents Bill or whether it is any other Government measure, to attempt to bring forward a more rapid development of our economy. That is exactly the point why we had to bring this Bill because the conditions have changed and it is necessary now to apply our mind in the context of the realities as they are to day. Economic growth is related also to national good and therefore we have tried to make a happy combination between economic growth, industrial policy and social objectives, without which any industrial growth will have no meaning, because all this is designed to bring about a measure of prosperity for the people; and unless we

combine social objectives with economic growth it will have no meaning at all. That is why the whole attempt has been to try to avoid exploitation, to see that all necessary inputs for industrial growth are given, and at the same time to see that the latest technological developments, wherever they take place, are brought to our people and to our manufacturers so that they can remain competitive in world markets.

On the question of giving incentive^s to inventions, as I mentioned earlier, there is the Inventions Promotion Board which assists in the promotion of inventions. It gives certain assistance, certain subsidy for their work where necessary. It also highlights their inventions and gives incentives to them.

Then there is the National Research Development Corporation which is engaged in assisting the commercial exploitation of inventions. Now, there are 53 centres where specifications are available to the public free of charge about the patents which are available. Also the Patents Office has its hand-book as well as the journal that it brings out, giving the latest information about the patents.

Therefore, facilities exist. It is a question of really concentrating our minds, and one of the important aspects of under-development is the under-development of the mind, and it is this which we must concentrate on, to make people conscious of what exists in our country and not to depend on what comes from outside, whether it is ideas or whether it is goods. And therefore, it is necessary that we must make our people more and more conscious of their own ability, of the resources that exist in this country and of the base that we have acquired for industrial growth and for economic growth as a whole. If we bear this in mind, Government will not be found wanting in applying these measures to the best interests of the country and to see that our people derive the maximum benefit from it.

Thank you.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The question is:

"That the Bill be passed."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The Bill is passed unanimously. And I congratulate the Go-

vernment for passing such a far-reaching and very important Bill.

SHRI KRISHAN KANT: Sir, before you adjourn, I also want to congratulate the Government and the Members from all sides who have jointly functioned in a national way.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : The House stands adjourned till 11.00 A. M. tomorrow.

The House then adjourned at thirty two minutes past five of the clock till eleven of the clock on Friday, the 4th September, 1970.