

The House reassembled after lunch at two minutes past two of the clock.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA) in the Chair.

**Re. Jaguar aircrash near Ambala**

**श्री सुरेश पचौरी** (मध्य प्रदेश) : मैं आपकी आज्ञा से एक मिनट में सदन का ध्यान आकर्षित करना चाहता हूँ।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): But we are taking up this discussion.

**श्री सुरेश पचौरी** . केवल एक मिनट लूंगा उपसभाध्यक्ष जी।

अभी अभी समाचार मिला है कि अम्बाला के पास भारतीय वायु सेना का जगुआर विमान गिर गया है। उसमें पायलट की भी मौत हो गयी है। उसके साथ काफी नुकसान हुआ है। मान्यवर, पिछले कई दिनों से ये समाचार मिल रहे थे कि मिग-21 दुर्घटनाग्रस्त हो रहे है। एक माह में चौथी वायु सेना के विमान की दुर्घटना है जो निस्संदेह देश के लिए चिंताजनक है। इसलिए मैं आपके माध्यम से सरकार से आग्रह करना चाहूंगा कि इसे बहुत गंभीरता से ले और अच्छा हो कि लगातार जो, चाहे मिग-21 की दुर्घटना हो रही है या भारतीय वायु सेना के अन्य विमानों की निरंतर दुर्घटना हो रही है, इनको गंभीरता से लेते हुए सदन में वक्तव्य दें।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA ): Okay. Now, we take up discussion on the Patents (Second Amendment) Bill, 1999. Shri Prithviraj Chavan.

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**THE PATENTS (SECOND AMENDMENT) BILL, 1999 - Contd.**

SHRI PRITHVIRAJ CHAVAN : Thank you, Mr. Vice-Chairman, Sir. Sir, I stand to support the Patents (Second Amendment) Bill, as amended. The Congress Party is committed to fulfil its obligations arising out of our signing of the Marrakesh Agreement which launched WTO eight years ago. The experience of last eight years has been mixed. In many areas, the promises made during the Uruguay Round negotiations have not been fulfilled by the developed world. The expected gains have not accrued in many areas. Learning from this experience, we have to look at this legislation. We have to tread very cautiously when you look at the entire

legislation arising out of the WTO. The patent protection is an important component of the TRIPS Agreement, India had the famous Patents Act of 1970 which served us very well for the last 32 years. Patent rights, which grant monopoly rights to the inventor, in return for the inventor sharing his knowledge with the society, particularly, in terms of availability of newer drugs at affordable prices.

But it is a double-edged weapon. Unless the rights and obligations are fully balanced, it may work to the detriment of the society, particularly, it might affect the health and well-being of billions of poor people who are facing a grave health crisis. With these concerns about the health of the poor people, the Congress Party approaches this legislation.

Sir, the time-table for the patents law change, has three phases. We have already completed the first phase in 1999 when we accepted the principle of product patents, and agreed to incorporate exclusive marketing rights for the drugs and medicines which would eventually get product patents, when we launch a product patent regime. The second stage began on 1<sup>st</sup> January, 2000, and, this Bill, the proposed legislation, tries to fulfil that obligation. We are already late. The Minister has promised that there will be a third stage before December, 2004, when product patent regime is formally launched. The present Bill is the result of the stupendous work done by the Joint Committee of the two Houses over two years, and I would like to commend the Chairman of the Committee, hon. Shri T.N. Chaturvedi and the Members of the Committee, including the Minister who was also a Member of that Committee, although he could not attend many meetings. I would like to wholeheartedly commend the work done by the Committee. But if one looks at the report of the Committee and looks at the dates very carefully, the work of the Committee was substantially over by November, 2001. The famous Doha Declaration on TRIPS and Public Health, which the Minister has said is a landmark decision and I agree with him, came on 14<sup>th</sup> November, 2001. The Minister came back from Doha and he informed, by a statement, as to what happened at Doha, laid the declarations on the Table of the House, but substantial discussion could take place in this House only on 28<sup>th</sup> November, 2001. Therefore, Sir, the Joint Committee could not take decisions reached in the Doha Declaration into its deliberations. It could not factor in the benefits which accrued out of the Doha Declaration on Public Health into its recommendations. Unfortunately, if you look at the Bill, as has been reported by the Joint

Committee, it still reflects a rigid mindset of the pre-Doha TRIPS Agreement, and, I am afraid, it squanders the gains of Doha by not factoring in what has been given to us. And, that is why, we have brought in some amendments to rectify the situation. Sir, a grave health crisis is facing, not only India, but the world. In 2001, 11 million people have died due to preventable and treatable diseases, probably, because non-availability of drugs at affordable prices. It is equivalent to 30,000 people dying per day for non-availability of drugs, pneumonia causes three-and-a-half million deaths per year, AIDS causes three million, tuberculosis causes two million, and malaria causes one million deaths. In 2001, 5.3 million people were infected by AIDS. Out of a total of over 36 million people infected by HIV-AIDS, India has more than 3.7 million people affected by AIDS. Malaria is re-emerging. But, Sir, of the drugs that would treat these diseases, eighty per cent of the patented drugs are owned by the Multi-National Corporations (MNCs).

I would just give an example to show what exorbitant prices the MNCs are charging in the case of drugs. The cost of one year treatment for HIV / AIDS charged by MNCs is \$10,000, whereas an Indian company, Cipla, offers the same medicine to an international NGO at \$350 per year. Another Indian company, Arvind Pharma, offers the same drug at a cost of \$300 per year. That shows the kind of profit the MNCs are making.

Sir, the hon. Minister, Mr. Maran, during his intervention in the Rajya Sabha on 28<sup>th</sup> November last year, poetically highlighted the battle between the health concerns of billions of poor of the world and the exorbitant profits being charged by the MNCs. While doing so, he quoted what other famous people of the world have said about this problem. The Minister quoted both Prof. Jagdish Bhagwati and Arthur Dunkel as having said: "We are turning WTO, thanks to the powerful lobbies, into a royalty-collecting agency." The Minister further quotes Prof. Bhagwati and Mr. Srinivasan of Yale University as having said: "The unrequited mass transfer of rent alone is 8.3 billion dollars to four developed countries from the rest of the world. Of these 8.3 billion dollars, 5.3 billion dollars will accrue to the US alone."

Then he quoted the Nobel laureate, Joseph Stiglitz as having said: "Free trade, WTO-style, is like Opium Wars, because it allows the MNCs to fleece people in the poor countries by charging usurious prices for branded medicines and other services."

Doha, as the hon. Minister says, gave us some concessions, some flexibilities, and certain clarifications. They have put public health concerns above the MNCs' profits. India, along with Brazil, took the lead, and I commend the hon. Minister, though we are not satisfied with the outcome of the Doha conference. But, the Declaration on TRIPS and Public Health has been a significant achievement of the poor people, and needs to be highly commended. Because of this there is a battle between the interests of the poor people, who are facing a grave health crisis and the MNCs profit-making greed. It was not only the billions of poor people from India, but also the UN agencies like the UNHRC, UNAIDS, World Bank, WHO and international NGOs like Oxfam, MSF, who joined the battle against the MNCs. It was their pressure which has forced the developed countries to reduce the prices of drugs. It was under this pressure that, at Doha, they had to concede on the TRIPS and Public Health Declaration.

Now, what are the achievements at Doha, particularly in regard to the Public Health Declaration. Broadly, it is an official and binding interpretation on the TRIPS Agreement. For the first time, in the history of GATT, and the WTO, that a Trade Treaty had to be clarified. Earlier, the Treaty was not very clear. It was ambiguous. The ambiguity was sought to be cleared by this clarification. It also clearly establishes the primacy of the public health concerns of the poor over the commercial interests of the MNCs. It also clarifies the position on compulsory licences.

The first time that the declaration uses the words "compulsory licences" as in our law. Sir, it also puts a moratorium, on raising disputes till the next Ministerial Conference. It gives additional ten years to the least developed countries to switch over to a complete, full, patent regime, and directs the Council of TRIPS to find expeditious solutions to the problems of those countries with insufficient capacities in the pharma sector, by the end of 2002. Here, I will maintain that you could take advantage of this clause because India is also insufficiently developed, as far as the pharma R & D is concerned. You could take advantage of this clause and, perhaps, could have delayed bringing this legislation till the TRIPS Council finally decided on the issues raised in this Declaration, by the end of 2002. I still plead with you to look at this clause of the Doha Declaration and see if you can delay this legislation till the end of 2002.

Now, I come to the provisions of the Bill. I have, with my colleagues from the Congress Party, moved five amendments. These

amendments particularly cover four areas. One area is about the most crucial area, which seeks to balance the rights of the poor people to get cheaper medicines against the profits of the inventors, the profits of the MNCs. This is the area of compulsory licensing. Compulsory licensing is sought to be given, under our law, by the newly-drafted Chapter on compulsory licensing by two sections. Section 84 gives us the normal circumstance when, after three years of the working of a patent, medicines are not available at low enough prices. That is the normal condition. There is a second condition, which is covered by section 92 of the proposed Chapter. It covers a condition of national emergency-something like what happened in Surat, the incidence of plague; or something like what happened in America, the Anthrax crisis. In regard to the national emergency condition, under section 92 and the normal compulsory licence condition under section 84, we were not satisfied with the Bill and that is why we have moved two amendments, to section 84 and section 92. I am happy to inform the House that the Minister, after yesterday's ...[Time-bell]...

Mr. Vice-Chairman, Sir, I have some additional time from my colleague, Mr. Maheshwari.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): If Mr. Maheshwari does not speak, it is all right.

SHRI PRITHVIRAJ CHAVAN: We have moved amendments to sections 84 and 92. I am happy to inform you that the Minister took the initiative in calling the leaders of the Opposition Parties. We had a meeting yesterday evening. And he has conceded to our concerns on compulsory licensing, under both section 84 and section 92. I am not completely satisfied because there is section 87, which still applies to section 84. But you can still look at it. By and large, we are happy and therefore, I will not press these two amendments.

The second amendment is about the amount of royalty paid to the inventor. The 1970 legislation specifically puts a ceiling of four per cent on the royalty. That means, the royalty shall not exceed four per cent on the ex-factory price of the drugs. A very specific ceiling has been put in. The proposed legislation does away with this ceiling, which means the multinational companies can now ask for a royalty of not just five or six per cent, but even for a royalty of 50-100 per cent. I would plead with the Government, please put an upper limit on the ceiling. If you are not happy with four per cent, put eight per cent or ten per cent. But I think there should be an upper limit for the percentage of royalty, a ceiling on the

percentage of royalty, that can be charged. Otherwise, if you leave it to the Controller, it is between the Controller and a very large multinational, a very, very large multinational, and you know what will happen, Sir.

The next area of our concern was about the conditions of patentability. We had some objections, we had some worries. The American law allows what is popularly called 'evergreening of patents'. After they get a patent for 20 years, if it is a patent for tablet, they go back to the Patent Office with a capsule and say, "Now it is a capsule, you give us another patent"; then, they go back again and say, "It is an injection now, give us another patent"; they go back again and say, "This is a different form of application, give us another patent". In this way, the patent monopolies continue. We want a reference very specifically that only new chemical entities, only those entities which are really novel, with inventive steps involved, should be considered. The Minister has promised us that this amendment will be brought in 2004, when the next amendment of the Bill takes place, when you launch the product patenting regime, because this definitely concerns product patents. I am happy to let it go.....with an assurance that it will be brought forward again.

The last amendment that we had moved was on parallel imports. We wanted a condition to be put in, that medicines could be imported from the cheapest possible source. Right now, the clause allows us to import medicines from any source, provided it is approved by the patent-holder. This is quite a technical and complicated matter. The Minister has not agreed to this amendment. I will also not press it because he has explained the position. I plead with him; please wait for the results of the 2002 consultations. This has a grave implication for the poor countries. The poor countries have been given additional ten years to go to a product patent regime. There could be a situation when India could import cheaper drugs from a third country which has not entered the product patent regime. Do not tie your hands. Please look into this point very carefully. Even now, you are tying. If you consider, please get this amendment also approved. Sir, these are our amendments. But there are certain other amendments moved in by our friends on the left. One concern patenting of micro organisms. Certain things as not patentable. Clause 4 of this Bill amends this Section 3 of the Act. Amended section permits patenting of micro organisms which are life forms. Life forms are not patentable. But this Bill is permitting patenting of micro organisms. Sir, I plead with you; there is no consensus in the world community, particularly, the world

scientific community, on patenting micro organisms which are life forms. The scientific community opposes it; Europe opposes it. I would like to remind you that the TRIPS Agreement, under section 27.3(b), has a provision for a mandatory review of this particular clause. This mandatory review begins four years after the launching of the WTO. It began on 1<sup>st</sup> January, 1999. The review is not yet over. Why are you in a great hurry to bring in patenting of micro organisms when the world community and the WTO itself are considering this matter? Please do not do it, and accept the amendment of my friends from the left who want micro organisms to be removed from it. Please postpone your decision on it.

Sir, I will conclude by making one more point. I would like to point out the attitudes of the officials in the Ministry. I do not know who is responsible. The whole Parliament is responsible. Sir, I did take part in the debate on the Patents Bill in the other House, the First Amendment Bill, and I still remember that there was a section, section 39, in the 1970 Act. This section dealt with filing of patent applications, relating to defence, national security and atomic energy, outside India. This particular section was in regard to the defence patents being filed outside India. The condition was that one had to first inform before one filed an application. In the First Amendment, the Government deleted the entire section. I remember, Sir, during my intervention in the other House, I pleaded with the then Government--because he was not there--"Please do not delete this section. This is a very crucial section for national security. Let it be there. It is an important and well thought-out provision put in 1970." The then Government--I am not blaming him--did not listen. Section 39 of the Patents Act was deleted in the First Amendment. And now very strangely, in the Second Amendment, which we are considering now, the very same provision comes back entirely, as it was in 1970. It is a very good decision; I support it. It comes back, vide clause 22. Why was it removed in the first place? What kind of advice are you getting from the officials of the Ministry? This is one example. Sir, there are many other examples. This is very, very complicated piece of legislation. Most of the countries which have framed legislations have lacunae in them. They are correcting them. Please do correct your laws whenever a flaw comes in. Do not have any inhibition. Sir, with these words, I conclude. I support the Bill; I would urge upon the Minister to look at some additional concerns that we have, and the concerns that my friends on the left have. The Congress Party will support you constructively in going ahead with legislation arising out of WTO

or with the obligations arising out of WTO as long as they are in our national interest, as long as they are for the growth of the economy, and as long as there is growth of employment.

Whenever you bring forward any provision, though we might have signed it in 1994, after the experience of the last eight years, if we feel that it is not in the national interest, it is not in the interest of the poor, it will affect the health concerns of the poor people, we will oppose it. With this proviso, I support this Bill. I, once again, commend the Committee for having done such a stupendous and great work. Thank you.

SHRI T.N. CHATURVEDI (Uttar Pradesh): Thank you, Mr. Vice-Chairman, for giving me this opportunity to speak on an important Bill. In the first place, I would like to thank the hon. Minister for making such a kind reference to me, as also to the Members of the Committee. I am, indeed, grateful to the hon. Members of the Committee which represented varied experience and different opinions. But, at the same time, what has been repeatedly stated by Mr. Chavan, the national interest, was given overriding consideration, even when differed and argued. I am very thankful to my friend, Mr. Chavan, who made a very constructive proposition, and said that he was always constructive and the support of the Congress Party would always be available. Now, I would like to assure him that as far as the Committee was concerned, we went into the debates that had taken place in the other House and we had come across the points that Mr. Chavan had made about the retention of clause 39, the national security. In a way, it is tribute to him. This also shows the meticulousness and seriousness with which the Committee had undertaken its task. I would like to assure him that, whatever might have been the thinking of the officials, whatever might have been the compulsions, whatever might have been the arguments advanced, etc., at that point of time--I am not concerned with that--when we discussed this point again with the officials of the Ministry, they were always very helpful and very facilitative in our work. . I would like to say that they made us available all the information; they got information from different countries at short notice, what they are actually doing, what are the litigations pending, what are the laws that have been enacted, what are the private negotiations that are going on, etc. Mr. Chavan also gave another reason why the second House, the Upper House, existed to rethink about the matter in a cooler atmosphere, giving a second thought to it. The Committee had the benefit of the discussions elsewhere and that was the

reason why for hours together we discussed this issue and insisted that this section should be brought back. I have already said that it was a tribute to Mr. Chavan. I would like to say that we were certainly with him in 1993 when the Marrakesh Treaty was signed. If anything goes against the national interest, I have no doubt, that everybody in this House, both in the Government and in the Opposition, will join hands to see where the chips are down and we will fight it out.

I may frankly mention a very few things here. In our legislation, probably, we may have to face some rough weather. No doubt, we will face it with courage and conviction, and with very logical arguments. The reason for this kind of a consensus has been that my friend, Mr. Chavan, and many other Members of the Committee, including the Members from the Left, had earlier worked in a number of fora together and discussed these particular points. That is why the concerns were shared universally; what were the anxieties of the nation; what were the anxieties of different sections of the industry. Without going into their internal politics, the interests of every section were looked into in the broad perspective of national interest. That enabled us to inform ourselves about what different sections of the society were considering. Since we worked in many other foras during the Uruguay Round, the TRIPS Agreement, the WTO, we were very conversant. As I said, there was a common sharing of those anxieties. So far as this Committee is concerned, with due deference, I would like to mention that we tried to address ourselves to these concerns. The hon. Minister in his opening remarks has mentioned a number of considerations which have guided the Government, so far as this Bill is concerned, I would also like to draw your attention to the approach of the Committee towards the discussion. The Committee went into the technical details and discussed these issues for days together. Dr. Biplab Dasgupta may differ with me. But I can say that there was every possible opportunity available to the hon. Members for giving their views and for getting every information. That is why all of them were so cooperative. Therefore, we could reach some kind of a consensus on a matter on which there was such a wide divergence of opinion which could not be bridged. Despite that some of the amendments that have been proposed by Dr. Biplab Dasgupta, have been circulated. I would just make a reference to them. It is not for me to again discuss them because these are the points which were discussed for days together during our deliberations. In order to go into it in much greater depth and in much greater intensity with the width of vision and the intensity of gaze, we even appointed a Sub-Committee so that there could be

completely free and fair decisions. We had also the benefit of two lawmakers, rather jurists, very great legal experts. We also drew upon their legal acumen for preparing the phraseology, the words and many other changes that we have made according to their advice because they have been concerned with many of these things. The implication of every single word which we have suggested at different places is only from the angle that as far as possible the phraseology that we used should stand the utmost scrutiny so far as international legal jurisprudence is concerned. I must express my thanks to Shri Nariman in particular. Sometimes, I made a request to him even to phrase a particular clause or part of a particular clause and so on in order to address ourselves to the possible objections that could be raised and at the same time to safeguard our interests. The national interest was uppermost in our mind. Keeping that interest in view, our aim was to see how our own technological development can take place -- this may not always sound music to the ears of my friend Dr. Biplab Dasgupta; he also wants more and more investments in the country -- and how we can have more joint ventures, more investment and at the same time see to it\* so far as the MNCs are concerned, the pejorative sense or the pejorative way that has worked to the detriment of the common people of the developing countries could be contained. That was our aim. So, Sir, we took care to see that whatever flexibility the TRIPS Agreement provided us, we tried to take the best advantage of it and, in the process, we tried to even borrow their language. There are certain aspects, as the hon. Minister has already said, about the pharma industry. To me, sometimes during the discussion, it looked as if the entire discussion of the Indian patents system had been hijacked only by one industry. Still, in the times to come, the scientists and the technologists will remind us that that has a much broader purpose, and, that is why, some of the points that have been raised by my friend, Mr. Chavan, and about which some mention was made by the hon. Minister, these will, again, be addressed at the appropriate time. But, in this particular Bill, we have tried to take note of all those aspects. So, Sir, apart from national interest and national security, this has been our concern. Then, again, we wanted that our language and our law should be such that as far as possible, international litigation should be avoided. Still, I would say, -- I will not refer to any particular article or clause - we "-knew, we have used certain languages; we have adopted a particular approach, to which some could take umbrage; but, we are sure, we will meet that umbrage or objection by what has happened elsewhere or what is happening in certain other

countries, and also by the legal interpretation that we can put to various aspects. That was our broad approach and, to illustrate, I will just mention a few things; particularly, I would like to say, as the Minister has said, 'flexibility', wherever it was possible, we have tried to avail of it to our national advantage, and with the kind of conflicting interests which you have to reconcile and having to bring about some kind of an optimum equilibrium, it becomes a very difficult task and this was the task that this Committee was entrusted by this hon. House and the other House. And we have, to the best of our abilities, tried to discharge it as satisfactorily as possible and it is really gratifying to note the kind references of my friend, Mr. Chavan, and the hon. Minister. I, particularly, want to draw the attention of the Government to the fact that we were extremely careful; that is why, Sir, you might have noted, clauses 35 to 46 have been omitted and a new clause 38, substituting Chapter 6, has been inserted. A new Chapter has been inserted, and this was only to address the various anxieties, the various misgivings, the doubts or even the possibilities, that might arise, which might be adverse to us. To the best of our ability, we have tried to do this. That is why, I think, along with the assurances which the Minister has given, when the appropriate time comes, as regards the pharma industry and certain other aspects, he will take care of them. He has just extended the support to this. I would also like to mention that I have had, personally, the benefit of advice; Mr. Pranab Mukherjee is not here. At times, when I tried to clarify certain points with him, we tried to put forth a common thinking. On the TRIPS Agreement and on the WTO, we wanted to conform to it in such a way that, primarily, the national interest was served. My friend, Mr. Chavan, quoted the hon. Minister. The Minister himself mounted a campaign, not only at Doha, but also at many other fora within the country and outside, so as to mobilise the public opinion. I think we all must commend the hon. Minister's efforts at mobilising the public opinion. I would also like to assure my friend, Mr. Chavan, that we, in the Committee, were completely in touch with the discussions that were going on, and with the trend of discussions. We had the benefit of the papers that the Government of India had prepared. We were also getting information from the concerned Government officials. Till the very last moment, we tried to incorporate the spirit of, and the new thrust given by, the Doha Declaration. While discussing all these aspects, we fully kept in view the situation about drugs, which, as the hon. Member pointed out, are very costly. I want to draw the attention of the House to one or two points pertaining to Chapter VI. I will just quote certain portions from clauses 82 and 83. It says,

"Without prejudice to other provisions contained in this Act, in exercising powers conferred by this Chapter, regard shall be had to the following general considerations, namely, that patents are granted to encourage inventions, and to secure that the inventions are worked in India on a commercial scale, to the fullest extent that is reasonably practical without any undue delay; that they are not granted merely to enable patentees to enjoy monopoly for the importation of the patented article". Thus, we were not so much in favour of importation, as against manufacture within the country. Then, it further says, "That the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge, and in a manner that is conducive to social and economic welfare." This was the point which Mr. Chavan made. We had in view the right of the patent-holder or the patentee or the inventor and, at the same time, the social obligation, the needs and requirements of the society. This is what is very important. It further says, "That the patents granted do not impede protection of public life and nutrition and should act as an instrument to promote public interest, specially in sectors of vital importance for socio-economic and technological development of India". And then, it says, "That the patents granted do not in any way prohibit the Central Government from taking measures to protect public health". This was the point which had been very rightly emphasised by my colleague.

Now, I do not want to go into the details, Sir. But I would draw your attention to one fact. We had lot of discussions, and we had consultations with a number of legal experts on whether we should have the expression "reasonable price" or "affordable price". This is how the phrase was coined, to give greater legal strength. Then, I want to mention about compulsory licensing which has been mentioned and which now has been recognised, and for which the Minister put up a good fight. In any case, we were always in favour of it so that the reasonable requirement of the public shall be deemed to be satisfied. We have tried to lay down the elements and the ingredients. It is good that certain other points have also been suggested by Shri Chavan.

I would also like to draw attention to the words -- even in our amended law that we have, we have gone in, particularly, for phrases of this kind - 'national emergency', 'extreme urgency' and 'public non-commercial

use'. These are the situations that we have envisaged during our discussion, and we have tried to do it. If I find that, after the discussion, they are being more explicit, probably, that would help in a better understanding of the purposes of the Bill. This will give further coherence to our thinking on this particular subject. But what I meant to suggest was that these are the things about which we, all along, were concerned during our discussion.

Sir, the next issue was, what would be the position of the Controller, because there were two opinions on that. One was, there were too much powers with the Controller; at the same time, we have to protect the national interest. After all, we have to choose a Controller in whom the country reposes confidence, who is a man of standing experience, because it is he who is the main authority. That is why we tried to strike a balance by providing checks and balances. At the same time, we have tried to ensure that our Controller has the same kind of authority and power which the Controller in any country would have. At the same time, we wanted to follow the rule of law, and we have mentioned that very point here.

Sir, I would like to point out that we have also discussed about the general purposes for granting compulsory licence. We have laid down the guidelines for the same. In one way, we bind him to certain guidelines so that there is no arbitrariness. We have laid down the terms and conditions for this.

A point was particularly made that, earlier, there was a four per cent limit. We had a lot of discussion on this point. I think, the reasonableness, the determination, of that now lies with the Controller. After taking into account all the pros and cons, it was felt that, probably, fixing a particular percentage now might contravene certain other provisions. We might have attempted that, if it would have conformed to our national interest, but we felt that, as far as possible, the Controller should not be dragged into this kind of a litigation. That is why we provided certain flexibility to him so that he could work out a scientific formula to know as to what expenditure, efforts, etc., had gone into a particular invention.

Sir, a lot of discussion took place in the Committee about the 20-years period. I think, Dr. Biplab Dasgupta- would again make that point that 20 years is too long a period. We know that in a fast-changing world, a thing can become redundant, it can be relegated to the background the

very next year, but, sometimes, it continues. If we have to provide the incentive, the impulse for better work, the impulse for scientific invention, then, some kind of a reasonable assurance should be given to him so that even if his first invention is not so very beneficial for him, he still does not lose the initiative to venture into the new field. We did not have this from the viewpoint of the MNCs. We did it after talking to our own people. I need not name them here because they are very eminent technologists and scientists who represent this country. We can say with pride that they have equipped themselves in their special fields. That is why, I would like to mention that all possible, misgivings which may arise in future, though that future is always uncertain, but even if I might say, the hob-gob-lins of some minds, not of any group or individuals, but some times, imagined fears, we have the provisions to deal with them and we can meet that particular situation. But the long debate that has been going on for the last 10-15 years, in the wake of TRIPS-Uruguay round and the WTO round, etc., this Bill has come. I think, it is really a landmark Bill. It will be a turning point, because our own people are anxious. In the people's interest, we should not further delay this Bill.

That is why, I am very happy to find that my friend has assured the support. The credit for the Bill is again a shared one, as the anxieties are shared, the remedies that we tried to suggest are the shared ones, and the vision of the Bill is also a shared one. Therefore, I have, no doubt that a constructive consensus would emerge, as the hon. Minister suggested in the beginning and requested for it.

My friend, Mr. Chavan assured us his support so graciously. I have no doubt that Dr. Biplab Dasgupta is always generous in extending support for all good causes; and more so when the economic developments and the future of the country are concerned.

Thank you.

DR. BIPLAB DASGUPTA (West Bengal): Sir, let me apologise for my speech difficulties but that would help the Chair. I will confine my speech to nine minutes. If I am right, I accompanied Mr. Maran. We went to Seattle. After we came back in December, 1999, there was a set of WTO-related Bills, which conformed to the WTO. All those were passed, because the Congress Party supported the BJP. The two parties had common

political interest. ...*{Interruptions}*... They agreed, whether good or bad, I don't know. But they came together. Only the small parties and we opposed them, both the BJP and the Congress on this particular issue.

In that case, I remember, we from the Left, wanted these Bills to be sent to Select Committees, as some of the measures were not comprehensible to the ordinary members. We wanted all the Bills to be referred to a Select Committee. But for one reason or the other, the Congress and the BJP agreed to pass them, excepting for this particular Bill. They agreed that this Bill will be referred to a Select Committee. So, this Bill has gone to the Select Committee. I was a Member of the Committee and Mr. Chaturvedi was the Chairman. I must say that the Members of the Committee worked very fairly, very impartially, diligently and intelligently. I have no doubt about it.

So, what I am saying is not against the Committee as such or the individuals of the Committee. The Committee considered this Bill. First, the Bill which went to the Committee and the Bill which came out of the Committee, they are two different things. The Bill which came out of the Committee was much better than the Bill which went to the Committee. So, the Committee improved the Bill, remember that. But there were two things. The major one was that the WTO wanted the patent period to be extended from 14 years to 20 years.

However, I do not agree with the decision of the Committee to extend the period of patent to 20 years from 14 now. This is in line with the WTO recommendation. This we did not follow. Some of us protested against it and we opposed it. I cannot see the point of revising the time period upwards. Why should it not be revised downwards making it, say, 10 years? Patent is a monopoly; rather it is a time bound monopoly. I thought that the present regime was against monopoly of all kinds. My other argument against the extension of the time period is that it does not agree with the way the world is moving. Technologies are changing faster, much faster than before. A computer becomes out of date within five years and software is legally valid only for two - three years. This is true of all the technologies. When technologies are changing fast, what is the point making the patent valid for 20 years? But according to this Bill, this monopoly is going to be for 20 years. When technologies are changing so fast, I do not see any need for extending it to 20 years. This will only

3.00 p.m.

enable the multinational companies to continue with the patent for a long time. The only reason for making the patent period valid for 20 years could be that when the patent expires nobody will be interested in this product. By then the technology will change and we will have new products to satisfy the same demands. In other words, the multinational corporations of the rich countries will continue with their monopoly in terms of new products. Nobody will be interested in this after 20 years the period which has been prescribed. My point is that ceiling on the patent should be only ten years, plus three or four years of preparations.

My second point is that there is no need to rush through this Bill. Now we have three Bills on patents before the House, which address three different aspects of the patent issue. We have this Bill which has been moved by the Minister of Commerce, my friend, Mr. Murasoli Maran. This Bill tries to conform to an international document called the TRIPS. The second Bill is on plant varieties and which has already been passed by the Select Committee which was formed for this purpose. This Bill has been moved by the Ministry of Agriculture. It meets the needs of a particular section of TRIPS, that wants the plant varieties to be patented. The third Bill is sponsored by the Ministry of Environment and it is in response to CBD or Convention of Biodiversity of 1993. This Bill is not before any Select Committee but it is being examined by the Standing Committee on Science and Technology which will take some time to complete the examination. There are many common elements in these three patent Bills. Each of them prescribes an authority to examine the laws. Each of them has something on benefit sharing. We have asked the question in our note of dissent that how the divergence would be reconciled, and if there is a conflict between the three Bills, how this can be settled. So, three Bills are there. I do not know which Bill is going to precede, I do not know. I asked the Secretary of the Ministry of Science and Technology about this. He told me that his Bill would be the last. So, ultimately, he will have the last laugh.

There is also a conflict between the various international documents that have been signed. For example, TRIPS talks of conformity, while the Convention on Biodiversity talks of diversity. Our country has signed both these documents. You cannot have three Patent Bills working in three different directions. I want to say that you have to choose between the

two. You can go in for either diversity or conformity. You cannot follow both, simultaneously. So, the Government has to decide for itself, between diversity and conformity. On this, there should be a proper thinking, and the Government should take no hasty decisions. You have to give this assurance to the House. There is no point in rushing through it.

Lastly, I would like to say that the world trade is in deep turmoil now. The Marrakesh Agreement was signed in 1994. But the world of 2002 is different from that of 1994; it is not the same. At that time, the Third World countries did not have any say in anything. They were not able to say a single word. They were completely afraid of the developed countries. In 1999, I attended the Seattle Conference. There, the Minister and myself realised that in regard to the perception of the people, a lot of changes had taken place. The same Third World countries, which were earlier afraid of the developed countries, were not allowing Resolutions to be passed against their interests. Now, the Third World countries are more aware of their own interests, and they are willing to fight for their rights. So, there is no need to rush through it. There are many countries in the world which have not yet passed this Bill? They want to follow India's position because they think that ours is a very important Bill. You have to be careful because our Bill will affect many countries of the world. Our Bill is very important. So, wait for some more years; wait for the other countries to arrive at a decision; wait for alliances to take place. All of us, India, China and all other Asian countries, can go together. The world scenario is changing. In view of all these things, I think there is no point in showing any haste in passing this Bill. There is a lot of time. With these words, I request the Minister to withdraw the Bill. We can wait for some more time before we finalise the Bill. Thank you.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri Rama Shanker Kaushik. You have six minutes.

**श्री रमा शंकर कौशिक (उत्तर प्रदेश) :** श्रीमन् माननीय मंत्री जी ने अभी इस विधेयक को रखते हुए जो बात कही, उस से ऐसा लगा कि जैसे वे बड़ी लाचारी में इस बिल को इस सदन में लाए हैं। उन्होंने वर्ष 1994 का हवाला दिया कि 1994 की उस समय की सरकार ने जो वहां समझौता हुआ, उस समझौते पर हस्ताक्षर कर दिए और इस विधेयक को हम यहां बड़ी कठिन स्थितियों में ला रहे हैं। महोदय, एक बात यह समझ में नहीं आती कि यह सरकार किस प्रकार से काम करना चाहती है? वह अपने ऊपर जिम्मेदारी क्यों नहीं लेना चाहती है। वह खुलकर यह कहने के लिए क्यों तैयार नहीं है कि इस विधेयक को हम सोच-समझकर अपनी

नीतियों के अनुसार इस सदन में लाए हैं। वह यह हवाला क्यों देती है कि कांग्रेस पार्टी की तत्कालीन सरकार ने चूंकि ऐसे फैसले कर लिए, उन फैसलों के वशीभूत हम इस विधेयक या इस प्रकार के विधेयक को ला रहे हैं। श्रीमन दो और विधेयक पेटेंट के संबंध में आने वाले हैं जो कि अभी रास्ते में हैं, लेकिन इन सब विधेयकों को मिलाकर हमारे देश में जो स्थिति बनती है, वह बड़ी दयनीय है। हमारे कई उद्योग चौपट होंगे ही, हमारी वनस्पतियां जोकि हमारे हजारों साल के अनुभव के कारण हम को प्राप्त हुई हैं, हम उन के लाभ से ही वंचित हो जाएंगे। हम यह नहीं चाहते कि उन का लाभ दूसरे देशों के लोगों को न मिले, लेकिन हम उन से वंचित कर दिए जाएं, यह हम स्वीकार नहीं कर सकते। महोदय, इन पेटेंट विधेयकों के जरिए हमारी जड़ी-बूटियां सुरक्षित नहीं हैं, हमारे उद्योग सुरक्षित नहीं हैं और हमारे यहां दवाओं की स्थिति इतनी खराब हो जाएगी कि गरीबों को दवा मिलना मुश्किल हो जाएगा, असंभव हो जाएगा। यह सरकार ऐसी स्थिति पेटेंट बिल के जरिए देश में लाना चाहती है।

श्रीमन 1970 का जो हमारा पेटेंट कानून है, उस के तहत हम किसी खाद्य पदार्थ या दवाओं पर पेटेंट नहीं देते। यह एक खास बात है और दूसरी खास बात यह है कि हम किसी भी पदार्थ पर पेटेंट नहीं देते बल्कि उस पदार्थ की प्रक्रिया पर पेटेंट देते हैं। इस प्रक्रिया पर पेटेंट देने के कारण हमारे देश में दवाइयां बहुत सस्ती हुई हैं। मैं एक मिसाल "रेंटीडीन" नामक दवा की देना चाहता हूँ जोकि हमारे देश में जिस कीमत पर मिलती है उस से 18 गुना कीमत पर पकिस्तान में मिलती है, 20 गुना ज्यादा कीमत पर इंडोनेशिया में, 47 गुना ज्यादा इंग्लैंड में और 103 गुना ज्यादा कीमत पर अमेरिका में मिलती है। उस का कारण यही है कि हमारे यहां प्रक्रिया पर पेटेंट होने के कारण उस दवा का निर्माण हो सकता है। इसी वजह से हमारे यहां दवा कंपनियां बढी हैं। सन 1970-72 में जहां दवा कंपनियों की संख्या 5 हजार थी, आज उन की तादाद 24 हजार है, जहां उस समय 250 करोड़ रुपए की दवाएं देश में बनती थी, वही आज देश में 12068 करोड़ की दवाएं बनती हैं और जहां उस समय हमारा दवाओं का निर्यात केवल 228 करोड़ रुपए का था। वही आज हमारा निर्यात 4000 करोड़ रुपए से ज्यादा का है। यह स्थितियां हमारे यहां हैं। अब मैं नहीं समझ पाता कि क्यों हम अपने समकक्ष देशों की बात को नहीं लेकर चलते और क्यों हम अपने को दीन-हीन समझकर चल रहे हैं? हम क्यों यह समझ बैठे हैं कि अगर हम ने डबल्यू.टी.ओ. की शर्तों का पूरी तरह पालन नहीं किया तो हम जैसे दुनिया से निकाल दिए जाएंगे और हमारा अस्तित्व खत्म हो जाएगा। महोदय, सिर्फ एक ब्राजील की मिसाल ले लीजिए। वहां विश्व स्वास्थ्य संगठन ने ऐलान किया था कि 2001 तक वहां सवा 12 लाख एड्स के मरीज होंगे, लेकिन स्थिति यह है कि आज ब्राजील में केवल 5 लाख लोग एड्स से पीड़ित हैं। मैं ब्राजील की बात कर रहा हूँ, उपसभाध्यक्ष महोदय। वहां के लिए विश्व स्वास्थ्य संगठन का जो सवा बारह लाख की फिगर थी, वह कैसे पांच लाख पर आ गई? इसलिए कि ब्राजील ने डब्ल्यूटीओ के शर्तों को धत्ता बताकर अपने यहां एड्स की दवा का निर्माण किया और सस्ती दवा का निर्माण किया, जिससे वहां के मरीजों को वह दवा मिली और उनकी संख्या में कमी आई। अमेरिका में या पश्चिम देशों में जो इसकी दवा मिल रही है, जैसा अभी हमारे एक साथी ने बताया, उस पर मरीज का प्रति वर्ष दस हजार डालर खर्चा आता है। तो क्या आपके देश में उसका इस्तेमाल हो सकता है? आपके देश का साधारण गरीब मरीज जो है, क्या वह उस दवा का सेवन कर सकता है? नहीं कर सकता है। वहां पर इस्तेमाल में है और इस दवा के निर्मित होने से पश्चिमी देशों में एड्स के कारण होने वाली मृत्युदर में 70

फीसदी की कमी हुई है। यह बात अपनी जगह सही है, लेकिन हमारे यहां सिपला कंपनी 350/- रुपए में वह दवा देने के लिए तैयार है।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** अब आप समाप्त करें।

**श्री रमा शंकर कौशिक :** श्रीमन जी, अभी तो बात पूरी नहीं हुई है।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** आप खुद वाइस चेयरमेन पैनल में हैं, आप तो जानते ही हैं। समय तो आपका हो गया है। थोड़ा कॉपरेट करें।

**श्री रमा शंकर कौशिक :** जी सर, वाइस चेयरमेन पैनल में तो हूं, लेकिन मैं एक साधारण सदस्य भी हूं।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** इसलिए तो मैंने आपसे कहा। आपका छह मिनट का समय था और छह मिनट हो गए हैं।

**श्री रमा शंकर कौशिक :** सर, मैं यह कह रहा था कि ब्राज़ील में इस ढंग से बात हुई है और फिर उसको अमेरिका की बहुराष्ट्रीय कंपनियों ने डब्ल्यूटीओ के ट्रिब्यूनल में घसीट लिया, लेकिन उसकी परवाह न करते हुए वह संयुक्त राष्ट्र के विश्व स्वास्थ्य संगठन के पास गए और अंतर्राष्ट्रीय मानवाधिकार आयोग के पास गए। उन दोनों ने ब्राज़ील की बात को माना और कहा कि गरीब देशों को भी अपने गरीब मरीजों का इलाज करने का पूरा हक है, उनका मौलिक अधिकार है और इसलिए अगर बहुराष्ट्रीय कंपनियां उनके ऊपर डब्ल्यूटीओ की ऐसी शर्तें लादती हैं तो वह गलत हैं।

उपसभाध्यक्ष महोदय, हम क्यों पीछे रहते हैं, हम क्यों नहीं बोलते? क्यों हम इस बात में रह जाते हैं कि हम डब्ल्यूटीओ की सारी शर्तों को मानेंगे? हमारी जड़ी बूटियों पर वह पेटेंट लाना चाहते हैं। राइसटेक कम्पनी के मामले में आप जानते ही हैं कि बासमती पर भी वह पेटेंट लेने वाले थे, जो ले लिया था, लेकिन शायद आप मुकदमा लड़े हैं। उसमें शायद आप जीते हैं या क्या हुआ, हमें पूरा पता नहीं। ऐसे ही हल्दी की हालत है, ऐसे ही नीम की हालत है, ऐसे ही अदरक की हालत है, जो हमारे हजारों वर्षों का अनुभव है, उस अनुभव को वह पेटेंट कर अपने द्वारा हमको देना चाहते हैं। अगर यह स्थिति होगी तो हमारे देश का क्या होगा? इस पर हमें सोचना है।

उपसभाध्यक्ष महोदय, डा. विप्लव दासगुप्त जी ने जो बीस साल वाली बात रखी है, तो यह बीस साल का मालिकाना हक क्यों दिया जा रहा है? पेटेंट कानून या किसी कानून को मानने का हक यह हो गया कि उसका मालिकाना हक हो गया। यह मालिकाना हक बीस साल के लिए क्यों दिया जा रहा है? इतनी तेजी से दुनिया आगे जा रही है, इतने चमत्कार हो रहे हैं, इतने कार्य हो रहे हैं, इतनी प्रौद्योगिकी बढ़ रही है, इतना विज्ञान बढ़ रहा है, तो हम यह बीस साल की कंडीशन क्यों रख रहे हैं? हम उसको कम करें, दस साल का करें की दस साल तक उस पर मालिकाना हक रहेगा, मेरा निवेदन होगा कि इस बीस साल के मालिकाना हक को

कम करें। निश्चित रूप से यह जो विप्लव दासगुप्त जी का जो सुझाव है, बहुत अच्छा सुझाव है। मैं इसका समर्थन करता हूँ।

इसके साथ ही मैं इन सारे पेटेंट बिलों का विरोध करूंगा और इसलिए करूंगा क्योंकि इससे हमारे देश की अर्थव्यवस्था, हमारे देश का कारोबार, हमारे देश की दवाइयों, हमारी जड़ी बूटियों, हमारे देश के पौधों, हमारे देश के खादानों पर इससे संकट मंडरा रहा है। इन्हीं शब्दों के साथ मैं इस विधेयक का विरोध करता हूँ। धन्यवाद।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** श्री पी.के.माहेश्वरी। आपने अपना कुछ समय उनको दे दिया था। कृपया ध्यान रखें। पांच मिनट आप बोले।

**श्री बालकवि बैरागी (मध्य प्रदेश) :** उपसभाध्यक्ष महोदय, हमारी सरकार की जानकारी में यह होगा कि कल के ही अखबारों में यह समाचार था कि अब तो वह कोटा स्टोन को भी पेटेंट करवाने की तैयारी में है।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** ठीक है, अभी आपका नंबर नहीं है। कृपा करके आप बैठ जाइए।

**श्री रमा शंकर कौशिक :** उपसभाध्यक्ष जी, इस बात को बहाल रखा जाए, जो बालकवि बैरागी जी ने कहा है।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** मैंने इसको बाहर नहीं किया है। यह तो रिकार्ड में आ ही गया है।

SHRI P.K. MAHESHWARI (Madhya Pradesh): Thank you, Mr. Vice-Chairman, Sir, for giving me an opportunity to speak on this Bill.

At the outset, I must commend the Committee headed by Shri Chaturvedi, of which the hon. Minister was also a Member, for bringing a very good piece of legislation. And, as amended, I am here to support it from my Party. I will not go into much details, as my friend, Shri Prithviraj Chavan, has already taken up most of the points. But I would certainly like to point out that, Sir, your concern and mine are the same.

We look after the interests of the nation and its people who are one hundred crore in number and who can ill-afford to go in for expensive medicines. We are all aware that if generic medicines are made available, they would be very much cheaper. Once they are branded, they become very expensive. My submission is that we have large poorer regions like

Chhattisgarh in Madhya Pradesh inhabited by tribals and other poor population. There are very wealthy regions also. The concern is for those who cannot afford the high priced medicines. We must have a right to produce medicines at cheaper prices for them. This is what all other countries have done. In this connection, I give the example of the French legislation, to retain the right to manufacture medicines at cheaper prices, if they are not made available by the MNCs at cheaper prices. My friend has just quoted Brazil. Brazil has passed a law that in case any patented medicine is not manufactured on the soil of Brazil, then that patent will not be valid in Brazil, and they will be free to produce their own medicines at cheaper prices. The point is whether we can afford to let our people die for the reason that medicines are available only at prices our people can ill-afford, and, in the process, allow the multinationals to make money. Take, for example, the cancer patients, the TB patients, patients suffering from malaria, diabetes and those who can survive only with the help of life-saving drugs. They look up to you for relief. It is our bounden duty to make it available to them medicines through our channels.

Sir, the Indian drug industry is a Rs.20,000 crore industry today. It produces drugs at cheaper rates and also exports them. It also competes with the multinationals.

Now, what is the affordable price? Is it at the level the patent holders make them available to us in India or is it the level at which the Indian people can afford? Sir, if you go into this specific problem of prices, you will find that affordable prices are those which prevail at a place where they are sold and not the prices which the patent-holder offers wherever it is produced.

The last point which I would like to make is about the ever-greening, which my friend, Shri Prithviraj, mentioned. Ever-greening is one where, with a little addition of any of the compounds, they get it patented and it is renewed for another period of 14 or 20 years. This practice should be discouraged. I am sure we will have an assurance from the hon. Minister that this will not be allowed to be done, the patent would be granted only if there is a new invention. Otherwise the patent would not be renewed.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri Rajkumar Dhoot. This is your maiden speech. I understand you are in a great hurry. But, still, you can speak for three minutes.

SHRI RAJKUMAR N. DHOOT (Maharashtra): I rise to make my maiden speech before this august House, because of the courtesy of the hon. Chairman, on a topic that is patently beyond my knowledge-domain. If I trip somewhere, please bear with me.

I speak in support of the Patents (Second Amendment) Bill, 1999, which seeks to align the Indian Patent Laws with the requirement of the TRIPS Agreement.

Ever since India joined the WTO in 1995, exports have increased from \$30.63 billion to \$44.2 billion in 5 years. The growth in Indian exports during this period has been marginally above the growth of world exports. China, despite being a country with a much higher share of world trade, as compared to India, was able to join the WTO only last year.

This underscores the importance of the WTO, even to the developing countries of the world, for rapidly increasing their share of world trade. It is estimated that if South Asia, Africa, East Asia and Latin America increase their share of world exports by just one per cent each, the resultant gain in income could lift 128 million people out of poverty. India can expect to create real employment for lakhs, on account of the increased trade.

Hence, it shows the importance of this Bill under consideration, which incorporates most of the issues mentioned in the Doha Declaration. Thus, there are clauses that enable the Government to introduce compulsory licensing, to protect public health, and also in the event of national emergency. The Government of India is required to make its laws TRIPS compliant by January, 2005. However, there is no need to make an early commitment in this regard, and the Bill provides for this by enacting that, through a Gazette Notification, at a later stage. The product-patent regime in the pharmaceutical sector has to be introduced from January 1, 2005. Some people fear that this will result in Indian companies going out of business, and also that the cost of essential medicines and drugs could go up sharply.

I am proud to say that the Indian drugs and pharmaceutical industry has adapted itself well to the changing situation, and, already, companies like Ranbaxy, Cipla, Lupin, Shanti Biotech and Dr. Reddy, have

introduced new molecules/drugs with their own R&D laboratory. Sir, the Indian chemists and biochemists are second to none, and their interest should be looked after by us.

Conformity to the WTO requirements and, at the same time, preserving the national interest, to the maximum extent possible, is a part of the economic reforms initiated by our Government, spearheaded by the hon. Prime Minister, and ably assisted by the hon. Finance Minister and the hon. Commerce Minister. I would like to remind my colleagues that it was only after the food aid to India from the USA, under PL 480, was stopped that the Indian agricultural scientists and the Indian farmers ushered in the Green Revolution. India is already contributing to the intellectual capability of the world through its software technologists. India will make further inroads into the global intellectual world in the pharmaceutical and biotechnology sectors, and hence, India will stand to benefit through the system of protection of intellectual property rights, acceptable globally, which the WTO has evolved. I commend the Bill for whole-hearted support, cutting across party lines, with my thanks to the Chair.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri R. Kamraj. You have seven minutes, please.

\*SHRI R.KAMARAJ (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise to speak on the Patents (Second Amendment) Bill, 1999 on behalf of AIADMK. This Bill has come up for discussion after two years of deliberations by the Joint Parliamentary Committee. The Joint Committee has suggested several amendments to the original Bill. This Bill would have been passed in the year 1999 itself. But we are discussing it in the year 2002 because the Parliament did not want to rush through this important legislation. We were more concerned about the interest of our nation and that is why this delay.

Sir, man has learnt to fly in the sky with birds; he has learnt to swim in water with the fish; but unfortunately man has not learnt to live with fellow human beings in harmony. Man continuously endeavours to usurp the right of other man. This situation is witnessed world over. The developed nations have been attempting to patent the inventions and even ancient usages of other countries, particularly the developing countries.

English translation of the original speech delivered in Tamil.

The bio-products that have been used for generations in India are being patented in the name of inventions by certain developed nations. This bio-piracy has been going on for long. Already countries like the United States have been staking patent claims on our traditional plants like turmeric, neem, Pepper, basmati, gooseberry, ginger and mustard. But the recent patenting activities of the US are disturbing. Now patent has been given in the US to bittergourd, jamun and brinjal. This is highly condemnable.

Mr. Vice-Chairman, Sir, the purpose of this Bill is to protect new inventions by granting patents to such inventions. But this is being misused by certain countries. The property of bittergourd, jamun and brinjal in controlling sugar in diabetics has been known for ages in our country. Diabetic patients have been using these in various forms in India. This is being known as prior art in the patent law.

But without any concern for the existence of prior art in India on these bio-products, America has granted patent right to one Cromak Research Inc. *vide* US patent No. 5900240 for bittergourd, jamun and brinjal for their medicinal properties of controlling sugar. These medicinal properties have been documented long ago in treatises like *The wealth of India* and the *Compendium of Indian Medicinal plants*.

Sir, we are bringing changes in our patent law conforming to the WTO Agreement. At the same time, I would expect the Minister to tell the House whether countries like the US have amended or in the process of amending their domestic patent laws in conformity with the WTO Agreement. I say this because, Article 102 of the US patent law does not recognize prior art even if it is in continuous use in some other country. If anything is new to the US then patent right is given there.

Under these circumstances, I would like to know from the Minister the steps taken to protect our prior art from this kind of bio-piracy. He should also inform the House whether Article 102 of the US Patent law has been amended or not. Because amending our patent law to prove our law-abiding trait to the world could sometime land us in trouble and we may get cheated. In this highly competitive world, we should monitor as to what other nations do on the matter. Then alone we will be able to preserve our prior arts and wealth for the posterity.

This illegal patenting and bio-piracy could strike a severe blow to our economy. Patenting means commercial monopoly. This monopoly is something that nations crave for. It is reported that the commercial value of inventions by Indians patents abroad is worth over one thousand crore rupees. The reason for this is said to be the foolproof protection given by that country and also the world market available for such patents. If these are the reasons for getting inventions patented abroad, then the Centre should remove the grievances and provide a conducive atmosphere. We should evolve a national policy on special discoveries and inventions in order to protect them from piracy. I am reminded of another problem. It is said that about 17,00 applications are pending for grant of patents all over the country. This is not a welcome situation. This trend will negate the spirit of inventions.

Sir, I wish to make one more point. Parliament had passed the Geographical Indication of Goods Act to protect piracy of geographical names. But even the Registrar has not been appointed to register such names. My leader and the Honable Chief Minister of Tamil Nadu Dr. Puratchi Thalaivi Amma has taken up the matter with the Centre. Because products like the traditionally famous Kancheepuram silk will have to be registered in order to protect illegal patenting. This matter has also been taken up with the Textile Ministry of the Centre. I lay emphasis on this because even Kancheepuram silk may be patented by the US. That is my apprehension. It is not enough to enact laws. The Government should implement the laws in letter and spirit. Then alone we will be able to protect our wealth of knowledge from piracy and illegal patenting. Thank you.

SHRI V.V. RAGHAVAN (Kerala): Sir, the hon. Minister has reminded us of our obligations to the TRIPS Agreement and other international commitments. I do agree with him. But, when we enact such a law, the priority should be the interest of our nation, the welfare of our people. The Patents Act, 1970 is a model law under which our pharmaceutical industry grew and the prices of medicines were the cheapest in India as compared to the whole of world. When we first amended this Act, eminent personalities, scientists and economists warned us that this was an untimely amendment; it would not help us; it would adversely affect our national interest. At that time, the Law Commission also warned the Government and asked, "Is it necessary?" Ruling out all those opinions, we first amended the Act in 1999. What is the result? In the name of Intellectual Property Rights, even our own MNCs enhanced the prices of medicines to sky high. If you conduct a study

of the prices of life saving drugs prevailing in 1999 and afterwards, you will be stunned. What a loot! I have gone through the report of the Joint Parliamentary Committee carefully. I am very disappointed. It says, "Reasonable and affordable prices". Who decides that? What is the criterion? Sir, we have the privilege of medical facilities. The Members of Parliament, MLAs and the people in the organised sector have got the facility of medical reimbursement. But what about our vast masses, agricultural workers and rural and urban poor who constitute 80 per cent of our population? They are being looted. What safeguards are being taken to control the prices of life-saving drugs? What steps are being taken to make available life-saving drugs at affordable prices to the poor people?

Rich people can afford them, and the people in the organised sector have so many privileges. But our vast masses are suffering because of these prices fixed under Intellectual Property Rights, without any legal ground. All MNCs, including the MNCs in India, are looting the people in the name of Intellectual Property Rights. When our hon. Minister reminds us about our obligations, international commitments, may I ask the hon. Minister: "Does it not apply to the United States of America?" If you look at the website of their country, we will find that they have enacted a law saying, "Whatever be the international commitments or agreements signed by America, if any agreement conflicts with the interests of the American people, the American law will prevail; the American law will subdue that commitment." If America can do that, I don't understand why we should succumb to their pressures. I congratulate the Minister on putting up a valiant fight at Doha, but history shows that we always succumb at the end. These are minor concessions; on public health, etc., that too, under certain conditions. Why should we succumb to such pressures? Why should we amend our model Patents Act? Keeping in view our social interests, our people's welfare, our national interests, we can enact our own laws. I don't think, amending our Patents Act should not be to meet the obligations towards the TRIPS Agreement or the WTO Agreements. We have to argue our case strongly.

Sir, for want of time, I am leaving out many points. What is the situation in our country? The prices of medicines have gone sky-high; there are 60 million diabetic patients; we have 40 million asthmatic patients; we have 80 million cardiac patients; diseases like malaria and T.B. are again spreading; not to speak of HIV and AIDS. Now, what is the purchasing

capacity of our people? Considering the status of our country, the status of our poor people, there must be provisions, -- I would like to point out Shri Chaturvedi that vague sentences would not help - stringent provisions are needed to control the prices. Your phrase, 'reasonable' can go up to anywhere. It is necessary that this Act must have a stringent clause which limits the price, which controls the price. 'Affordable price' means a price which the poor people can afford. Without this, this Act will, again, harm our people, as it happened when the First enactment was made. At the end, I would say that I agree with the amendments proposed by Dr. Biplab Dasgupta.

Thank you, Sir.

SHRI MANOJ BHATTACHARYA (West Bengal): Sir, at the outset, I must submit, most respectfully, to you that this is a very complicated Bill and this does not concern only today, nor does it concern only the immediate tomorrow, but it concerns the years to come. And it concerns the interests of the entire nation; not only ours, but the interests of all under-developed countries and all developing countries, to whom we must show that India will provide leadership in all manner. I was listening to the speech of the hon. Minister and that of Shri T.N. Chaturvedi very carefully.

One thing transpired, that there is an element of helplessness; they are trying to plead that we are in a helpless condition, that we cannot do it because we are already a member of the WTO; we are already committed; we are already in the trap; and so we cannot come out of that trap, and for that only we have to effect these changes to the already existing very, very good and very, very progressive Indian Patents Law of 1970. Sir, I must say that with the advent of this neo-liberal economy, which is primarily to facilitate the free flow of capital, goods and services throughout the world, to the benefit of the big multinational corporations of the Northern Hemisphere, the scene has changed. They are conniving. They are conspiring and they are hatching plans in their laboratories to put these developing countries, the countries of the Southern Hemisphere, in such a condition that their exploitation can continue unabated, and they can continue to reap maximum advantage out of these sorts of changes in the law, and out of the provisions of the WTO, within the WTO. Sir, I must submit to you, and, through you, to the Government also, that the situation is quite treacherous. I understand that the situation is quite complicated. I

rather congratulate the hon. Minister, Shri Murasoli Maran, who really fought relentlessly at Doha, and who could provide a good leadership to the developing countries at Doha. But, with the advent of days, I do not know why this fighting spirit is withering away. I would like to prevail upon Shri Murasoli Maran and say that, yes, you took a strong position at Doha, and the other developing countries also looked to you. You were sufficiently armed and supported by all good citizens of this country, and all good people, and all the deprived majority of this world. They will be there with you if you can stage a real battle and continue to stage a real battle. Sir, I am conscious of the time factor. So, I will just take up certain points. I would also like to dwell upon the situation in the pharmaceutical sector. What is the conspiracy? The national patent laws grant too little exclusivity to the patent-holders, or to protect the rights for too short a time span. That has to be changed. This benefit, virtually, the North, and this North means the MNCs. And, the MNCs do not mean merely the hundreds of MNCs, but the MNCs that are now merging together. They are making huge conglomerates. Hundreds of MNCs are merging together. What is to be noted is that these conglomerates of MNCs are appointing the best of lawyers in their land, and also internationally, to plead their cases. Good lawyers are not available in the Third World countries to plead other cases. This is the problem. Once again I say that this will benefit the North, and the North is holding most of the patents. There are many references where India was seen as the prime target. Indeed, in 1996, the United States of America complained about the alleged failure of India to provide interim patent protection for pharmaceutical and agro-chemical products. The case numbers are WTO 1996 c, Page 6, and WTO 1996 d, Page 2. The European Union joined one year later, that is, in 1997. Similarly, the USA complained against Pakistan also (WTO 1997b, Page 7). Article 27 allows the exclusion of inventions from patentability and prevention of their exploitation, to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by the laws. Thus, the TRIPS agreement overrules the existing national laws.

Naturally, one patent law has to be there ail over the world; a similar patent law has to be there all over the world so that the mobility of capital, the mobility of goods, the mobility of services are not hindered, in any way. It should have a free flow. Sir, WTO agreements do not always do so. The USA had been granted an exemption, under paragraph 3 of the GATT 1994 agreement, with regard to its legislation prohibiting foreign built

vessels in internal shipping. Sir, I am just quoting some examples here. This exemption was to be reviewed five years after the entry into force of the WTO agreement. Now, what happened? When several delegations urged the USA to modify its legislation, the USA stressed that this exemption was not a waiver or a temporary provision, but an integral part of GATT 1994. Here is the deceit; here is the dupery that the USA is doing. The USA is persistently indulging in this sort of deceit, this sort of dupery, with the other countries of the world. The US legislation, the Jones Act of 1920, had not been modified or amended and, thus, the conditions that created the need for exemptions still existed. Sir, I am referring to WTO 1999 (C) case, page 5. Out of all the countries of the world, Australia pointed out a number of times that all other members had been obliged to bring their old legislation into conformity. The USA stressed that this exemption was the result of negotiation and had not been obtained for nothing, affecting the way the other elements of the WTO system had been finalised. It said that the exemption would vanish when the US changed the legislation or decide to end the exemption, through negotiations. So, the USA has taken the full advantage; the USA has incidentally taken the full advantage to this effect, by exploiting the provisions of the WTO, and they did not bother because it is in their interest. They are virtually running the WTO; they are virtually deciding everything in this world.

The traditional requirements for patenting are changed by dismissing the inventive steps. Something goes beyond a mere discovery, as a necessary condition for patentability. Article 27 demands an inventive step, but redefines it as 'non-obvious'. This makes an important difference applying tribal and traditional knowledge obtained in the South -- i.e., countries like ours, countries like India, and many other under-developed or developing countries - to problems in the North might not involve an inventive step, but it may be considered as non-obvious.

Sir, I am referring to a very interesting case of Endod. Mr. Murasoli Maran can also note it. Endod is an African soapberry plant which kills the snails which harbour the parasites causing schistosomiasis, a disease. This may serve as an illustrative example. For centuries, Endod had been cultivated by innovative Ethiopian women, the sub-Saharan country. Attempts to get help from the northern institutions to develop Endod further to obtain a preventive medicine were quite unsuccessful. For a very long time, the Ethiopians tried for this. The poor Ethiopian tribal society tried to

develop it; the international community did not cooperate with them. Neither did they have that capability, as we also don't have the capability, as we don't have that scientific capability, to do all these things. Now, what happened? The US scientists at the Ohio University, learning about Endod from an Ethiopian colleague about to receive an honorary degree, wondered whether it might kill zebra mussels, a scourge of the US shipping industry in the Great Lakes. They were told about Endod on 14<sup>th</sup> June, 1990. On 15<sup>th</sup> June, they knew that it worked on Zebra mussels; and on 15<sup>th</sup> October, within two-three months, they patented this. This Endod was patented in USA; and these Ethiopian poor women or the Ethiopian tribal society continued languishing. So, the natural sources of different Third World countries or different developing countries are being exploited by these MNCs or by these advanced countries. So, here is a confrontation between the Less Developed Countries and the Advanced, Developed, Countries. Now, where do I stand? Where do I provide the leadership? I want to know whether India is prepared to provide leadership to the LDCs or India is going to surrender, lock, stock and barrel, to the wishes, to the designs and to the *malafide* designs of the advanced, developed, countries. That has to be determined.

Sir, now I go back to drugs and pharmaceuticals. My learned colleague, Shri Chavan, then, another colleague, Shri Kamraj and then my learned colleague, Shri Rama Shanker Kaushikji, dealt with this matter quite extensively.

I would just tell you as to what is the situation and what the problem of patenting is. Once this process patent is over, the product patent will come and 20 years time will be given. Now there is a huge propaganda. A huge propaganda is being made. I have also received several letters from different Multi-National Corporations and cartels of Multi-National Corporations that 95% of the drugs, which are in vogue today, the patents of those are going to expire only within two-three years. What is the conspiracy? I am giving you an example.

Everybody knows that omeprazole, an antk-ulcerant, is an invention and patented by Astra, Sweden. The patent of Omeprazole is going to expire by 2003. This Astra, Sweden, is a very powerful multi-national company and they have just changed one isomer of a molecule and they applied for patent-in hundreds of countries. This is number one. These

hundred countries will have no alternative, but to get it patented in the name of Astra, Sweden. This is true for many other products. Many other products and drugs will be patented like this. So, instead of 20 years, it will become 38 years also; because from the 18th year, they will file fresh application for patent and once this product patent is accepted, and once we accept that for 20 years, this will be a catastrophe for us. Already, the prices of essential drugs are high. Shri Maran was referring to the list of 279 essential drugs, if I may remember correctly.

Even with these 279 drugs, with the advent of neo-liberal economy, after 1991, I do not have the figures with me since I don't have the time at my disposal, otherwise I would have shown it how the prices of drugs have been changed, how the prices of drugs have been enhanced. We are trying to derive a negative satisfaction saying that the prices of drugs in India are quite economical, quite cheap. I am not going to buy this idea, because the prices of Indian drugs could be brought down, only after the 1970 Patent Law was promulgated, after the Hathi Committee recommendations were implemented to a great extent, after the public sector units were created, after the Union Government could show its wisdom, they could go for public sector undertakings like the IDPL, the Hindustan Antibiotics, etc., etc. The prices of very many drugs were brought down. By using the process patent the Indian pharmaceutical companies could develop, to a great extent, and they could really make this country a self-reliant country, in so far as the 279 essential drugs are concerned and beyond. But the scenario has altogether changed now. The public sector undertakings, which worked effectively to put up a challenge before the multi-national companies and their Indian collaborators. Many companies are Indian collaborators. Today, I attended the Consultative Committee meeting in the morning. I am a Member of the Consultative Committee on Chemicals and Fertilizers. There, it was said that there were 27 multi-national companies and some 200-odd Indian companies.

I put one simple question that how many of these companies are collaborators with the Multi-National Companies. Please don't say 27 companies. There will be 54 companies, there will be 80 companies because many of them are collaborators with the Indian companies. They are acting virtually as compradors. They are only acting as agents of the Multi-National Corporations.

Sir, these companies have freely increased the prices of medicines. I can quote a number of medicines which are very essential and which are in the list of the 279 drugs. Once this patent regime is changed, once this product patent is implemented, I tell you, Mr. Vice-Chairman, Sir, also the Government, through you, Sir, that there is going to be an increase in the prices of medicines to the extent of 5 to 10 times. Not only that, the essential medicines would not be available in this country of ours. We will be absolutely depending on the whims and fancies of the Multi-National Corporations.

Kindly forgive me for saying so, the Multi-National Corporations work only to amass super-profits. They work only to amass super profits. They are not satisfied. Their lust is not satisfied with the profits only. Their lust is satisfied only with super profits. They are working only for superprofits. They have no concern for the public health, they are not concerned for the ailing children of ours, they have got no concern for the malnourished women of our country and they have got no concern for the poor people of this country.

They are concerned only with their super profit. Are we trying to pave way for them? Instead we should put a challenge before them that this country is capable of challenging the conspiracies of the multinational corporations and that this Country is capable of challenging the imperialist countries who harbour these multinational corporations. We shall not yield to the pressure even if required, whether we are prepared to stand alone in the world scenario and that we are not going to compromise with this sort of things where the poor people's lives have been compromised and where the poor people's lives are being challenged. Sir, I would urge upon the hon. Minister and the Government, through you, Sir, that they should think once again. Yes, the Select Committee has done a commendable job. They have done as much as possible. I admire the capability of the Select Committee. They have done as much as possible. But the transitional period is not over. *..(Time-bell)..* I am just concluding, Sir, the Transitional period is not over. All countries have been provided one year transitional period and the developing countries have been provided additional four years of transitional period. The transitional period is not over. They have time. By this time, I am hopeful, I am an optimist person, as a Communist, I am an optimist person, Sir, and I look forward that the world will change, this economic order will not exist. It cannot exist at the altar of the entire

population, poor population. So, there will be a change, an effective change in this economic order. Why should we not wait for some time more because effectively we have time till 1.1.2003? Why are you trying to rush, through? What is the reason that we are trying to rush through within this period? I would urge upon the Hon. Minister, Shri Murasoli Maran, that he should wait for some time more. There will be changes, Sir. I am telling that world economic scenario is going to change. There is an end to everything. The poor people are languishing. Poverty is increasing, unemployment is increasing. The economies are in a shambles. The economies of various countries are in a shambles. So, Sir, there is going to be an effective change in the scenario. Our Government should wait for some time more. They can join hands with Brazil, Argentina, the Latin American countries, Sub-Saharan countries and a world power can be developed to thwart the attempts or conspiratorial attempts of the Northern countries, the conspiratorial attempts of MNCs.

Sir, I would also say, please consider it. I am thankful to Shri Murasoli Maran that he has come with an amendment where emergencies can be considered. This amendment is a welcome amendment. It has included AIDS, Human Immunology Deficiency Virus, tuberculosis, malaria, etc. Cancer could have been included in it. I know one company Abott which is originally an American company. I was told in the morning that last year they imported anti-cancer drugs worth Rs.200 crores and this year they are going to import anti-cancer drugs worth Rs.8000 crores. Each vial costs about Rs.7000. A cancer patient requires at least 30 vials a month, that is, 30x7000, you can imagine the cost of the treatment. This cost will escalate further. Even the ordinary medicines will be costing more. So, Sir, I will urge upon the Government that they should think hundred times before effecting such changes in the patent laws, before effecting derogatory changes in the patent laws of ours and this period of 20 years should not be provided. Twenty years is too long a period—Earlier we had seven years for drugs and pharmaceuticals. Now, it cannot be 20 years because 20 years is too long a period and many changes may be taking place during this period. Sir, I fully support the amendments moved by hon. Member, Dr. Biplab Dasgupta and others. I once again request the Government to withdraw this Amendment Bill for the time being and wait for some time more and come out afresh after fresh considerations, the points that we have given and if required, we are prepared to give them many suggestions and come after some time so that we can get some time and we can

4.00 p.m.

ponder over this. We can also look at the international scenario and thereby you can have changes, if at all, we are forced to change. Thank you very much.

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया)** . आप के पास 6मिनट का समय है ।

**डा. रमेन्द्र कुमार यादव 'रवि' (बिहार)** . मान्यवर, मैं पेटेंट बिल का विरोध करने के लिए खड़ा हुआ हूँ यह जानते हुए भी कि "हां" पक्ष और "न" पक्ष की मिलीभगत है और "दो पाटन के बीच में साबुत बचा न कोय ।" इसलिए मेरे मुखर विरोध के भी कोई मायने नहीं रह जाते हैं ।

महोदय, मैं स्मरण दिलाना चाहूंगा सलेक्ट कमेटी के सम्मानीय चेयरमैन साहब को कि मैं 22-12-1998 को जब पेटेंट पर बोल रहा था तो उस समय वह पीठासीन अधिकारी थे और उन्होंने मुझे प्रशंसा पत्र दिया था, जोकि मेरी जेब में आज भी है । मैं ने उस समय अपने भाषण के क्रम में कहा था कि,

"निगाहें बदल जाती हैं, अफसाने नहीं बदलते,  
साकी-ए- रिश्ता टूट भी जाए, मयखाने नहीं बदलते ।"

लेकिन आज मयखाने को बदलते हुए देख रहा हूँ । स्वदेशी जागरण का मंच, शंख फूंकने वाली पार्टी, स्वदेशी आचारण का मंत्र देने वाली पार्टी, अपनी भारतीय मानसिकता की प्रतिबद्धता से हट रही है और पेटेंट का समर्थन करने जा रही है । महोदय , कहने को बहुत सारी बातें हैं । उस दिन का विरोध बड़ा ही सार्थक विरोध था । अगर वह सार्थक विरोध न होता तो कदाचित्त संशोधन के साथ यह बिल सदन में नहीं आता और माननीय सदस्य व बुद्धिजीवी इस बहस में शिरकत नहीं करते । उस दिन विरोध का मसविदा था ।

*\*The controversial Bill seeks to amend the 1970 Patent Act to grant exclusive marketing rights to internal agro-chemical and pharmaceutical companies for five years. The Bill seeks to make the Indian patent system at par with advanced countries of the world. It provides for grant of product patent, among others, in agro-chemical and pharmaceuticals, giving exclusive marketing rights and establishment of a mail box for receiving patent applications in accordance with trade-related Intellectual Property Rights Agreement of the WTO.\**

उस दिन विरोध हुआ और उसी की यह सार्थक परिणति है कि आज उस पर हम बहस कर रहे हैं ।

महोदय, 6 मिनट का समय बहुत कम है और इतने समय में कुछ नहीं कहा जा सकता, लेकिन यह मानसिकता है कि एक भारतीय नागरिक होने के नाते हम ने किसी से कुछ लिया नहीं है बल्कि दिया है। चाहे खगोल हो, भूगोल हो, ज्योतिष हो, विज्ञान हो, ऋचा हो, पुराण हो, आयुर्वेद हो, होम्पोपैथी हो — सब कुछ हम ने दिया है, लेकिन आज वे हम से लेना चाहते हैं और लेना चाहते हैं तुलसी के पत्ते, हम से लेना चाहते हैं लहसुन, हम से लेना चाहते हैं टमाटर और हम से लेना चाहते हैं हल्दी। पहले हम इतने महंगे थे और आज हम इतने सस्ते हैं। महोदय, मैं कांग्रेस की बात नहीं करता। कांग्रेस का तो एक ग्लोबल आउटलुक रहा है, वे संस्कारों से उदार रहे हैं, लेकिन जो भारतीयता की बात करते हैं तो हमारे भारतीय तो यहां से अमेरिका जाते थे तो अपनी 7 नदियों का जल साथ ले जाते थे क्योंकि वहां का जल पिपेंगे तो अशुद्ध हो जाएंगे। तो हम आत्म शुद्धि चाह रहे हैं या भारत के उन निरीह गरीब, भुखण्डों की जो टोली है, उसको निजात दिलाना चाह रहे हैं? महोदय, इस के बहुत दूरगामी प्रभाव होंगे। मैं डा. विप्लव दासगुप्त के तैयार भाषण के कुछ वाक्य पढ़ना चाहता हूँ। "I am giving you a particular example of the conflict that can arise in trying to conform to all these international documents. The TRIPS talks of conformity, while the CBD talks of diversity. At the essence of life, you cannot sign both. Either uniformity is good or it is bad; diversity is either good or bad. You cannot have three Patent Bills working in three different ways. The Government has to take a position on this. यह पढ़ते हुए मुझे स्मरण आ रहा है जॉर्ज बर्नार्ड शो का और सर, मैं बहुत हम्ब्ली कहना चाहूंगा। Once Mr. Shaw was asked by an American heiress to take her unto him as his lawfully wedded wife. She had said by then, "You are so intellectual, and I am so very beautiful. The product of our union must inherit your brain and my beauty. Mr. Shaw was known for his presence of mind. He immediately responded: "But, Madam, nature is so wayward, what if our union inherited your brain and my beauty?"

मैं कहना चाहूंगा कि जिन प्रावधानों के तहत आज हम यह विधेयक ला रहे हैं, इसके दूरगामी प्रभाव बुरे भी हो सकते हैं।

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** प्लीज।

**डा. रमेन्द्र कुमार यादव 'रवि' :** मान्यवर, आपने माननीय सदस्य के प्रति बड़ी उदारता बरती।...(व्यवधान)...

**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) :** नहीं, नहीं। कोई उदारता नहीं बरती। इनका जो समय था, उससे आधा समय उनको मिला। उदारता कोई नहीं बरती। सब एक समान है। प्लीज, अब समाप्त करें।

**डा. रमेन्द्र कुमार यादव रवि :** सर, मैं यह कहना चाहता हूँ कि जिस हेतु, जिस उद्देश्य से यह पेटेंट विधेयक लाया जा रहा है, उसमें एक बहुत ही मौजू और प्रभावी बात यह है, जैसा इन्होंने बताया, कि अगर हम इस पेटेंट को लाते हैं तो उसमें टाइम — बोण्ड कम्पलसन है और इस टाइम बॉन्ड कंपलसन से मोनोपोली हो जाएगी उस पेटेंट की, कि हम बीस वर्ष के लिए ला रहे हैं। जैसा विप्लव दासगुप्ता जी ने कहा, राघवन जी ने जिसका समर्थन किया और हमारे मित्र रमा शंकर कौशिक जी ने कहा कि इसे दस वर्ष क्यों नहीं किया जा रहा, बीस वर्ष की इसमें बाध्यता क्यों रखी जा रही है? हम क्यों उन पर निर्भर हैं? यह विश्व की एक त्रासदी है कि जो ग्लोबल फंड मिला, जिसमें फाइनेशियल इन्वोलवमेंट है, उस पर 40 परसेंट अमरीका का कब्जा है और बाकी 60 परसेंट में सारा विश्व आता है।

अमेरिका के एकाधिकारी की प्रवृत्ति, साम्राज्यवाद विस्तार की प्रवृत्ति से हमको बेखबर नहीं रहना चाहिए क्योंकि जो मुल्क रूस के साइंटिफिक सोशलिज्म को बर्बाद कर सकता है, वह भारत को भी बर्बाद कर सकता है। यह आर्थिक गुलामी का जो कुछ हो रहा है, मैं समझता हूँ कि यह उचित नहीं हो रहा। हमारे आने वाला कल हमारा है क्योंकि हमारा देश आज अपने बलबूते पर खड़ा है, किसी के हम मोहताज नहीं हैं।

उपसभाध्यक्ष महोदय, मैं शिक्षक हूँ, मैं तो मानता हूँ कि जिसे रोमांटिसिज्म कहते हैं, उसे हमने नहीं लिया। हमारे यहां मेघ भी दूत का काम करता था, फ्रेथफुल मैसेंजर का काम करता था। कालीदास के समय में हमारे यहां परसोनिफिकेशन आफ नेचर हुआ। हमने विदेशियों से कुछ लिया नहीं है, जिसे हम रोमांटिसिज्म कहते हैं। हमारे यहां कविवर चन्द्रबरदाई हुए, हमारे यहां कालीदास हुए, जो बहुत पहले हुए हैं। भारत की गरिमा, भारत का संस्कार, भारत की बौद्धिक संपदा बहुत पुरानी है, जिसे मैं यह कहना चाहता हूँ कि हम ठीक से रिटेन नहीं कर सके हैं क्योंकि वह विदेशों में भाग रही है। हमारे मुल्क में इंजीनियर बेकार बैठे हैं, हमारे यहां डाक्टर बेकार बैठे हैं। मैंने फाइनेन्स बिल पर बोलते हुए कहा था कि एक डाक्टर के पढ़ाने पर हमारा 18 लाख रूपया लगता है, एक इंजीनियर को पढ़ाने पर 16 लाख रूपया लगता है, लेकिन आज सरकार उसको भी नौकरी देने की स्थिति में नहीं है, बाकी बेरोज़गारों की बात तो आप छोड़ दीजिए।

उपसभाध्यक्ष महोदय, आज मैं श्रम मंत्री जी का वक्तव्य सुन रहा था, जो बड़ा ही हास्यास्पद मुझे लगा। प्रधान मंत्री जी ने घोषणा की कि एक करोड़ लोगों को एम्प्लायमेंट देंगे, लेकिन उन्होंने कहा कि डेढ़ करोड़ लोगों को एम्प्लायमेंट देंगे। जैसे ढपोर शंख होता है कि कह दिया एक लक्ष, तो दो लक्ष, एक लाख तो दो लाख और दो लाख तो चार लाख, वैसे ही वह बोलते जो रहे थे। आज हम यहां कुछ करने की स्थिति में नहीं हैं, यह पेटेंट बिल आपके पास होना ही है, आज ही होना है और हम अपनी खुली आंखों से देखेंगे कि यह बिल पास हो रहा है। माननीय सदस्य डा. विप्लव दासगुप्ता जी, राघवन जी और रमा शंकर कौशिक जी, हम संख्या में कम हैं, लेकिन हमारी भी भावनाएं हैं और हम चाहते हैं कि हमारा देश ग्लोबली काफ़ी ऊंचा रहे, हम अमरीका के सिर पर नाचे, हम इंग्लैंड के सिर पर नाचे। लेकिन आज जो अमेरिका, इंग्लैंड, रूस, फ्रांस या जापान की स्थिति है, उसकी तुलना भारत से नहीं हो सकती। हमारा देश कृषि पर आधारित है, हमारा देश उद्योग-विहीन देश है, हम विकसित देश नहीं हैं,

विकासशील देशों में हम अग्रणी हैं। हमारा कृषि पर आधारित सामाजिक जीवन है, हमारे यहां उद्योग न के बराबर है, इसलिए हमारे जैसे मुल्क के लिए यह ग्लोबल नहीं है, लेकिन हमारी विवशता है। हमको सात घोड़ों के साथ चलना पड़ रहा है, हम चल भी रहे हैं। पेटेंट विधेयक तो आप पास करेंगे ही।

उपसभाध्यक्ष महोदय, हम अपने आदरणीय मित्र और मंत्री महोदय से कहना चाहते हैं कि वह दोहा में थे, रामचरित मानस का उन्होंने दोहा पढ़ा है, जो असली दोहा है। उन्होंने दोहा में जो दोहा पढ़ा था, जो उनका फर्म एक्शन था, उसी मोरेलिटि के साथ, उसी मानसिकता के साथ, उसी डिटरमिनेशन के साथ ..... इस पेटेंट पर पोलिटिकल पार्टिसिपेशन हो, इंटरसेक्टुअल पार्टिसिपेशन हो और अगर रेफरेंडस हो जनरल मुशरफ की तरह, तो इस देश की 80 प्रतिशत से अधिक जनता इस पेटेंट के विरोध में मत देगी, ऐसा मेरा विश्वास है। धन्यवाद।

SHRI PRANAB MUKHERJEE (West Bengal): Thank you, Mr. Vice-Chairman, Sir, for giving me this opportunity. Sir, it takes me back to almost 7-8 years when sitting on that side, I tried to introduce the First Amendment Bill, which was our international obligation after signing of the Marrakesh Agreement on 15<sup>th</sup> April, 1994, in this House, but I could not. I could not do that because of the simple arithmetic, we did not have the majority. I would not like to go into the whole range of debate, but, first of all, I would like to congratulate and place on record our appreciation to Mr. T.N. Chaturvedi and his colleagues who have done a wonderful job in the Joint Select Committee, in preparing a Report. In fact, the Bill has been re-written. Practically, a group, which was appointed by the Joint Select Committee, has re-written the entire Bill. If one compares with the original Bill introduced and the Bill which has emerged from the Joint Select Committee, one will find that it is almost a new Bill. And, I am grateful to the Government for accepting this Bill. This Bill has to be passed. I would like to take this opportunity to clarify one position which I have repeated on the floor of this House is that mere change of seat does not change the policies. If we consider something good in the national interest sitting on that side, simply by coming to this side, I do not see any reason why it should be changed, and I do not feel apologetic at all.

Mr. Vice-Chairman, Sir, very recently, while making her address in the CH, the Leader of the Opposition, the Congress President, Shrimati Sonia Gandhi, had made these observations which clarifies the position of the Congress in regard to the economic reforms. I quote, "Our record of constructive cooperations speaks for itself, whether it is insurance liberalisation, or, WTO-related legislation, or Company Law change, the

Congress has, on its own, supported the Government." Because we do consider that the changes are absolutely called for. Yes, something happened in 1990. I had the fortune or misfortune, whatever you may call it, to introduce the First Amendment Bill. Sir, I was then in Parliament, in Government, and I am in Parliament, today, though, not in the Government. Of course, in 1970, in the socio-economic conditions prevailing at that point of time, a piece of legislation like the Indian Patent Act, 1970, was called for. I would not like to go into the details, but there too the product patent was permissible. Only in three areas, product patent was not permissible. Conceptually, we did never agree that will never allow product patent. In host of areas, product patent was permissible. In certain products, agricultural chemicals, drugs, pharmaceuticals, and certain food-processed items, the product patent was not permissible.

We had the FERA Act of 1973. We have Sterling companies; we have foreign investment, etc. At that point of time, it was considered necessary that we should do away with it. We have replaced the FERA by the FEMA. We have opened doors for investment, whether investment will come or not, that is a different story. But investment will come on the basis of credibility. The credibility is to be created; credibility cannot be created by words of mouth, credibility can be created by the institutional arrangements. Well-defined, well-articulated, well-explained legal framework is an area of establishing credibility. There are certain areas, where I do feel, I do believe, my party believe, we have elaborately discussed it. Even, in the document which we have published in January, 2001, about 10 paragraphs have been dealt with the WTO-related legislations, and it is not our off-the-cuff remark. This is the result of deliberate discussions. After a good deal of deliberations, a good deal of discussions, we thought that we should follow what we considered necessary, irrespective of where we do we sit, either this side of you, or, that side of you. This is what is to be done. I am really grateful to Mr. Maran - because certain issues were raised day-before-yesterday -- he was kind enough to sit with us. We had a discussion with him, and in the official amendment, those concerns have been taken note of. Yes; W6 would like to take advantage, if there be any ambiguity in inter national legislations, we always see to it as to what extent we can protect our domestic interests. But the test of a pudding is in its eating. Here, I would like to make it quite clear that we shall have to keep in view that if the national legislation is not compatible with the international agreement, it will not-go well with the obligations which we have. And, we

undertook these obligations on our own, even today. Just the other day, while replying to the debate on the Finance Bill, the Finance Minister, Shri Yashwant Sinha made it quite clear that if we do not want to have the obligations, there is no compulsion. We can walk out of it by giving a notice of six months. Are we in a position to do so? And how do we expect that we will go in our own way, and all other countries would follow? There is no free lunch. The W.T.O is an umbrella agreement within which we shall have to negotiate with our trading partners; it is not playing to the gallery; when we know that 16 per cent of our total international trade is directed to one group -- if you take three groups European Union, the United States of America and Japan, all these three groups and block taken together account for more than two-third of our total export -- how can we do it? Therefore, keeping all these factors in view, this Bill was absolutely called for. Rather we are late. The world is moving very fast. One suggestion was made as to why the period of patent should be for twenty years. Why should it not be reduced? Why should it not be less? There is no need of it. Those who are primarily concerned with it are going to reduce this period, if they find that by retaining the patentable period for twenty years, they cannot cope with the fast changing world. They are more concerned about it. In our speeches, we can just go on abusing the MNCs, and this and that. Fine! But we should not forget that from the investment point of view, from the point of view of generation of employment and creation of wealth, we cannot do so. The other day somebody was saying jokingly that the lobby of the UN building is less attractive compared to the lobby of the Davos, where captains of MNCs are represented. The hard reality is that 49 LLDCs., accounting for 20 per cent of the world's population, in the last 15 years, have lost their real income. Their debt burdens have increased and exports have shrunk. Therefore, in this unequal world, recognising the situation, we shall have to enter into agreements, keeping our eyes and ears open. Our legislations must be compatible with the international rules and obligations. At the same time we have to take advantage of the grey areas. I had explained it at that point of time. I am happy that Mr. Maran had explained that at Doha we could flag it, but we must keep in view that the Ministerial Declaration expresses the intention, and those intentions ultimately get reflected in actual action, which we get in the form of bilateral or multilateral agreements.

Somebody this morning told me that our Karnataka silk, in quality and price is, competing with the Chinese silk. We have been able to

achieve it not by closing our doors, but by opening them and creating an atmosphere of competition. On the other hand I can mention the industry which enjoyed monopoly for 20 years, but did not spend even a single penny on research and development. Consequently, in those areas we are well behind. I entirely agree with what Mr. Maran said in his preliminary remarks, while moving the Bill that instead of depending on the reverse engineering process for all time to come, we must choose the alternative route of innovations, research and development. Somebody was pointing out that we opposed the Exclusive Marketing Rights (EMR). Why was EMR necessary? Let us look back. When we signed this Agreement, there was no need for EMR. It was optional. Either amend the Patents Act, or, if you cannot amend the Patents Act and if you want to take advantage of the full ten-year period which was available to countries like India, then, for the first five years, you ought to give the Exclusive Marketing Rights. If we had taken the advantage of amending the Patents Act at the initial stage in the

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first seven or eight years, there would have been no need for giving product-patents, because those would not have been given even to those who were not there in the pipeline. But, unfortunately, we could not carry conviction with our colleagues and friends. In a democracy, we have to accept it. It is better late than never. Ultimately, good sense has prevailed and this Bill has been brought here. We are supporting this Bill. I would not like to make a long speech, but I would only like to point out that the spirit with which various viewpoints have been attempted to be accommodated and a detailed discussion has taken place in a Parliamentary forum, would be followed. In many areas, we are going to have new legislations.

Legislative framework is needed, the Product Patent Bill has to be brought, competition laws are to be formulated, insolvency laws have to be worked out, because, with the changing situations, with the changing socio-economic conditions, these legal instrumentalities are absolutely necessary to inspire confidence; otherwise, merely stating, in the Budget Speech of the Finance Minister, all ritually, reiterating in the various government documents, that we will bring the gap, that we will have a growth rate of seven-eight per cent, will not help. These types of things will not take place unless we create a conducive atmosphere, unless we create confidence in the legal framework which is transparent, which is clear, which is easily understandable. With these words, Sir, I support this Bill. Thank you, Mr. Vice-Chairman.

DR. L.M. SINGHVI (Rajasthan): Mr. Vice-Chairman, Sir, I think, the hon. Member, Shri Pranab Mukherjee has put the developments in the historical perspective as well as in the economic perspective. Those are perspectives which are important. Those are perspectives which have been a part of the long debate we have had in respect of this piece of Legislation. We have travelled a long way from Marrakesh to Delhi, from Delhi to Doha, and from Doha back to Delhi. I would like to congratulate the hon. Minister, Shri Murasoli Maran, for having provided a consistent leadership, a thoughtful leadership and an open-minded leadership, in the matter of considering various aspects of this Legislation. I think, it is quite remarkable that he was able to articulate and give leadership to the sentiments of countries like India. That articulation in Doha led to certain specific results, but, I think, there will be some necessity for the on-going process of learning from experience, modifying the WTO's own perspectives in the light of the experiences of countries, especially the less developed countries and the developed countries. That we can say, Mr. Vice-Chairman, Sir, that, perhaps, there would be other rounds of discussions, there would be other opportunities for coming to terms with our own problems and for making the more developed countries in the world come to terms with our problems. But, I think, we must look at it in the perspective of the future developments. No country can be an island unto itself. No country can remain isolated today and, I think, a patents regime which is acceptable generally, widely, particularly, with regard to the relationships with our own trading partners would lead, one hopes, to greater economic resilience and strength of our own economy. I recall on one occasion when the distinguished Minister, Shri Arun Shourie, spoke of a number of patents which were being registered in China, a sea-change, if I may say so, in the economic situation of China, but, I think, it is necessary for us to provide a patents laws which, on the one hand, takes into account the international perspective, and, on the other hand, takes into account what is often known as the *Swadeshi* perspective. The reconciliation is important for the reason that competition is a word of many different shades and meanings. Competition postulates a level-playing field. Competition is not in a vacuum. We have to create conditions and capacities for competition. That is why in the transitional period, sometimes, there are fears; there are misgivings; and I think that is the reason why all of us in the Committee made common cause. That is why I found in the dissenting notes of Mr. Roopchand Pal or Mr. Shyama Charan Shukla or Dr. Biplab Dasgupta and a letter from Justice Krishna Iyer a cry of

the heart. We must not forget that this legislation and what we have discussed relates to the protection of our people, in the sense, wherever there is a problem, that problem is our problem and no one else is coming to solve it. That is the reason why we discussed at length the various aspects of this legislation in the Committee. That is the reason why in the dynamics of our Committee system, we were able to produce a piece of legislation which is far from the original piece of legislation which was brought to us. I am proud to say that we have introduced into this piece of legislation concepts which are dynamic, concepts which are people-oriented, a concept like, for instance, reasonably affordable price. This is a concept of great potential. But, at the same time, I think we have been able to bring about a piece of legislation which is TRIPS compatible. Section 3 of the principal Act, under which we have added certain concepts for the preservation of our traditional knowledge and traditional medicines, is very important. Those are far-reaching introductions. Therefore, it is not as if the Government has brought this in an apologetic tone. But the Government has brought "it with the resilience of keeping pace with the times, keeping pace with our national interest; and on that national interest the House, as a whole, is united. In that national interest I found a rare unanimity and a rare sense of purpose, in the deliberations of the Committee which were very ably led by the Chairman, Shri T.N. Chaturvedi.

Mr. Vice-Chairman, Sir, I would like to make a point that there is much in what is being said with regard to the period of 20 years, from the date of the sealing of the patent. A suggestion that has been made-but it is not TRIPS compatible-is that the period should be computed from the date of the application, rather than from the sealing of the patent. But, I am sure, Mr. Murasoli Maran will continue to dialogue with nations which have similar problems and will be able to bring about changes in the WTO's perspective. In the meanwhile, may I say that in the discussions that we had yesterday, thanks to the initiative taken by some of the hon. Members, especially Shri Prithviraj Chavan, and the open-mindedness, the willingness and the readiness, of the Minister, we have here several amendments which, Mr. Vice-Chairman, I commend very strongly to the House, in particular, the amendment in clause 38, which stands in the name of Mr. Murasoli Maran. This brings greater clarity to the provisions. It says:

"Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in-

- (i) a circumstance of national emergency; or
- (ii) a circumstance of extreme urgency; or
- (iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crisis, relating to Acquired Immuno Deficiency Syndrome, Human Immuno Deficiency Virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

\*Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87."

I think it is one of the most salutary changes that the hon. Minister has agreed to. It will go a long way in allaying the apprehensions that many of us had. This is something which shows to us how Parliament and the system of Parliament fulfils its mission through the dialogue, through the dynamics of the dialogue which we found extremely rewarding and useful. Mr. Vice-Chairman, Sir, at this stage, one does not have to say much more than to express the hope that we will continue to vigilantly monitor this legislation and to see that it continues to serve the purposes of the nation, to protect the interests of the nation, and especially the underprivileged, the downtrodden, the poor because we do not want a scene or a situation where the ordinary consumer in our country is so marginalized that he cannot afford to look after his health or to protect his own interests. I think that will happen. I think there is a political will in our nation. The leadership of this nation will make sure that not only do we give a lead in our country in the matter of patent protection and protection of the people at the same time, but we give a lead to the world at large in the matter of protection of intellectual property on the one hand and the protection of the common people and their compelling and imperative interests on the other hand. Thank you.

SHRI MURASOLI MARAN : Mr. Vice-Chairman, Sir, I grateful to the hon. Members who have expressed their valuable views. The debate

was of a very high level. It produced a lot of light rather than a heat. After the clarifications made by Shri T. N. Chaturvedi, Chairman JPC, Shri Pranab Mukherjee, Dr. L.M. Singhvi and others, my job has become easier because they have almost covered all the points. This kind of cooperation is very unique. In the USA, they call it bipartisan cooperation. What we need in this country at this juncture is multiparty cooperation, at least, with regard to matters of national interests and national importance. This Bill is about our international obligations to the WTO, the Marrakesh Agreement and the Uruguay Round which were signed earlier by the Congress Government. But we cannot get out of it for that reason and say, "No, we are not a party to it. We cannot sign it. We cannot fulfil these obligations." It is not possible. The Government continues. Our national interests are there. Our international obligations are there. After passing this Bill here today and then in the Lok Sabha next week, we can send a signal to the world that India honours its international obligation, whichever party comes to power. That continuity should be there. That continuity is here. Therefore, I am grateful to the hon. Members, especially to the Congress Party Members and to the Marxist Members. Shri Pranab Mukherjee has said that the JPC has rewritten this Bill. It is a great thing. Legal luminaries like Dr. L.M. Singhvi, Shri Nariman and others were there in the Committee. This Bill was literally rewritten. Yesterday, a group of hon. Members including Shri Pranab Mukherjee, Shri Prithviraj Chavan, Dr. Biplab Dasgupta met me. We agreed to all the suggestions. Now amendments are being moved. That means we have strengthened the Bill. I have told them very clearly that from the Government side we are not bothered about the WTO. I am ready to come up to the precipice. Let us not fall into the pit of litigations of WTO. That is my slogan. Let us make use of the flexibilities to the maximum level. Therefore, I say, we have created a very unique Bill, a very important Bill. Much has been said as to why the time-frame should be 20 years for patents. It is an oft-raised question. In the 60's, the time period was eight years; then, we increased it to 10 and 12 years. Now, we are increasing it to 20 years because that is our international obligation; that is what the WTO wants; that is what almost all the countries in the world, including, China, Russia and Cuba are following. So, in this context, I would say, I don't want to justify it; if years are less, no doubt, I will be very happy. But there are reasons for fixing it at 20 years. In the 60's, it was taking 8-9 years to develop and market a drug. Now, it takes more than 10-12 years to obtain all regulatory approvals and complete the field and clinical tests. But the other side of the argument, as Dr. L.M. Singhvi

mentioned, is that the actual life is rarely more than 7-8 years. We will try our level best; we will argue our case at the TRIPS' Council, but I have no hope at all because the entire world has agreed to it. Not only that; here, in our Copyrights' Act, we have increased the copyrights time-frame from 50 years to 60 years just to safeguard the works of our nobel laureate, Rabindranath Tagore. We can be WTO-plus, but we can't be WTO-less. At one place, we have increased the period. Here, we are sticking to the limits. That is why, I would say, - the hon. Member, Dr. Biplab Dasgupta, himself is an Economist; he has written a book on WTO. He is an authority and more than anybody else, at least, more than me, he knows the implications - we can't reduce the time-frame. Therefore, I would request him not to press for his amendment. Then, with regard to the compensation, the royalty, to be paid, the question was raised as to what is the royalty that we should pay. Mr. Chavan has asked as to why we should not restrict it to a certain percentage. It was consciously done and not because the TRIPS has said like that. It is one way advantageous also. What does our law say? In Page 31, we have stated: "Provided the patentee shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent." So, it will be decided case-by-case and it may be less than four per cent. Why should we determine that it will be four or five or six per cent? It will then be binding our hands. Now, we are giving the option to the Controller. Naturally, the Controller will fix a reasonable price. The important point is, it is not that every case will go to the WTO. Every case of this kind, whether it is a question of economic value, whether it is a question of reasonable price, we will go to the Supreme Court. So, very soon, we will develop a kind of jurisprudence regarding this Patents Act. Let us wait for that. There will be no harm. That is my clarification to Mr. Chavan. I am very happy that he has agreed to that.

Sir, the edifice of this Bill is built on the following pillars: Public interest, national interest, national security, protection of traditional knowledge, protection of bio-resources on environment, public health and nutrition. So, we have taken care of it, more than anything else, at least, the question of affordable price. The Prime Minister has, recently, stated that the availability of drugs and medicines at affordable prices is a question of human rights. Therefore, we have taken enough precautions. Generally, the question is asked: Why should patents be given? The argument is that it is a kind of monopoly. We all know it; monopoly is contrary to common

law rights. For that, we are justifying it for some consideration that it should go to the public. This is the kind of time frame, whether it is seven years or twenty years, for encouraging innovation and for encouraging research. Unless it is economically advantageous, nobody will do research for the sake of research. That number has dwindled. That was in the previous era. Today, it is the dollar era, the moneymaking era. Therefore, what are the considerations? How do we take the sting out of the monopoly, because it is an anathema to common law? One is disclosure; while making the application, the patentee should disclose the matter so that when the time period is over, it may be available in the public domain. Secondly, there is another important provision, which is about compulsory licensing. The Government can take over the rights of the patentee, or anybody can claim the rights, if the Government declares that there is an emergency -- or there is an extreme urgency -- or there is a public crisis. We have brought it out very clearly, and more than anything else, 'affordable price' has been emphasised very strongly. You may ask how can we impose affordable price. Affordable price can be imposed by invoking compulsory licensing, by the Government taking over, even without Compensation. Those provisions are there. I do not want to go into the details. These are only the old provisions that have been retained, the old sections 100, 199, 102, 157. All these sections say that the Government can acquire for its own purposes, which means, the Government is not going to be sick; the Government can acquire the rights and produce the medicines, if possible. Otherwise, it can assign this work to any person so that it may be useful in the public distribution system, in the Government hospitals and in our public health centres. So, this is very much protected. Nobody should worry about it. Public order is taken care of. If any patentee goes against the public order or public morals, and plays mischief with the defence system, the Government can intervene and acquire. These kinds of protections are taken care of in this Bill. At the same time, I would like to say a few words about that 1970 Bill. As Pranabda has stated, we do not want to find fault with the previous Governments. We all know that the foundations were laid by the Congress Governments during the first few years of our Independence, even though that path may not be preferable now. But it was the vision of Pandit Jawaharlal Nehru. While creating the law for patents, he appointed a committee, under the chairmanship of Justice Rajagopala Aiyangar. Evidently, the Patent Law of 1970 was not an accidental piece of legislation; it was a deliberate assertion of the nation. He wanted to encourage, as Pranabda has stated, process patenting in two

or three areas so that our people can make use of it and become global leaders. That is what the other industrialised countries did. That is what Germany did; that is what Japan did; that is what UK did; that is what USA did. So, for about thirty years, we have enjoyed these facilities. Today, we can be proud to say that we are one of the global leaders, or that we are becoming one of the global leaders. We are emerging as leaders in the pharmaceuticals sector. Every day, we feel happy to see that our pharmaceutical companies are discovering new molecules. They are indulging in co-development and co-marketing with global majors. I do not want to mention the names here. There are so many of them. Generally, we Indians, are not innovators. But take, for example, the case of MIT. Every day, they are filing patents. Students there are filing hundred patents every day. We do not have that culture. Now, the CSIR is coming up and they are filing about 90 to 100 patents per day.

So, that culture is there. Here, the CSIR is funded by the Government, it is an autonomous organisation. There, is the Massachusetts Institute of Technology in which students file hundred patent applications per day. So, that way, we should graduate - what should I call it? - I don't want to call it 'copying culture' -- from the reverse engineering culture to the R&D culture. We are already doing it; we are coming up.

As far as the 20-year period is concerned, I would like to tell hon. Biplab Dasgupta that it cuts both ways. In information technology and in software, we are one of the global players. Mr. Bill Gates has stated that in the 21<sup>st</sup> century, India would be a super power in software. Of course, software comes under copyright, but if there is a combination of software and hardware, it comes under patent. So, the 20-year period helps us also. We should look at it from that point of view. We may be a developing country; we may have pockets of poverty; that is a different matter. At the same time, we are making nuclear armaments, we are sending rockets in the sky, and we are moving forward in information technology. So, we should not forget that fact. Therefore, I would like to tell Dr. Biplab Dasgupta, frankly, that the 20-year period should be there.

Sir, I would quickly complete my speech. I would say, let anybody- imagine any contingency, that contingency is taken care of in this Bill. What happens if a patented medicine is not available? The answer is this. The Government can import as well as distribute it. Under clause 47, they can

immediately import. The Government can use or acquire for its own use or a third party use, under clauses 100 and 102. Compulsory licence can be granted to a third party, under clause 84, to manufacture that product.

Then, the next question is this. What happens if the patented product is being sold at an exorbitant price, i.e., at an unaffordable price? The Government can import as well as distribute it, under clause 47. If a product is being sold at a cheaper price in any part of the world -- for example, one multinational is selling it in Singapore at a lower price than it is being sold in India -- then the Government or the third party can import it from the country where it is sold at a cheaper-price, under clause 107 (A) (b) of parallel import. The Government can grant compulsory licence to a third party, under clause 84, up to three years, notify the patent at any time. Here, the three-year time limit is not there. There is automatic use by a third party, under clause 92. The Government can acquire the patent for third party use, under clauses 100 and 102. What happens if there is a public health crisis, including those relating to HIV, AIDS, tuberculosis, malaria and other epidemics? We can import as well as distribute it, under clause 47. We can import it from any other country where it is available at a cheaper price, under clause 107(b), encourage widespread manufacture or production by notifying, under clause 92, for automatic use by a third party. So, we are encouraging local manufacturing; we are also encouraging exports, after substantially satisfying the needs of the domestic people. So, the Government can go to the extreme and acquire the patent for third party use, under clause 102.

Sir, what happens if the patent is abused by importation? Sir, Chapter XVI, and, especially, under clause 84, we can examine it, in the context of adequate availability and reasonable pricing and invoke compulsory licensing. If importation is not meeting public requirement and creating a public health crisis, then we can invoke clause 92, authorising automatic use by a third party. Dr. L.M. Singhvi quoted my amendment, saying that in the Doha Declaration, we got this benefit. In case of national emergency, extreme urgency or other epidemics like HIV, AIDS, tuberculosis, malaria, we can invoke compulsory licensing, but who will determine the 'national emergency'?

Who will determine the extreme urgency? The Government, by a notification. If the Government is satisfied and declares it, nobody can

question it. So, the Government has extraordinary powers, to prevent the misuse or mischief of multi-nationals.

Especially, hon. Member, Mr. Chaturvedi was saying that the pharma people have hijacked the patents debate. It is very much true. Not only true now, it was true from the beginning. Sir, in the 70's during the Tokyo Round, the industrialised countries, especially the multi-national lobbies, they introduced a concept, which was innocuous at that time, which said, "We have to safeguard our intellectual property. Therefore, we should introduce measures for anti-counterfeiting." India also supported it in good faith. Now, it has become a monster. That small 'Anti-counterfeiting measures,' the three words, they have enlarged it and made it as TRIPs.

So, who were behind it? The multi-nationals. I am not blaming them, because they have learnt it for their own interest. In Doha Declaration, we were introducing all those curbing measures. I would say that the Doha Declaration on TRIPs and Public Health was a landmark declaration, which has put public health above the profit-making motive.

I know, Sir, I have seen it with my own eyes. It is not a secret. Everybody in the media has written about it. The multi-nationals were putting pressure. So many phone calls. Shamelessly, some of the representatives of the advanced countries were saying, "Why can't you do it? You should help us. We have got pressure." Pressure from whom? We said "no, the lives of the poor people are important. We can't yield." That is why, the credit must go to India and Brazil, along with 50 countries, we created an atmosphere. We pioneered the motive. There were so many other things. What happens if the companies try reengineering of patents, that is, perpetuate patent protection by passing of admixtures, formulations and new dosages, form such new inventions? It is evergreen. They may do one more mixture and say it as if it is a new product. No, admixtures, dosage forms are not patentable formulations *per se* under section 3. It prohibits that. Hence, evergreening of patents is not permissible.

What happens if a patent is basically a pirated version of traditional knowledge? We are rich in traditional knowledge. So, such a patent can't be granted under section 3. Not only that, in the pre- opposition stage also, we can get it stalled. Any public member can say, "This is a traditional knowledge. This is bio-piracy. What they are doing is bio-piracy." Then, we

5.00 p.m.

will prevent it. Therefore, Sir, I would plead with the House let us pass some of the amendments which we have agreed to. This is a landmark legislation.

Before I conclude, I should confess that there are a lot of old arrears. So, we have got a major plan of modernising and reducing the patents. The Patents Office is presently having several thousands of applications, just like arrears in courts, these are pending in the Patents Office also. We will introduce a system of deferred examination which will allow the weeding out of applications, not being pursued seriously. These are normally 30-40% of the total number of applications. They will come down further. The statutory time-limit for meeting official objection is proposed to be reduced from ismonths to 12 months.

An additional 132 examiners are being recruited. We have also written to the Finance Ministry for permission to appoint another 102 additional examiners. We have computerised the Chennai Office; we have computerised the Delhi Office and other offices are also being computerised. Land options in Delhi between the DDA and the CSIR are under active consideration. Surplus land of the State Department in Mumbai has already been earmarked for Mumbai Office. The Government of West Bengal was also approached for land in Calcutta. Option in Chennai is also being explored. Sir, I would say that we will not lag behind. In fact, because of the progress so far, the Delhi and Chennai offices are examining applications for medicine and drugs which are around one year old as compared to the past when such examination could be taken up only after three or four years. In order to take up the processing as early as possible, a new system was introduced in October 2000, because of which it has been possible to take up nearly 28,000 applications and issue preliminary examinations. In fact, I would say that these arrears are more. But we will make all efforts. They are just like the arrears in the Supreme Court or High Courts. We will make efforts to release them and make them updated. At the same time, I would like to once again thank Pranabda and his Party for their cooperation. But for their cooperation, we would not be in a position to pass this Bill. Pranabda mentioned that when he was here, he moved this Bill. I think he will be here to move the Product Patent Bill also. So, I will be happy. In democracy anything can happen. I would say one

thing more and submit that this kind of cooperation in national matters should continue. Sir, in Tamil there is a proverb that if some strange miracles are happening, then there will be monsoon rains. So, I think because of this continued cooperation the monsoon rains will t\$e all right. I would also like to say that nobody in the case of economic reforms, can feel shy to follow in the footsteps of Dr. Manmohan Singh and the Congress Party. We need not feel shy to follow or imitate the achievements of China. Therefore, I wish that such kind of cooperation should continue, not only in this but in other matters also, especially in the field of economic reforms. Thank you.

SHRI MANOJ BHATTACHARYA: Sir, through you, I would like to seek only a very small clarification. Sir, the hon. Minister was referring to the innovations, some new molecules in pharmaceuticals. I would like to know from him how many new molecules could be developed by the Indian pharmaceutical industry or the Central Drugs Research Laboratory.

SHRI MURASOLI MARAN: You mean through the CSIR.

SHRI MANOJ BHATTACHARYA: Yes, I know, through the CSIR. *...(Interruptions)...* I would like to know how many new molecules we could develop. My question is how many new molecules could be developed by the Indian pharmaceutical industry in the last five years and how many of these could be patented. Do we have adequate infrastructure to develop the systems so that things can be patented quickly. I would request the Minister to clarify this.

SHRI KAPIL SIBAL (Bihar) : Mr. Vice-Chairman, I will make just one point and seek the reaction of the hon. Minister. Sir, as you know, under the Drug Policy, we have the Drug Price Control Order and under that Order there is a formula on the basis of which the price of a drug is to be determined. There are bulk drugs and there are other drugs which are sold in retail market. There is a formula for that. The Canadians have, in fact, set up, what is called, the Drug Prices Regime. I am sure the hon. Minister is aware of it. This is a far more efficient system of determining the prices of drugs than our complicated process under the Drug Price Control Order. This is for the purpose of modernisation of laws and this is a much easier way to control drug prices which are ultimately going to be sold after patents are granted to them after, 20 yaars. I would like to know whether

the hon. Minister is considering or would like to consider, in the light of this Canadian legislation on the point, and see that if that can be replicated, and, in fact, not necessarily replicated, but adjusted in the light of the Indian conditions. That is what I wanted to know from the hon. Minister.

SHRI V.V. RAGHAVAN: Sir, I would like to know from the Hon. Minister that instead of saying 'affordable prices', what is his objection in prescribing some criteria, at least, in regard to life-saving medicines to the Controller of Drugs. There should be some criteria as to at what rate the intellectual property can claim; what should be the prices of life-saving drugs, and how to fix it.

SHRI MURASOLI MARAN: Sir, I will start with the last question. The Drug Controller, as mentioned by the hon. Member, fixes the prices. He has got all powers to fix the prices. So far as discovery of molecules is concerned, many molecules have been discovered by the private sector. But, about the CISR, I do not have the details right now, I will collect the details and let you know. Mr. Kapil Sibal has made a very good point, but the pity is I am not the incharge of drug control. The Ministry of Law is incharge of drug control. I will definitely pass on the information to them.

DR. RAMENDRA KUMAR YADAV 'RAVI': Sir. I have a small question.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): No, please. ...{Interruptions}... We can't continue like this. ...{Interruptions}... We can't continue like this.

DR. RAMENDRA KUMAR YADAV 'RAVI' : Sir, this is for the benefit of this country:

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): What's that?

डा. रमेन्द्र कुमार यादव 'रवि' . सर, मैं आपके माध्यम से माननीय मंत्री जी से जानना चाहता हूँ कि आर्यभट्ट, जो भारत की विभूति थे, उनके ऐल्जेब्रा के 14 फार्मूले और 0 को भारत के इंटरैस्ट में आप क्या पेटेंट करा सकते हैं ?

SHRI MURASOLI MARAN: Sir, I would like to make one correction. I said that the Ministry of Law is incharge of drug control. It is

the Ministry of Chemicals and Fertilizers. The concerned Minister is also here. Naturally, he would have heard it. He will take care of it.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): The question

"That the Bill further to amend the Patents Act, 1970, as reported by the Joint Committee, be taken into consideration."

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take clause-by-clause consideration of the Bill. We take up clause 2.

*Clause 2 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up clause 3. There are five amendments by Dr. Biplab Das Gupta.

**Clause 3 - Amendment of Section 2**

DR. BIPLAB DASGUPTA: Sir, I beg to move:

- (3) That at page 10, line 14, *for* the words "in an industry" the words "in any industry" be *substituted*.
- (4) That at page 11, line 4, *after* the word "product" the words "including machine, apparatus or other articles" be *inserted*.
- (5) That at page 11, line 4, *after* the word "process" the words "including chemical, biochemical, biotechnological and microbiological processes" be *inserted*.
- (6) That at page 11, *for* lines 6 and 7, the following be *substituted*, namely:-

(ja) 'inventive step' means a feature of an invention that involves an important technical advance as compared to the existing knowledge and or having considerable economic

significance and which makes the invention not obvious to a person skilled in art".

- (7) That at page 11, after *line* 8, the following be *inserted*, namely:-

"(gg) for clause (1) the following clause shall be substituted, namely: -

- (1) "Pharmaceutical substance" includes -- drug chemical entity, or medical drug or drug molecule or bulk drug involving inventive steps".
- (2) New or novel invention means by invention or technology which has not been anticipated by publication in any document or used in India or elsewhere before the date of filing of a patent application with complete specification i.e., any subject matter having fallen in public domain."

*The questions were put and the motions were negatived.*

*Clause 3 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up the amendment for insertion of new clause 3A by Shri Prithviraj Chavan, Shri Suresh Pachouri, and Shri P.K. Maheshwari.

SHRI PRITHVIRAJ CHAVAN: Sir, I am not moving.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up clause 4. There are six amendments by Dr. Biplab Dasgupta.

#### **Clause 4 - Amendment of section 3.**

DR. BIPLAB DASGUPTA: Sir, I beg to move:

- (9) That at page 11, line 25, *for* the words "prejudice to human, animal or plant life or health" the words "prejudice to human, animal or plant life or health" the words "prejudice to human and animal health or plant life" be *substituted*.

(10) That at page 11, *after* line 28, the following be *inserted*, namely: -

"(ba) for clause (d), - the following clause shall be substituted, namely:-

(d) the mere discovery of any new property or new use for a known substance or combination of all patented substances or of the mere use of known process, machine or apparatus."

(11) That at page 11, *after* line 28, the following be *inserted*, namely:-

"(bb) after clause (d) the following clause shall be inserted, namely:-

(da) formulation in any form meant for use as medicine or drug for internal or external use excepting those involve innovative technologies may be covered by process patents".

(12) That at page 11, line 33, be *deleted*.

(13) That at page 12, line 1, the words "other than micro-organisms" be *deleted*.

(14) That at page 12, *after* line- 3, the following be *inserted*, namely:-

"(ja) inventions which do not strictly meet the criteria of industrial application (e.g., patents granted at multiple stages covering basic research -- onco mouse, stem cell, partial gene fragments, research tools, PCR technique, machine based embedded bio-informatics software, genomic information and databases)

(jb) all or parts of the natural living being and biological material found in nature or isolated therefrom including

DNA sequences, genes and cell components genome or germ plasm of any natural living being and biological process, single nucleotide polymorphisms, naturally occurring proteins or modified proteins.

(j) biotechnology inventions needing the use of biological resources".

*The questions were put and the motions were negatived.  
Clause 4 was added to the Bill.*

, THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Clause 5.  
There is one amendment, No. 15, by Dr. Biplab Dasgupta.

**CLAUSE 5: Amendment of Section 5**

DR. BIPLAB DASGUPTA : Sir, I move:-

(15) That at page 12, for lines 16-19, the following be *inserted*, namely: -

"5. In Section 5 of the Principal Act,

- a. for sub-sections(1) and (2) the following shall be substituted, namely :-

Patents shall be available for any inventions including pharmaceutical substances whether products or processes in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

*Explanation :-* For the purposes of this section the term "inventive step" and "capable of industrial application" may be deemed to be synonymous with the term 'non-obvious' and "useful" respectively.

*The question was put and the motion was negatived.  
Clause 5 was added to the Bill. Clauses 6 and 7 were added to the Bill.*

[9 May, 2002]

RAJYA SABHA

THE VICE - CHAIRMAN(SHRI SANTOSH BAGRODIA): Clause 8. There are four amendments, Nos. 16, 17, 18 and 19, by Dr. Biplab Dasgupta.

**CLAUSE 8: Amendment of Section 10**

DR. BIPLAB DASGUPTA : Sir, I move :-

(16) That at page 13, *for* lines 24 and 25, the following be *substituted*, namely :-

"(A) The deposit of the material shall be made not later than the date of filing of biological patent an application for patent-in India."

(17) That at page 13, lines 26 -29, for the word "material" wherever it occurs, the word "biological" be substituted.

(18) That at page 13, *for* lines 30 to 32, the following be *substituted*, namely:-

"(C) access to the biological material from the depositary institution is available to any interested person only for the purpose of verification and/or research and development and after the expiry of the eighteen months period from the date of filing of the application for the patent or the priority date if any, whichever is earlier."

(19) That at page 14, line 7, *for* the word "concept" the word "step" be *substituted*.

*The questions were put and the motions were negatived.  
Clause 8 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take up clause 9. There are five amendments. I shall first take up amendments, Nos. 21, 22, 23 and 24, by Dr. Biplab Dasgupta.

**CLAUSE 9: Amendment of Chapter IV.**

DR. BIPLAB DASGUPTA : Sir. I move :-

21. That at page 14, *for* lines 26 to 28, the following be *substituted*, namely: -

"(5) The particulars of every application under the section shall include date of application, date of priority, if any, number of application, name and address of the applicant, an abstract of the invention disclosed and any other information that the Controller in the circumstances deem fit."

22. That at page 14, *for* lines 30-31, the following be *substituted*, namely:-

"(a) on making a request therefor, in the prescribed manner the depository institution shall make the biological material mentioned in the specification available to the public."

23. That at page 14, *after* line 31, the following be *inserted*, namely:-

"(aa) The depository institution shall take an undertaking from the applicant for the supply of the biological material in the prescribed manner to the effect that the biological material requested for is only for the purposes of the verification and/or for the research and development work."

24. That at page 15, *for* lines 14-16, the following be *substituted*, namely:-

"(i) The applicant or any other interested person at anytime - after the filing of the application for patent but before the publication or before the grant of the patent on the application withdraw the application made by him, and".

*The questions were put and the motions were negatived.*

THE VICE - CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take up amendment, No. 20, by Shri Murasoli Maran.

SHRI MURASOLI MARAN: Sir, I beg to move :-

20. That at page 14, line 40, for the figure "2001" the figure "2002" be substituted. \*

*The question was put and the motion was adopted.  
Clause 9, as amended, was added to the Bill.  
Clauses 10 to 16 were added to the Bill.*

THE VICE - CHAIRMAN (SHRI SANTOSH BAGRODIA): There is one amendment, No. 25, by Shri Murasoli Maran, for insertion of New Clause 16A.

**NEW CLAUSE 16(A)**

SHRI MURASOLI MARAN: Sir, I move: -

25. That at page 16, after line 30, the following be inserted, namely:-

Amendment of Section 24C.

'16A. In section 24 C of the Principal Act:-

- a. in clause (c), for the word and figures "section 85", the word and figures "section 84" shall be substituted;
- b. for clause (d), the following clause shall be substituted, namely:-"

(d) clause (e) of sub-section (7) of section 84 shall be omitted.'

*The question was put and the motion was adopted. New Clause 16 (A) was added to the Bill. Clauses 17 to 19 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up clause 20. There are two amendments No. 26 and 27, by Dr. Biplab Dasgupta.

**CLAUSE 20: Insertion of Section 39.**

DR. BIPLAB DASGUPTA: Sir, I beg to move:

(26) "That at page 17, line 23, *after* the words "related to atomic energy unless" the words "or biological materials or any other subject matter of strategic importance that may be notified by the Government from time to time" be *inserted*.

(27) That at page 17, line 34, *for* the word "protection" the word "the grant of a patent" be *substituted*.

*The questions were put and the motions were negatived.*

*Clause 20 was added to the Bill.*

*Clauses 21-24 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up amendment No. 28, by Dr. Biplab Dasgupta, for insertion of new clause

24-A.

**NEW CLAUSE 24- A: Substitution of new section for section 48.**

DR. BIPLAB DASGUPTA: Sir, I beg to move:

(28) "That at page 18 *after* line 23, the following new clauses be *inserted*, namely: -

"24A. In the Principal Act, after section 48 the following section shall be inserted namely: -

48A when product covered by sub-clauses (a) or (b) of section 48 which are lawfully acquired by a person directly from the patentee or his licensee or with his consent expressly, or implied, the sale or subsequent dealing in those products by any person in another country shall not constitute infringement of patentee's rights."

*The question was put and the motion was negatived.*

*Clause 25 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up clause 26. There are three amendments No. 29, 30 and 31. First, we take up the amendment No.29, by Shri Murasoli Maran.

**CLAUSE 26: Amendment of section 53.**

SHRI MURASOLI MARAN: Sir, I beg to move:

(29) That at page 18, line 31, *for* the figure "2001" the figure "2002" be *substituted*.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up amendments No. 30 and 31, by Dr. Biplab Dasgupta.

DR. BIPLAB DASGUPTA : Sir, I beg to move:

(30) "That at page 18, *for* lines 30 to 34, the following be *substituted*, namely:-

"(1) subject to the provisions of this Act, the term of every • patent granted, under this Act, shall be twenty years from the date of filing of the application for the patent."

(31) "That at page 18, *after* line 34, the following be *inserted*, namely: -

"However, in the case of pharmaceutical inventions the term of the patent shall be ten years from the date of sealing of patent."

*The House divided.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA):

Ayes : 21

Noes ; 83

Ayes : 21

Ahmed, Shri Sk. Khabir Uddin  
Basu, Shri Nilotpal  
Bhandary, Prof. Ram Deo  
Bhattacharya, Shri Manoj  
Borghain, Shri Drupad  
Chatterjee, Shri Prasanta  
Dasgupta, Dr. Biplab  
Dubey, Shrimati Saroj  
Kaushal, Shri Swaraj  
Kaushik, Shri Rama Shanker  
Maheshwari, Shrimati Sarla  
Mukherjee, Shri Dipankar  
Pandey, Shrimati Chandra Kala  
Pillai, Shri S. Ramachandran  
Poulose, Shri CO.  
Raghavan, Shri V.V.  
Rai, Shrimati Kum Kum  
Roy, Shri Tarini Kanta  
Vijaya Raghavan, Shri A.  
Yadav, Prof. Ram Gopal  
Yadav 'Ravi', Dr. Ramendra Kumar

Noes - 83

Agarwalla, Shri Parmeshwar Kumar  
Ahluwalia, Shri S.S.  
Akarapu, Shri Sudarshan  
Apte, Shri B.P.  
Azad, Shri Gandhi  
Azmi, Maulana Obaidullah Khan  
Bachani Lekhraj, Shri  
Bairagi, Shri Balkavi  
Barot, Shri Jayantilal  
Barupal, Shrimati Jamana Devi  
Basha, Shri S.M. Lal Jan  
Bhardwaj, Shri Hansraj  
Bhardwaj, Shri Suresh

Bhattacharjee, Shri Karnendu  
Bohidar, Ms. Pramila  
Bora, Shri Indramoni  
Chandran, Shri S. S.  
Chaturvedi, Shri T.N.  
Chavan, Shri Prithviraj  
Das, Dr. M.N.  
Dhindsa, Shri Sukh Dev Singh  
Dhyani, Shri Manohar Kant  
Durga, Shrimati N. P.  
Faguni Ram, Dr.  
Fernandes, Shri Osdar  
Gautam, Shri Sangh Priya  
Qoyal, Shri Vedprakash P.  
Hiphei, Shri  
Indira, Shrimati S.G.  
Jaitley, Shri Arun  
Jamir, Shri C. Apok  
Kadar, Shri M.A.  
Kamaraj, Shri R.  
Kaur, Shrimati Gurcharan  
Khan (Durr), Shri Aimaduddin Ahmed  
Khan, Shri K. Rahman  
Khan, Shri S.P.M. Syed  
Khuntia, Shri Ramachandra  
Krishnamurthy K., Shri Jana  
Kshatriya, Prof. Alka Balram  
Lath, Shri Surendra  
Mahajan, Shri Pramod  
Maitreya, Dr.V.  
Manmohan Singh, Dr.  
Man Singh, Rao  
Maroo, Shri Ajay  
Maya Singh, Shrimati  
Mehta, Shri Lalitbhai  
Mishra, Shri Kalraj  
Mukherjee, Shri Pranab  
Nandi Yellaiah, Sri  
Narayanan, Shri P.G.

Narendra Mohan, Shri  
Pachouri, Shri Suresh  
Parmar, Shri Raju  
Patel, Dr. A. K.  
Patel, Shri Ahmed  
Perumal, Shri C.  
Rai, Shri Lajpat  
Rajagopal, Shri O.  
Rao, Dr. Dasari Narayana  
Rao, Shri K. Kalavenkata  
Rao, Shri K. Rama Mohana  
Rashid, Mirza Abdul  
Reddy, Shri Ravula Chandra Sekar  
Sankaralingam, Prof. M.  
Sharda, Shrimati Savita  
Sharma, Shri Anil  
Shourie, Shri Arun  
Shunmugasundaram, Shri R.  
Shyam Lal, Shri  
Singh, Shri Birabhadra  
Singh, Shri Jaswant  
Singh, Shri Bashistha Narain  
Singhal, Shri B.P.  
Singhvi, Dr. LM.  
Sirigireddy, Shri Rama Muni Reddy  
Sivasubramanian, Shri S.  
Swaraj, Shrimati Sushma  
Thirunavukkarasu, Shri CP.  
Vanga Geetha, Shrimati  
Virumbi, Shri S. Viduthalai  
Zahidi, Shri Khan Ghufuran

*The motion was negatived.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now I will put the amendment of Shri Murasoli Maran to vote. The question is:

29. That at page 18, line 31, for the figure "2001" the figure "2002" be substituted.

*The motion was adopted.*

*Clause 26, as amended, was added to the BUI.*

*Clauses 27-30 were added to the Bill.*

**NEW CLAUSE 30A**

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): There is one amendment, No.32, by Dr. Biplab Dasgupta, for insertion of New Clause 30A.

DR. BIPLAB DASGUPTA : Sir, I beg to move:

32. That at page 20, *after* line 22, the following new clause be *inserted*, namely:-

"30A. In Section 66 of the Principal Act, the existing section shall be re-numbered as (1) and after the sub-section so re-numbered the following sub-section shall be inserted, namely: -

(2) Where supply of any patented material/ substance is blocked for political or any other reason by the patent holder, the Central Government shall revoke the patent without giving any reason or notice.

*The question was put and the motion was negatived.*

*Clauses 31-37 were added to the Bill.*

**Clause - 38: Substitution of new Chapter for Chapter XVI**

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): There are 18 amendments, Nos. 33-36, 38-49, 51-52 by Dr. Biplab Dasgupta; there are two amendments, Nos. 37 and 50 by Shri Prithviraj Chavan, Shri Suresh Pachouri, Shri P.K. Maheswari and Shri Nilotpal Basu; there are three amendments Nos.59-61 by Shri Murasoli Maran.

DR. BIPLAB DASGUPTA: Sir, I beg to move:

33. That at page 22, line 39, *after* the word "worked", the words "in different parts" be *inserted*.

34. That at page 23, line 5, *after* the word "worked" the words "in different parts" be *inserted*.

35. That at page 23, line 14, *after* the word "worked" the words "in different parts" be *inserted*.
36. That at page 23, line 15, the words "order the patentee" be *deleted*.
38. That at page 23, line 16, *for* the words "directs the patentee to grant" the word "grants" be *substituted*.
39. That at page 23, *after* line 17, the following be *inserted*, namely:-  
"(5a) In the case of compulsory licence for pharmaceutical the Controller shall order that the licensee to sell fifty per cent of his production to the non-associated formulators."
40. That at page 23, *for* lines 37-33, the following be *substituted*, Namely:-  
"(v) where the individual merits of an applicant have been determined by the Controller to use the patented invention and that the proposed user has made efforts to obtain authorization from the patentee to use the patent on the reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time, the Controller shall at any time after the expiration of three Years from the date of sealing of the patent, grant Compulsory licence to the proposed user on such terms and conditions as he may deem fit;  
(v) the reasonable period after which the proposed user may approach the Controller would be .not less than 150 days from the date he had approached the patent holder. The commercial terms and conditions offered by the proposed user would be considered as reasonable by the Controller if any royalty and other remuneratign offered by him shall be between four and eight per cent of the annual sales turnover at net ex-factory sale price. The period of the licensee shall be co-terminus with the period available to the patentee;

- (vi) if the conditions stipulated in clause (v) of this section are satisfied, the proposed user shall have the right to the grant of the compulsory licence within a period of 100 days by the Controller within the stipulation for pharmaceuticals as in sub-section (5a) of section 84.
41. That at page 5, line 36, *after* the words "notice of apposition" the words and figure "Total period available for apposition, however, shall not exceed more than 100 days" be *inserted*.
42. That at page 25, line 41, *after* the words "deciding the case" the words and figure "within a further period of not more than 100 days" be *inserted*.
43. That at page 25, line 44, the words "by reason of conditions imposed by the patentee" be *deleted*.
44. That at page 26, line 11, *after* the words "held by the patentee and" the word "or" be *inserted*.
45. That at page 26, lines 12 and 13, the words "by order direct the" be *deleted*.
46. That at page 26, *after* line 38, the following be *inserted*, namely:-
- "(ia) that considering the various factors indicated in this clause the reasonable royalty and other remunerations payable to the patentee would be within four to eight per cent of the annual sale price. The licensee shall be entitled to commence production of the patented product immediately on grant of the licence and reconsideration of royalty payment if disputed by the patent holder or any other person shall not stand in the way of commencing production."
47. That at page 2i, lines 1 and 2, the words "unless a shorter term is consistent with public interest" be *deleted*.
48. That at page 27, *for* lines 3 to 8, the following be *substituted*, namely:-

"(vii) that the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product if need be;

(viii) that in the case of semi-conductor technology the licence granted is to work the invention for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(ix) that where the licence granted in other cases to remedy a practice determined after judicial or administrative process to be anti-competitive, the need to correct anti-competitive process will be taken into account in determining the amount of remuneration".

49. That at page 27, lines 18-19, the words "royalty and other remuneration, if any, payable to patentee" be *deleted*.

51. That at page 28, *after* line 16, the following new clause be *inserted*, namely: -

"92A(1) At any time after the sealing of the patent, -the Controller shall have the right to issue compulsory licence or licences on any patented product relating to public health as notified by the Government in the public interest in the official gazette on such terms and conditions as he may deem reasonable.

(2) The reasonable terms and conditions would be either a lump sum compensation or royalty and other remunerations not exceeding four per cent of net ex-factory annual sale turnover payable to the patentee for the remaining term of the patent".

52. That at page 28, line 21, *for* the word and figure "section 84" the word and figure "section 92" be *substituted*.

SHRI NILOTPAL BASU (West Bengal) : Sir, I beg to move:

37. That at page 23, lines 15-16, *for* the words "may order the

Patentee to grant a licence upon such terms as he may deem fit" the words "may grant a licence upon such terms as he may deem fit" be *substituted*.

50. That at page 28, after line 16, the following new clause be *inserted*, namely:-

"92A Notwithstanding anything contained in this Act, the Controller shall have the right to issue compulsory licence or licences on any patent for a pharmaceutical product relating to public health or considered to be in the public interest by the Government on such terms and conditions as he may deem fit."

SHRI MURASOLI MARAN: Sir, I beg to move:

59. That at page 23, line 15, the words "order the patentee to" be *deleted*.

60. That at page 28, line 14, *after* the word "sections" the figure "83" be *inserted*.

61. That at page 28, *after* line 16, the following be *inserted*, namely: -

"(3) Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in-

- (i) a circumstance of national emergency; or
- (ii) a circumstance of extreme urgency; or
- (iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crisis, relating to Acquired Immuno Deficiency Syndrome, Human Immuno deficiency Virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87."

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I will first put the amendments moved by Dr. Biplab Dasgupta to vote.

DR. BIPLAB DASGUPTA: Sir, I want a division on amendment 46.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Okay. Now, I will put the Amendments, No.33 to 36, 38 to 45, 47 to 49 and 51 and 52, to vote.

Amendments No.33 to 36, 36 to 45, 47 to 49 and 51 and 52 were negatived.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, I will put Amendment, No.46, moved by Dr. Biplab Dasgupta to vote. The question is:

46. That at page 26, *after* line 38, the following be *inserted*, namely:-

"(ia) that considering the various factors indicated in this clause the reasonable royalty and other remunerations payable to the patentee would be within four to eight per cent of the annual sale price. The licensee shall be entitled to commence production of the patented product immediately on grant of the licence and reconsideration of royalty payment if disputed by the patent holder or any other person shall not stand in the way of commencing production."

*The House divided.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA):

Ayes .... 21

Noes ... 83

**Ayes .... 21**

Ahmed, Shri Sk. Khabir Uddin  
Basu, Shri Nilotpal

Bhandary, Prof. Ram Deo  
Bhattacharya, Shri Manoj  
Borgohain, Shri Drupad  
Chatterjee, Shri Prasanta  
Dasgupta, Dr. Biplab  
Dubey, Shrimati Saroj  
Kaushal, Shri Swaraj  
Kaushik, Shri Rama Shanker  
Maheshwar!, Shrimati Sarla  
Mukherjee, Shri Dipankar  
Pandey, Shrimati Chandra Kala  
Pillai, Shri S. Ramachandran  
Poulose, Shri CO.  
Raghavan, Shri V.V.  
Rai, Shrimati Kum Kum  
Roy, Shri Tarini Kanta  
Vijaya Raghavan, Shri A.  
Yadav, Prof. Ram Gopal  
Yadav 'Ravi', Dr. Ramendra Kumar

Noes .... 83

Agarwalla, Shri Parmeshwar Kumar  
Ahluwalia, Shri S.S.  
Akarapu, Shri Sudarshan  
Apte, Shri B.P.  
Azad, Shri Gandhi  
Azmi, Maulana Obaidullah Khan  
Bachani Lekhraj, Shri  
Bairagi, Shri Balkavi  
Barot, Shri Jayantilal  
Barupal, Shrimati Jamana Devi  
Basha, Shri S.M. Lal Jan  
Bhardwaj, Shri Hansraj  
Bhardwaj, Shri Suresh  
Bhattacharjee, Shri Karnendu  
Bohidar, Ms. Pramila  
Bora, Shri Indramoni

RAJYA SABHA

Brahma, Shri Urkhao Gwra  
Chandran, Shri S. S.  
Chaturvedi, Shri T.N.  
Chavan, Shri Prithviraj  
Das, Dr. M.N.  
Dhindsa, Shri Sukh Dev Singh  
Dhyani, Shri Manohar Kant  
Durga, Shrimati N. P.  
Faguni Ram, Dr.  
Fernandes, Shri Oscar  
Gautam, Shri Sangh Priya  
Goyal, Shri Vedprakash P.  
Hiphei, Shri  
Indira, Shrimati S.G.  
Jaitley, Shri Arun  
Jamir, Shri C. Apok  
Kadar, Shri M.A.  
Kamaraj, Shri R.  
Kaur, Shrimati Gurcharan  
Khan (Durr), Shri Aimaduddin Ahmed  
Khan, Shri K. Rahman  
Khan, Shri S.P.M. Syed  
Khuntia, Shri Ramachandra  
Krishnamurthy K., Shri Jana  
Kshatriya, Prof. Alka Balram  
Lath, Shri Surendra  
Mahajan, Shri Pramod  
Maitreyan, Dr.V.  
Manmohan Singh, Dr.  
Maroo, Shri Ajay  
Maya Singh, Shrimati  
Mehta, Shri Lalitbhai  
Mishra, Shri Kalraj  
Mukherjee, Shri Pranab  
Nandi Yellaiah, Shri  
Narayanan, Shri P.G.  
Narendra Mohan, Shri  
Pachouri, Shri Suresh  
Parmar, Shri Raju

[9 May, 2002]

RAJYA SABHA

Patel, Dr. A. K.  
Patel, Shri Ahmed  
Perumal, Shri C.  
Rai, Shri Lajpat  
Rajagopal, Shri O.  
Rao, Dr. Dasari Narayana  
Rao, Shri K. Kalavenkata  
Rao, Shri K. Rama Mohana  
Rashid, Mirza Abdul  
Reddy, Shri Ravula Chandra Sekar  
Sankaralingam, Prof. M.  
Sharda, Shrimati Savita  
Sharma, Shri Anil  
Shourie, Shri Arun  
Shunmugasundaram, Shri R.  
Shyam Lal, Shri  
Singh, Shri Birabhadra  
Singh, Shri Jaswant  
Singh, Shri Bashistha Narain  
Singhal, Shri B.P.  
Singhvi, Dr. L.M.  
Sirigireddy, Shri Rama Muni Reddy  
Sivasubramanian, Shri S.  
Swaraj, Shrimati Sushma  
Thirunavukkarasu, Shri CP.  
Vanga Geetha, Shrimati  
Virumbi, Shri S. Viduthalai  
Zahidi, Shri Khan Ghufra

*The motion was negatived.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I shall now put the amendments, No.37 and 50, moved by Shri Nilotpal Basu to vote.

*Amendments, No. 37 and 50, were negatived.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I shall now put the amendments moved by Shri Murasoli Maran to vote. The question is:

59. That at page 23, line 15, the words "order the patentee to" be *deleted*.
60. That at page 28, line 14, *after* the word "sections" the figure "83", be *inserted*.
61. That at page 28, after line 16, the following be inserted, namely: -
- "(3) "Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in-
- (i) a circumstance of national emergency; *or*
- (ii) a circumstance of extreme urgency; *or*
- (iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crises, relating to Acquired Immuno Deficiency Syndrome, Human Immuno Deficiency Virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87."

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*The motions were adopted.*

*Clause 38, as amended, was added to the Bill.*

*Clause 39 was added to the Bill.*

*Clause 40-Amendment of Section 100*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now, we take up clause 40. There are two amendments. Amendment, No.53, by Shri Prithviraj Chavan, Shri Suresh Pachori and Shri P.K. Maheshwari; and Amendment, No.62, by the Minister.

SHRI PRITHVIRAJ CHAVAN: Sir, we are not moving the amendment.

SHRI MURASOLI MARAN: Sir, I beg to move:

62. That at page 28, line 34, *after* the word "paid" the words "not more than" be *inserted*."

*The question was put and the motion was adopted.*

*Clause 40, as amended, was added to the Bill.*

*Clauses 41 and 42 were added to the Bill.*

**Clause 43 - Insertion of new section 107A.**

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): There are two Amendments, No.54 and 55, by Dr. Biplab Dasgupta, and one Amendment, No.56, by Shri Prithviraj Chavan, Shri Suresh Pachouri and Shri P.K. Maheshwari. Shri Prithviraj Chavan, Shri Suresh Pachouri and Shri P.K. Maheshwari are not moving the amendment.

DR. BIPLAB DASGUPTA: .Sir, I beg to move:

54. That at page 30, line 6, the words "by\* the patentee" be *deleted*.

55. That at page 30, line 6, *after* the words "distribute the product" the words "provided the product is required to meet unfulfilled demand and is also available at cheaper price" be *inserted*.

*The questions were put and the motions were negatived.*

*Clause 43 was added to the Bill.*

*Clauses 44 to 51 were added to the Bill.*

**Clause 52 - Amendment of section 126**

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): There is one Amendment, No.57, by the Minister

SHRI MURASOLI MARAN: Sir, I beg to move:

57. That at page 33, line 30, for the figure "2001" the figure "2002 be substituted.

*The question was put and the motion was adopted.*

*Clause 52, as amended, was added to the Bill.*

*Clauses 53 to 61 were added to the Bill.*

**Clause 62 - Substitution of new section for section 157A**

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): There is one amendment. No. 58, by Dr. Biplab Dasgupta.

DR. BIPLAB DASGUPTA: Sir, I beg to move:

58. That at page 35, for lines 24 to 26, the following be substituted, namely:-

"(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which considers prejudicial to the interest of the security of India, health security, biological security, economic and territorial security of people of India.

(aa) any violation of this clause would result in cancellation of the patent rights, pecuniary punishment and imprisonment".

*The question was put and the motion was negatived.*

*Clause 62 was added to the Bill.*

*Clasues 63 to 65 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now we take up Clause 1. There is one amendment, No. 2, by the Minister.

**CLAUSE-1 (SHORT TITLE AND COMMENCEMENT)**

SHRI MURASOLI MARAN: Sir, I move:

2. That at page 9, line 3, for the figure "2001" the figure "2002" be *substituted*.

*The question was put and the motion was adopted.  
Clause 1, as amended, was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Now we take up the Enacting Formula. There is one amendment, No. 1, by the Minister.

**ENACTING FORMULA**

SHRI MURASOLI MARAN: Sir, I move:

37. That at page 9, line 1, for the word "Fifty-second" the word "Fifty-third" be substituted.

*The question was put and the motion was adopted.  
The Enacting Formula, as amended, was added to the Bill.  
The Title was added to the Bill.*

SHRI MURASOLI MARAN: Sir, I move:

*"That the Bill, as amended, be passed. The  
question was put and the motion was adopted."*

[THE VICE-CHAIRMAN (SHRI NILOTPAL BASU) in the Chair.]

**I. THE CONSTITUTION (SCHEDULED CASTES AND SCHEDULED TRIBES) ORDERS (AMENDMENT) BILL, 2002.**

**AND**

**II. THE CONSTITUTION (SCHEDULED CASTES) ORDER (AMENDMENT) BILL, 2002.**

सामाजिक न्याय और अधिकारिता मंत्री (डा. सत्य नारायण जटिया) . माननीय उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि संविधान अनुसूचित जातियाँ – अनुसूचित जनजातियाँ आदेश संशोधन विधेयक, 2002 पर , जिसे लोक सभा ने 2 मई , 2002 को पारित कर दिया है, पर विचार किया जाए । माननीय उपसभाध्यक्ष महोदय, संविधान अनुसूचित जाति एवं अनुसूचित जनजाति आदेश संशोधन विधेयक , 2002 लोक सभा 2 मई , 2002 को पारित कर चुकी है । पहले विधेयक का उद्देश्य यह है कि मध्य प्रदेश और महाराष्ट्र की अनुसूचित जातियों तथा